

Date 16.9.25 period 2 time 10.30 am

Last subject (school of law> ancient period)

Comparative Table of Definitions of Law

Thinker	Definition in English	परिभाषा (हिंदी में)
Socrates	Socrates believed that just as there are natural physical laws, there is also a natural moral law. Man, through his inner insight, can recognize goodness or badness and thus discover absolute and eternal moral rules.	सुकरात का मानना था कि जैसे प्राकृतिक भौतिक नियम होते हैं, वैसे ही एक प्राकृतिक नैतिक नियम भी है। मनुष्य अपनी आंतरिक अंतर्दृष्टि के द्वारा अच्छाई और बुराई को पहचान सकता है और इस प्रकार शाश्वत एवं परम नैतिक नियमों की खोज कर सकता है।
Plato	According to Plato, law is the civilization of decorum and the guiding way through which human beings develop beyond their primitive animalistic stage. Humans often fail to know the best way of social life, and even if they do, personal interests restrain them. Law can be applied through instruction, but if ignored, sanctions are needed. Still, it is a moral duty to follow natural law.	प्लेटो के अनुसार, विधि शिष्टाचार की सभ्यता है और वह मार्ग है जिसके द्वारा मनुष्य अपनी आदिम पशुवत् अवस्था से आगे बढ़ता है। मनुष्य हमेशा उचित सामाजिक जीवन का सर्वोत्तम तरीका नहीं जानता, और यदि जान भी ले, तो स्वार्थ उसे नियंत्रित कर लेते हैं। विधि को निर्देशों द्वारा लागू किया जा सकता है, परंतु उपेक्षा होने पर दंड आवश्यक हो जाता है। फिर भी प्राकृतिक विधि का पालन करना नैतिक कर्तव्य है।
Aristotle	According to Aristotle, man is a part of nature because he is God's creature, and through his will he makes active use of reason. Law is a pure precept naturally directed towards the welfare of human beings. He defined law as "reason free from passions."	अरस्तू के अनुसार, मनुष्य प्रकृति का अंग है क्योंकि वह ईश्वर की रचना है और अपनी इच्छा से वह तर्क का सक्रिय उपयोग करता है। विधि एक शुद्ध उपदेश है, जो स्वाभाविक रूप से मानव कल्याण की ओर निर्देशित है। उन्होंने विधि को "भावनाओं से मुक्त तर्क" कहा।
Cicero	Cicero believed that prudence governs the world, and law is in harmony with nature, being universal, unchangeable, and eternal. Law commands duties and prohibits wrongful acts, and to go against natural law is itself a guilt.	सिसरो का मानना था कि विवेक संसार पर शासन करता है और विधि प्रकृति के पूर्ण सामंजस्य में है। यह सार्वभौमिक, अपरिवर्तनीय और शाश्वत है। विधि कर्तव्यों का आदेश देती है और बुरे कार्यों को निषिद्ध करती है। प्राकृतिक विधि का उल्लंघन करना स्वयं में अपराध है।

School of law

Medieval Period – Saint Augustine & Saint Thomas Aquinas

Saint Augustine

English:

According to Saint Augustine, law is rooted in divine command and derives its authority from God. He believed that natural law is a part of divine law, and human law must always conform to the higher law of God. If a human law contradicts divine law, it is not a true law.

हिंदी:

संत ऑगस्टिन के अनुसार, विधि की जड़ें ईश्वरीय आदेश में निहित हैं और इसकी सत्ता ईश्वर से प्राप्त होती है। उनका मानना था कि प्राकृतिक विधि, दैवीय विधि का एक भाग है और मानव निर्मित विधि को सदैव ईश्वर की उच्चतर विधि के अनुरूप होना चाहिए। यदि कोई मानव विधि दैवीय विधि का विरोध करती है तो वह वास्तविक विधि नहीं है।

Saint Thomas Aquinas

English:

Saint Thomas Aquinas systematized the theory of natural law. According to him, natural law is a part of divine law, and human reason is capable of discovering it. He emphasized four kinds of law: (1) **Eternal law** (God's plan), (2) **Divine law** (revealed in scriptures), (3) **Natural law** (discovered by human reason), and (4) **Human law** (made by rulers, valid only if in harmony with natural law).

हिंदी:

संत थॉमस एक्विनास ने प्राकृतिक विधि के सिद्धांत को व्यवस्थित रूप दिया। उनके अनुसार, प्राकृतिक विधि दैवीय विधि का एक भाग है और मनुष्य की बुद्धि उसे खोजने में सक्षम है। उन्होंने विधि के चार प्रकार बताए: (1) **शाश्वत विधि** (ईश्वर की योजना), (2) **दैवीय विधि** (धर्मग्रंथों में प्रकट), (3) **प्राकृतिक विधि** (मनुष्य की बुद्धि से ज्ञात), और (4) **मानव विधि** (शासकों द्वारा बनाई गई, परंतु तभी वैध जब यह प्राकृतिक विधि के अनुरूप हो)।

Great 🙌 Now let's cover the **Renaissance / Modern period thinkers** you mentioned: **Hobbes, Kohler, Rawls, and Fuller.**

I'll prepare a **comparative table** in **English + Hindi** just like the previous ones.

Renaissance / Modern Period – Theories of Law

Thinker	Definition in English	परिभाषा (हिंदी में)
Thomas Hobbes (1588–1679)	Hobbes considered law as the command of the sovereign, necessary to control the selfish and brutish nature of human beings. In the state of nature, life was "solitary, poor, nasty, brutish, and short." Therefore, people made a social contract, giving power to the sovereign, and law became the will of the sovereign.	हॉब्स के अनुसार, विधि शासक का आदेश है, जो मनुष्य की स्वार्थी और क्रूर प्रवृत्ति को नियंत्रित करने के लिए आवश्यक है। प्राकृतिक अवस्था में जीवन "एकाकी, निर्धन, घृणित, क्रूर और अल्पकालिक" था। इसलिए लोगों ने सामाजिक अनुबंध करके सत्ता शासक को सौंप दी और विधि शासक की इच्छा बन गई।
Josef Kohler	Kohler represented the historical school of jurisprudence. He believed that law is the product of human culture and civilization, and	कोहलर ऐतिहासिक विधिशास्त्र के प्रवक्ता थे। उनके अनुसार, विधि मानव संस्कृति और

Thinker	Definition in English	परिभाषा (हिंदी में)
(1849–1919)	it develops gradually with the progress of society.	सभ्यता की उपज है तथा यह समाज की प्रगति के साथ धीरे-धीरे विकसित होती है।
John Rawls (1921–2002)	Rawls propounded the theory of “Justice as Fairness.” According to him, laws and institutions are just if they are arranged to provide equal basic rights, and social and economic inequalities are permitted only if they benefit the least advantaged members of society (difference principle).	रॉल्स ने “न्याय के रूप में निष्पक्षता” का सिद्धांत प्रस्तुत किया। उनके अनुसार, विधि और संस्थाएँ तभी न्यायसंगत हैं जब वे समान मौलिक अधिकार प्रदान करें, और सामाजिक-आर्थिक असमानताएँ तभी स्वीकार्य हैं जब वे समाज के सबसे वंचित वर्ग के हित में हों (अंतर सिद्धांत)।
Lon L. Fuller (1902–1978)	Fuller emphasized the “inner morality of law.” He laid down eight principles (clarity, consistency, prospectivity, generality, possibility of compliance, congruence between rule and action, stability, and publicity) which make a legal system just and effective.	फुलर ने विधि की “आंतरिक नैतिकता” पर बल दिया। उन्होंने आठ सिद्धांत बताए (स्पष्टता, संगति, भविष्यगामी प्रभाव, सार्वभौमिकता, पालन की संभावना, नियम और क्रिया का सामंजस्य, स्थिरता, और प्रचार) जो किसी विधिक प्रणाली को न्यायसंगत और प्रभावी बनाते हैं।

Perfect 

Here's a **complete comparative table** of major thinkers from Ancient → Medieval → Renaissance/Modern covering **Socrates, Plato, Aristotle, Cicero, Saint Augustine, Saint Thomas Aquinas, Hobbes, Kohler, Rawls, and Fuller** in English + Hindi.

Comparative Table of Theories of Law

Thinker	Definition in English	परिभाषा (हिंदी में)
Socrates	Socrates believed that just as natural physical laws exist, there is also a natural moral law. Man, through his inner insight, can distinguish good from bad and discover eternal moral rules.	सुकरात का मानना था कि जैसे प्राकृतिक भौतिक नियम होते हैं, वैसे ही एक प्राकृतिक नैतिक नियम भी है। मनुष्य अपनी अंतर्दृष्टि से अच्छाई-बुराई को पहचानकर शाश्वत नैतिक नियम खोज सकता है।
Plato	Law is the civilization of decorum, guiding humans to rise above their primitive animalistic stage. Humans often fail to know the best social life, and even if they do, self-interest restrains them. Law may require sanctions if ignored, but following natural law is a moral duty.	प्लेटो के अनुसार, विधि शिष्टाचार की सभ्यता है जो मनुष्य को पशुवत अवस्था से ऊपर उठाकर विकास की ओर ले जाती है। मनुष्य अक्सर सर्वोत्तम सामाजिक जीवन नहीं जानता, और जानने पर भी स्वार्थ उसे रोकता है। विधि को लागू करने हेतु दंड आवश्यक हो सकता है, पर

Thinker	Definition in English	परिभाषा (हिंदी में)
		प्राकृतिक विधि का पालन करना नैतिक कर्तव्य है।
Aristotle	Man is part of nature as a creature of God. Law is a pure precept, directed towards human welfare. He defined law as "reason free from passions."	अरस्तू के अनुसार, मनुष्य प्रकृति का अंग और ईश्वर की रचना है। विधि एक शुद्ध उपदेश है जो मानव कल्याण की ओर निर्देशित है। उन्होंने विधि को "भावनाओं से मुक्त तर्क" कहा।
Cicero	Law is in harmony with nature, universal, unchangeable, and eternal. It commands duties and prohibits wrongs. To go against natural law is guilt.	सिसरो के अनुसार, विधि प्रकृति के अनुरूप है, सार्वभौमिक, अपरिवर्तनीय और शाश्वत है। यह कर्तव्यों का आदेश देती है और बुरे कार्यों को निषिद्ध करती है। प्राकृतिक विधि का उल्लंघन करना अपराध है।
Saint Augustine	Law derives its authority from God. Natural law is part of divine law, and human law must conform to it. A law contrary to divine law is not a true law.	संत ऑगस्टिन के अनुसार, विधि की सत्ता ईश्वर से आती है। प्राकृतिक विधि दैवीय विधि का भाग है और मानव विधि को इसके अनुरूप होना चाहिए। दैवीय विधि के विपरीत कोई भी मानव विधि वास्तविक विधि नहीं है।
Saint Thomas Aquinas	Systematized natural law: (1) Eternal law (God's plan), (2) Divine law (revealed), (3) Natural law (reason), (4) Human law (valid only if aligned with natural law).	संत थॉमस एक्विनास ने प्राकृतिक विधि को व्यवस्थित किया: (1) शाश्वत विधि (ईश्वर की योजना), (2) दैवीय विधि (प्रकट), (3) प्राकृतिक विधि (तर्क से ज्ञात), (4) मानव विधि (केवल तभी वैध जब प्राकृतिक विधि के अनुरूप हो)।
Thomas Hobbes	Law is the command of the sovereign to control the selfish, brutish human nature. In the state of nature, life was "solitary, poor, nasty, brutish, and short." Hence, people made a social contract giving power to the sovereign.	हॉब्स के अनुसार, विधि शासक का आदेश है जो स्वार्थी और क्रूर मानव स्वभाव को नियंत्रित करती है। प्राकृतिक अवस्था में जीवन "एकाकी, निर्धन, घृणित, क्रूर और अल्पकालिक" था। इसलिए लोगों ने सामाजिक अनुबंध कर सत्ता शासक को सौंप दी।
Josef Kohler	Law is a product of human culture and civilization, evolving gradually with society's progress.	कोहलर के अनुसार, विधि मानव संस्कृति और सभ्यता की उपज है और यह समाज की प्रगति के साथ धीरे-धीरे विकसित होती है।
John Rawls	Propounded "Justice as Fairness." Laws are just if they ensure equal basic rights and allow inequalities only when they benefit the least advantaged (difference principle).	रॉल्स ने "न्याय के रूप में निष्पक्षता" का सिद्धांत दिया। विधि तभी न्यायसंगत है जब वह समान मौलिक अधिकार दे और असमानताएँ केवल तभी स्वीकार्य हों जब वे सबसे वंचित वर्ग के हित में हों (अंतर सिद्धांत)।

Thinker	Definition in English	परिभाषा (हिंदी में)
Lon L. Fuller	Emphasized “inner morality of law.” Laid down 8 principles (clarity, consistency, prospectivity, generality, possibility of compliance, congruence, stability, publicity) necessary for a just legal system.	फुलर ने विधि की “आंतरिक नैतिकता” पर बल दिया। उन्होंने 8 सिद्धांत बताए (स्पष्टता, संगति, भविष्यगामी प्रभाव, सार्वभौमिकता, पालन की संभावना, सामंजस्य, स्थिरता, प्रचार) जो किसी विधिक प्रणाली को न्यायसंगत बनाते हैं।

Date 17-09-2025 time 10.30 am period 2

Resettion period rebirth theory social contract

By Grotius

During the Middle Ages, the Church remained supreme, but this period also witnessed systematic development and the rise of new ideas. The new political theories strongly advocated for the divinity and sovereignty of the State. At this time, rationalism became the dominant way of approaching knowledge. People began to demand greater protection from the State, which gave birth to the concept of nationalism.

The State, it was argued, must possess full sovereignty. This growing force eventually overthrew the dominance of the Church. This theory affirmed the truth in the view that society is founded upon a social contract.

Answer: Grotius and the Rise of Modern Political Theory

During the **Middle Ages**, the **Church remained the supreme authority** in political, social, and spiritual matters. The Pope exercised dominance even over kings, and political power was justified through religion. However, this period also witnessed the **systematic development of new ideas** that questioned Church supremacy and laid the foundation for **modern political theory**.

1. Rise of New Political Ideas

With the Renaissance and the Reformation, **rationalism** began to dominate the field of knowledge. Thinkers advocated that reason, not blind faith, should guide human conduct. This shift gave rise to **new political theories** which emphasized:

- The **sovereignty of the State**, rather than the Church.
- The need for **protection and order** to be provided by the State.
- The emergence of **nationalism**, as people started identifying with their nation rather than with religion alone.

2. Grotius (Hugo Grotius, 1583–1645)

Grotius is often called the “**Father of Modern International Law**.” He was one of the first thinkers to systematically break away from the **absolute control of the Church** in political matters.

His main contributions were:

- **Sovereignty of the State:** Grotius argued that the State must have **full and independent sovereignty** over its territory and people.
- **Natural Law:** He believed that natural law exists independent of divine authority, and it can be discovered through reason.
- **Social Contract Theory:** According to Grotius, society is founded on a **social contract** where individuals come together and agree to form a political community for mutual protection.
- **International Law:** Grotius laid the foundation of modern international law by asserting that relations among States should be governed by natural law and mutual consent, not by the Church.

3. Decline of Church Dominance

The rise of these ideas gradually **overthrew the supremacy of the Church**. Political thinkers like Grotius, Hobbes, Locke, and Rousseau developed the **contractual theory of the State**, shifting authority from divine power to **human agreement and sovereignty of the State**.

Conclusion

Grotius played a **pioneering role** in bridging the gap between medieval thought and modern political philosophy. By advocating **sovereignty, nationalism, rationalism, and social contract theory**, he laid the intellectual foundation of the modern State system.

Thus, Grotius's theory proved the truth of the view that **society is not merely divine creation but the result of a social contract**, making him one of the most influential figures in political thought.

ठीक है 👍 अब मैं आपको ऊपर दी गई सारी बातें **हिन्दी में** विस्तार से समझाता हूँ ताकि यह 20 अंकों के उत्तर के रूप में भी काम आ सके।

उत्तर : गोटियस और आधुनिक राजनीतिक सिद्धांत की शुरुआत

1. मध्यकाल और चर्च की सर्वोच्चता

मध्यकाल (Middle Ages) में चर्च ही सर्वोच्च प्राधिकरण था। पोप की सत्ता राजा से भी अधिक मानी जाती थी। लेकिन इसी समय नई विचारधाराओं का जन्म हुआ जिसने चर्च की प्रभुता को चुनौती दी और आधुनिक राजनीतिक चिंतन की नींव रखी।

2. पुनर्जागरण (Renaissance – Rebirth Period)

14वीं से 16वीं शताब्दी तक यूरोप में पुनर्जागरण हुआ, जिसे **“ज्ञान का पुनर्जन्म”** कहा गया।

- इसमें लोग अंधविश्वास और धार्मिक कट्टरता से हटकर **तर्क, विज्ञान और मानववाद** की ओर बढ़े।
 - राजनीति में इसका प्रभाव यह हुआ कि लोगों ने माना कि **राज्य को चर्च से स्वतंत्र होना चाहिए**।
 - इस बौद्धिक वातावरण ने गोटियस जैसे विचारकों को जन्म दिया।
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3. पुनर्जन्म सिद्धांत (Rebirth Theory)

पुनर्जन्म सिद्धांत का तात्पर्य यही है कि लंबे समय तक चर्च की सत्ता के बाद ज्ञान और स्वतंत्र चिंतन का **फिर से जन्म** हुआ।

- राजनीति में इसका अर्थ था कि सत्ता का केन्द्र चर्च नहीं बल्कि **स्वतंत्र राज्य** होना चाहिए।
- राष्ट्रवाद (Nationalism) और राज्य की **पूर्ण संप्रभुता (Sovereignty)** का विचार यहीं से उभरा।

4. सामाजिक संविदा सिद्धांत (Social Contract Theory)

ग्रोटियस (Hugo Grotius, 1583–1645) पहले आधुनिक विचारकों में से थे जिन्होंने कहा कि समाज की नींव **सामाजिक संविदा (Social Contract)** पर टिकी है, न कि केवल ईश्वर की इच्छा पर। बाद में अन्य विचारकों ने इसे आगे बढ़ाया :

- **हॉब्स (Hobbes)** – सामाजिक संविदा से एक *सर्वशक्तिमान संप्रभु* का जन्म होता है जो शांति और सुरक्षा बनाए रखे।
- **लॉक (Locke)** – सामाजिक संविदा का उद्देश्य मनुष्य के *प्राकृतिक अधिकार* (जीवन, स्वतंत्रता, संपत्ति) की रक्षा करना है।
- **रूसो (Rousseau)** – सामाजिक संविदा के माध्यम से *सामूहिक इच्छा (General Will)* और *जनसत्ता (Popular Sovereignty)* की स्थापना होती है।

5. ग्रोटियस का योगदान

- राज्य की **पूर्ण संप्रभुता** की वकालत की।
- **प्राकृतिक विधि (Natural Law)** को तर्क और बुद्धि से खोजने योग्य बताया।
- **अंतरराष्ट्रीय विधि (International Law)** की नींव रखी।
- यह सिद्ध किया कि समाज और राज्य की उत्पत्ति किसी दिव्य शक्ति से नहीं बल्कि **मानव समझौते** से हुई है।

निष्कर्ष

ग्रोटियस ने मध्यकालीन धार्मिक प्रभुता से आधुनिक राजनीतिक विचार तक का मार्ग प्रशस्त किया। पुनर्जागरण ने जिस **तर्क और स्वतंत्रता** का पुनर्जन्म किया था, उसे ग्रोटियस ने **सामाजिक संविदा** और **राज्य की संप्रभुता** के रूप में राजनीतिक सिद्धांत में स्थापित किया। इसलिए उनका विचार पुनर्जागरण काल, पुनर्जन्म सिद्धांत और सामाजिक संविदा – तीनों से सीधे जुड़ा हुआ है।

बहुत बढ़िया 🍌 मैंने नीचे एक **तुलनात्मक सारणी (Comparative Table)** बनाई है जिसमें **Renaissance (Rebirth Period) – Rebirth Theory – Social Contract** को **Grotius, Hobbes, Locke, Rousseau** से जोड़ा गया है।

■ Comparative Table (English & Hindi)

Period / Theory	Main Idea (English)	मुख्य विचार (Hindi)	Key Thinkers
Renaissance (14th–16th Century)	Rebirth of knowledge, reason, humanism; decline of Church dominance.	ज्ञान, तर्क और मानववाद का पुनर्जन्म; चर्च की प्रभुता का पतन।	Early Humanists, paved way for Grotius.
Rebirth Theory	Revival of classical learning; freedom of thought; State must be supreme, not the Church.	प्राचीन ज्ञान का पुनर्जागरण; स्वतंत्र चिंतन; राज्य चर्च से ऊपर होना चाहिए।	Grotius (Father of International Law).
Grotius (1583–1645)	Society based on Social Contract ; State has full sovereignty; Natural law is based on reason.	समाज की नींव सामाजिक संविदा पर; राज्य की पूर्ण संप्रभुता; प्राकृतिक विधि तर्क पर आधारित।	Hugo Grotius
Hobbes (1588–1679)	Social contract creates absolute sovereign to maintain peace and order.	सामाजिक संविदा से सर्वशक्तिमान संप्रभु का जन्म होता है जो शांति व व्यवस्था बनाए रखे।	Thomas Hobbes
Locke (1632–1704)	Social contract protects natural rights – life, liberty, property.	सामाजिक संविदा का उद्देश्य प्राकृतिक अधिकारों (जीवन, स्वतंत्रता, संपत्ति) की रक्षा करना।	John Locke
Rousseau (1712–1778)	Social contract establishes General Will and Popular Sovereignty .	सामाजिक संविदा सामूहिक इच्छा (General Will) और जनसत्ता (Popular Sovereignty) को स्थापित करती है।	Jean Jacques Rousseau

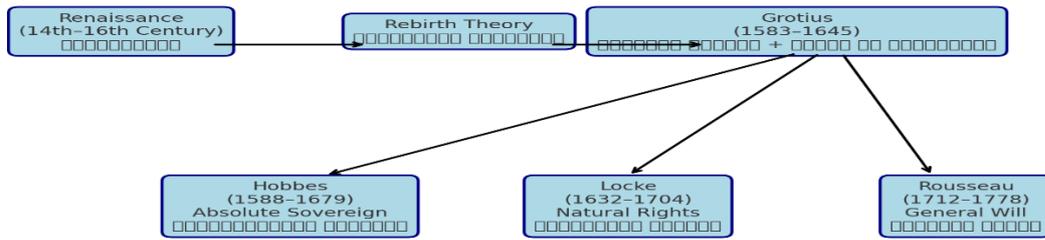
■ Comparative Table of Natural Law School

(English + Hindi)

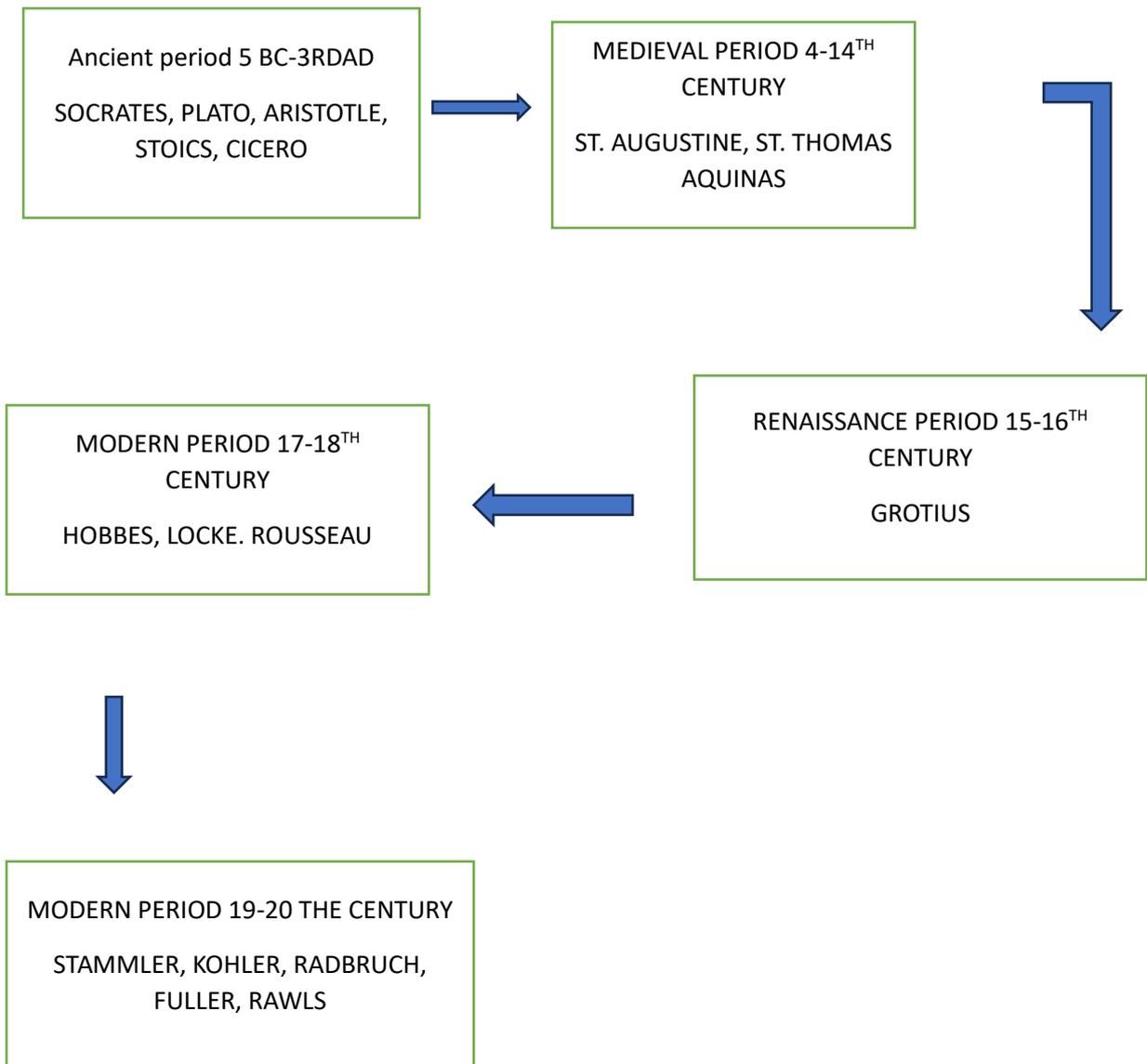
Period / कालखंड	Time (समय)	Thinkers / विचारक	Contribution (English)	योगदान (हिन्दी)
Ancient Period प्राचीन काल	5th Century BC – 3rd Century AD	Socrates, Plato, Aristotle, Stoics, Cicero	Natural law as universal moral order; law based on reason, not custom; Cicero: law is right reason in agreement with nature.	प्राकृतिक विधि को सार्वभौमिक नैतिक व्यवस्था माना; कानून तर्क पर आधारित होना चाहिए; सिसैरो ने कहा – “कानून प्रकृति के

Period / कालखंड	Time (समय)	Thinkers / विचारक	Contribution (English)	योगदान (हिन्दी)
				साथ सामंजस्य रखने वाला सही तर्क है।”
Medieval Period मध्यकालीन काल	4th – 14th Century AD	Saint Augustine, Saint Thomas Aquinas	Law connected with divine order; Aquinas distinguished eternal law, natural law, human law; morality linked with God’s will.	विधि को ईश्वर की इच्छा से जोड़ा; एक्विनास ने शाश्वत विधि, प्राकृतिक विधि और मानव विधि में भेद किया।
Renaissance Period पुनर्जागरण काल	15th – 16th Century	Grotius (1583–1645)	Secularization of natural law; foundation of international law; social contract basis of society; law is valid even without divine authority.	प्राकृतिक विधि को धर्म से अलग किया; अंतरराष्ट्रीय विधि की नींव रखी; सामाजिक संविदा को समाज की नींव बताया।
Modern Period (Early Modern) आधुनिक काल (प्रारंभिक)	17th – 18th Century	Hobbes, Locke, Rousseau	Hobbes: absolute sovereign by contract; Locke: natural rights (life, liberty, property); Rousseau: general will & popular sovereignty.	हॉब्स – सामाजिक संविदा से सर्वशक्तिमान संप्रभु; लॉक – जीवन, स्वतंत्रता, संपत्ति की रक्षा; रूसो – सामूहिक इच्छा और जनसत्ता।
Modern Period (19th – 20th Century) आधुनिक काल (19वीं-20वीं सदी)	19th – 20th Century	Stammler, Kohler, Radbruch, Fuller, Rawls	Stammler: natural law with variable content; Kohler: natural law through cultural evolution; Fuller: inner morality of law; Rawls: justice as fairness (modern revival of natural law).	स्टैमलर – परिवर्तनीय सामग्री वाली प्राकृतिक विधि; कोहलर – संस्कृति के विकास से विधि; फुलर – विधि की आंतरिक नैतिकता; रॉल्स – न्याय को समानता के रूप में (प्राकृतिक विधि का आधुनिक रूप)।

**Flowchart: Renaissance → Rebirth → Social Contract Theorists
(English + Hindi)**



=====



Social Contract Theory

From the beginning, human beings lived in a **state of nature**. In this natural condition, there was **no government and no law** to regulate their behavior. Life was insecure, uncertain, and full of dangers.

To protect their **life, liberty, and property**, people decided to come together and enter into an **agreement or contract**. This agreement is called the **Social Contract**.

According to this theory, society itself came into existence because of this contract. People surrendered some of their freedoms and rights to establish a **governing authority**. In return, the government (whether in the form of a sovereign, king, or ruler) was given the power and responsibility to protect the people and maintain order.

Thus, the **origin of both society and government** is explained by the Social Contract Theory.

सामाजिक संविदा सिद्धांत

आरम्भ में मनुष्य **प्राकृतिक अवस्था (State of Nature)** में रहते थे। उस समय न कोई सरकार थी और न ही कोई विधि (कानून) था। जीवन असुरक्षित, अनिश्चित और खतरों से भरा हुआ था।

अपने **जीवन, स्वतंत्रता और संपत्ति** की रक्षा के लिए लोगों ने आपस में एक **समझौता (संविदा / Contract)** किया। इसी को **सामाजिक संविदा (Social Contract)** कहा जाता है।

इस सिद्धांत के अनुसार, इसी संविदा के परिणामस्वरूप **समाज का अस्तित्व** आया। लोगों ने अपनी कुछ स्वतंत्रताओं और अधिकारों का त्याग करके एक **शासक अथवा सरकार** की स्थापना की। बदले में शासक या संप्रभु (Sovereign/King/Ruler) को यह दायित्व दिया गया कि वह जनता की रक्षा करे और व्यवस्था बनाए रखे।

अतः **समाज और सरकार दोनों की उत्पत्ति** सामाजिक संविदा के सिद्धांत से समझाई जाती है।

■ सामाजिक संविदा सिद्धांत (Social Contract Theory)

सामान्य विचार

प्रारम्भ में मनुष्य प्राकृतिक अवस्था (State of Nature) में रहता था।

उस अवस्था में **न सरकार थी, न कानून और न कोई संगठित समाज**। जीवन असुरक्षित और संकटपूर्ण था। अपनी **जीवन, स्वतंत्रता और संपत्ति** की सुरक्षा के लिए मनुष्यों ने आपस में एक समझौता (Contract) किया। इसी समझौते से समाज और सरकार दोनों की उत्पत्ति हुई।

◆ थॉमस हॉब्स (Thomas Hobbes, 1588–1679)

- प्राकृतिक अवस्था को “**युद्ध की स्थिति (State of War)**” कहा।
- मनुष्य स्वार्थी और हिंसक है, “**Man is selfish and brutish**।”
- जीवन “solitary, poor, nasty, brutish and short” था।
- इसलिए लोगों ने अपनी सारी स्वतंत्रता एक **सर्वशक्तिमान संप्रभु (Absolute Sovereign)** को सौंप दी।

- राज्य का उद्देश्य था **कानून और व्यवस्था बनाए रखना**।
👉 हॉब्स के अनुसार **संविधान और अधिकार शासक के अधीन हैं**।

◆ **जॉन लॉक (John Locke, 1632–1704)**

- प्राकृतिक अवस्था को अपेक्षाकृत शांतिपूर्ण माना।
- मनुष्य के पास पहले से ही **प्राकृतिक अधिकार (Natural Rights)** हैं –
 - जीवन (Life)
 - स्वतंत्रता (Liberty)
 - संपत्ति (Property)
- समाज और सरकार केवल इन अधिकारों की रक्षा के लिए बने।
- यदि शासक इन अधिकारों का उल्लंघन करता है तो जनता को **विद्रोह करने का अधिकार (Right to Revolt)** है।
👉 लॉक की विचारधारा ने **आधुनिक लोकतंत्र और उदारवाद** की नींव रखी।

◆ **जीन जैक रूसो (Jean Jacques Rousseau, 1712–1778)**

- प्राकृतिक अवस्था में मनुष्य को **“स्वतंत्र और भला (Free and Good)”** बताया।
- असमानता (Inequality) और निजी संपत्ति (Private Property) के कारण संघर्ष पैदा हुआ।
- सामाजिक संविदा के अनुसार सत्ता का स्रोत जनता की **सामूहिक इच्छा (General Will)** है।
- शासक केवल जनता का प्रतिनिधि है।
- वास्तविक संप्रभुता (Sovereignty) जनता में निहित है।
👉 रूसो के विचारों ने **फ्रांसीसी क्रांति (French Revolution)** और आधुनिक **जनसत्ता (Popular Sovereignty)** का मार्ग प्रशस्त किया।

✓ **निष्कर्ष**

सामाजिक संविदा सिद्धांत से यह स्पष्ट होता है कि –

- **हॉब्स** ने निरंकुश संप्रभुता का समर्थन किया।
- **लॉक** ने प्राकृतिक अधिकारों और सीमित सरकार पर बल दिया।
- **रूसो** ने जनसत्ता और सामूहिक इच्छा की संकल्पना प्रस्तुत की।

इन्हीं विचारों ने आधुनिक राज्य, लोकतंत्र और संवैधानिक शासन की नींव रखी।

Date 22.09.2025 time 01.30 pm period -4

Natural law of school > modern theory > **stammler**>

I see 🙌 You're referring to **Stammler's theory of law** (sometimes spelled *Stemler/Stammler*), an important part of **Natural Law philosophy**. Let me explain it clearly for your exam prep:

■ Stammler's Theory of Just Law

Core Idea

- According to Stammler, **all positive law** (the law actually enacted by the State) is only an **attempt at just law**.
 - What is *just law* or *justice*?
 - He says **justice is the harmony of will or purpose within the framework of social life**.
 - In other words, law must balance individual wills with the common good of society.
-
-

How Justice is Determined

- Stammler provides a **technique**:
 - By examining whether the purpose or desire of individuals deserves **legal recognition**.
 - Law should not recognize every individual desire; only those consistent with social harmony should be legally protected.
-

Relatively Just Law

- Since social life and conditions keep changing, absolute justice is impossible.
 - What we can achieve is **relative justice**:
 - At a particular time, if law promotes harmony of wills and social purpose, it is considered relatively just.
 - Therefore, law must **constantly evolve** to remain just.
-

Key Points in Simple Terms

1. **Positive law** = enacted by the State.
2. **Just law** = harmony of individual will + social purpose.
3. **Technique** = test which desires deserve recognition in law.
4. **Relativity** = justice changes with society, hence law must adapt.

Criticism

- Stammler gives only a **formal idea of justice** (harmony of wills) but does not provide clear material standards (like equality, liberty, etc.).
 - Still, his contribution is valuable because he connects **law with moral purpose and social life**.
-

Possible Exam Questions

Short Answer (5 Marks)

1. Define "Just Law" according to Stammler.
2. What does Stammler mean by "Relatively Just Law"?

Long Answer (15 Marks)

1. Explain Stammler's theory of just law. How does he distinguish between positive law and just law?
2. "Justice is the harmony of will or purpose within the framework of social life." Explain with reference to Stammler's theory.
3. Critically analyze Stammler's contribution to Natural Law theory.

Long Question Answer

Q. "Justice is the harmony of will or purpose within the framework of social life." Explain with reference to Stammler's theory.

Introduction

Julius **Stammler** was a German jurist and philosopher of law who belonged to the Natural Law school. He attempted to reconcile the rigid formalism of positive law with the moral demands of justice. According to him, **all positive law is only an attempt at just law**, and the concept of *just law* must guide the making and interpretation of positive law.

Positive Law vs Just Law

- **Positive law** is the body of rules enacted and enforced by the State. It exists in society irrespective of its justice.
- **Just law** is the ideal standard toward which positive law must strive. Stammler defined justice as **the harmony of individual wills within the framework of social life**.

This means the law should not merely enforce order but should coordinate the purposes and desires of individuals so that they align with social welfare.

Harmony of Will and Purpose

Stammler emphasized that:

1. The purpose of law is to regulate conflicting individual wills.
 2. A law is “just” if it creates a balance between the individual’s freedom and society’s collective interest.
 3. For example, property law protects individual ownership but also limits it through restrictions (like zoning, taxation) for the common good.
-

Technique to Judge Just Law

Stammler suggested a method to test whether a desire or purpose deserves legal recognition:

- Ask whether the desire promotes **harmony within social life**.
- Desires contrary to social harmony (e.g., exploitation, oppression) should not be recognized by law.

Thus, law acts as a filter: it validates purposes consistent with social good and rejects selfish or destructive ones.

Relatively Just Law

Stammler admitted that **absolute justice is impossible** because social conditions are constantly changing.

- Therefore, law can only be **relatively just** at a given time and place.
 - As society progresses, the law must evolve to maintain justice.
-

Criticism

- Stammler’s definition of justice is **formal** rather than **material**. He tells us that justice is “harmony of wills,” but does not give concrete standards like liberty, equality, or dignity.
 - However, his contribution is significant because he introduced a moral purpose into legal philosophy and made positive law accountable to justice.
-

Conclusion

Stammler’s theory bridges the gap between law as it is (*positive law*) and law as it ought to be (*just law*). His central idea that “justice is the harmony of will or purpose within the framework of social life” provides a guiding principle for evaluating laws. Although criticized for its vagueness, the concept of **relative justice** makes his theory flexible and socially relevant.

Or 2nd answer

Q: “Justice is the harmony of will or purpose within the framework of social life.” Explain with reference to Stammler’s theory.

Answer

Rudolf Stammler, a German jurist, is an important figure in the school of **Natural Law with variable content**. He attempted to reconcile natural law with changing social conditions.

According to Stammler, **all positive law is only an attempt at just law**. Positive law is the enacted law of the State, but it does not automatically ensure justice. To measure justice, Stammler introduces the idea of *Just Law*.

For him, **Just Law** means **a harmony of individual will and social purpose within the framework of social life**. Law must coordinate the diverse wills of individuals in society in such a way that they function harmoniously. Only those individual purposes or desires which can exist in harmony with the social whole deserve legal recognition.

Stammler provides a **technique** for testing justice: one must judge whether a particular purpose or desire deserves legal recognition. If it promotes harmony within society, then it is relatively just. If it creates disharmony, then it should not be recognized by law.

Importantly, Stammler emphasizes that **justice is relative**. Since society, conditions, and human needs constantly change, what is considered just at one time may not be just at another. Hence, law must continuously evolve to remain in tune with social purposes.

Although Stammler does not provide a fixed material standard of justice (such as liberty or equality), his idea of justice as “social harmony of wills” makes law a **dynamic and moral enterprise**, not merely a command of the sovereign.

Conclusion

Thus, according to Stammler, justice is not absolute but relative, and the true function of law is to create social harmony by recognizing only those desires which are consistent with the welfare of the community. In his words, *“Justice is the harmony of will or purpose within the framework of social life.”*

Comparison of Stammler’s Theory with Other Natural Law Thinkers

Thinker	Key Idea of Natural Law	Comparison with Stammler
Aquinas (Medieval)	Natural law = participation of human reason in God’s eternal law. Justice based on divine order and morality.	Aquinas = Absolute & Theological standard ; Stammler = Relative & Secular standard (based on social harmony).
Kant (Modern, Philosophy of Will)	Law = system of conditions under which freedom of each can coexist with freedom of all. Justice linked to universal reason and autonomy.	Stammler was influenced by Kant; both emphasize harmony of wills , but Kant = philosophical/ideal standard , Stammler = practical/relative test .
Stammler (Natural Law with Variable Content)	Just law = harmony of wills within social life; positive law is attempt at just law; justice is relative, not absolute.	Distinguishes between “form” of justice (harmony of wills) and “variable content” (changes with society).

Thinker	Key Idea of Natural Law	Comparison with Stammler
Modern Natural Law (e.g., Fuller, Finnis)	Law has inner morality (Fuller) or based on basic human goods (Finnis). Justice includes rights, dignity, fairness.	Stammler is more formal (gives test but not content). Modern thinkers provide substantive standards (like human rights, dignity, equality).

👉 Do you want me to also **compare Stammler’s theory with other Natural Law thinkers** (like Aquinas, Kant, or modern Natural Law) so that you can handle “Compare & Contrast” type exam questions?

Great 👍 I’ll now **add 2–3 case references** under each thinker where courts reflected similar reasoning. This will strengthen your exam answers.

📚 Comparison of Stammler’s Theory with Other Natural Law Thinkers (with Case References)

Thinker	Key Idea of Law/Justice	Case References	How it Differs / Relates to Stammler
Aquinas (1225–1274)	Law is an <i>ordinance of reason</i> for the common good , rooted in Divine Law . Natural Law = participation of humans in eternal law.	<ul style="list-style-type: none"> • <i>Kesavananda Bharati v. State of Kerala</i> (1973) – SC upheld basic structure doctrine, echoing common good & higher law. • <i>A.D.M. Jabalpur v. Shivkant Shukla</i> (1976) – later criticized; reaffirmed that natural rights exist beyond state law. 	Aquinas = material & religious (common good + divine order). Stammler = formal & secular (harmony of wills).
Kant (1724–1804)	Law = conditions where freedom of each can coexist with the freedom of all under universal rules. Justice = rational and universal.	<ul style="list-style-type: none"> • <i>Maneka Gandhi v. Union of India</i> (1978) – SC expanded Art. 21 → freedom with fairness, reason, universal principles. 	Stammler = strongly influenced by Kant. Both stress formal aspects (harmony/universal will). Stammler adds social framework to Kant’s freedom principle.

Thinker	Key Idea of Law/Justice	Case References	How it Differs / Relates to Stammler
Stammler (1856–1938)	All positive law is an attempt at just law. Justice = harmony of individual wills within the framework of social life . Justice is relative (changes with society).	<ul style="list-style-type: none"> • <i>State of Madras v. Champakam Dorairajan</i> (1951) – social purpose (education upliftment) v. individual rights. • <i>Indra Sawhney v. Union of India</i> (1992) – balance of individual & social harmony in reservations. 	Distinctive for being formal, secular, and social . Criticized for vagueness—no material values like liberty or equality specified.
Modern Natural Law (Fuller, Finnis, etc.)	Law must respect moral principles : rule of law (Fuller), human goods & dignity (Finnis). Provides substantive content of justice.	<ul style="list-style-type: none"> • <i>Kesavananda Bharati</i> (1973) – dignity, equality, justice are substantive values. • <i>Vishaka v. State of Rajasthan</i> (1997) – SC recognized international human rights norms as part of Indian law. 	Modern thinkers give concrete values (rights, dignity, equality). Stammler remains abstract —only “harmony of wills,” no fixed content.

✦ Quick Takeaway

- Courts often **echo Aquinas** when invoking “higher principles” like basic structure.
- **Kantian influence** shows in cases expanding personal liberty under universal fairness.
- **Stammler** reflects in balancing *individual will vs. social purpose* (reservation, upliftment).
- **Modern Natural Law** appears in cases invoking human rights and dignity.

👉 Do you want me to now also **draft a model 20-mark answer** (intro → theory → comparison → case laws → conclusion) combining all of this, so you can directly write it in exam?

Question analytical school? विधि के विश्लेषणात्मक सिद्धांत का वर्णन

Question pure theory of law? विधि के विशुद्ध सिद्धांत से आप क्या समझते हैं

Answer Austine > “Command of the Sovereign Authority”

■ Command of the Sovereign Authority

Austin’s Definition of Law

- John Austin (1790–1859) defined law as:

“Law is a command of the sovereign backed by sanction.”

- **According to him, law is not morality or custom; it is only what the sovereign orders, and which is enforced by sanctions.**

Key Elements

1. Command

- A command is an **expression of desire** by a political superior to a political inferior.
- Example: The State directs citizens to pay taxes.

2. Duty

- Commands create **legal duties**—an obligation on individuals to act or not to act.

3. Sanction

- If duty is not followed, there is a **punishment or evil consequence**.
- Example: Non-payment of taxes → penalty.

4. Sovereign

- Sovereign = a person or body of persons **whom society obeys habitually and who does not habitually obey anyone else**.
 - In modern terms → **Parliament + State authority**.
-

Illustration

- “Do not commit theft” → command of State.
 - Creates duty → citizens must not steal.
 - Backed by sanction → punishment under IPC if violated.
-

Criticism

- Too rigid: ignores **morality, justice, customs**.
 - Does not fit in modern democracies where **sovereignty is divided** (e.g., Constitution is supreme, not one person).
 - Cannot explain **international law** (no sovereign above States).
-

Case References

- *State of West Bengal v. Union of India* (1963) → SC held that **Parliament derives power from the Constitution**, not absolute sovereign in Austin’s sense.
 - *Kesavananda Bharati v. State of Kerala* (1973) → Constitution is supreme, sovereignty is limited by **basic structure doctrine**.
-

Possible Exam Questions

Short Notes

1. Explain the meaning of "Command" according to Austin.
2. Who is the "Sovereign" in Austin's theory?

Long Questions

1. Discuss John Austin's theory of law as "Command of the Sovereign".
2. Critically analyze the limitations of Austin's "Command Theory" in the modern democratic framework.

ऑस्टिन। संप्रभु के द्वारा दिया गया आदेश ही लॉ है।

विधि संप्रभु के द्वारा दिया गया आदेश है।

विधि सुप्रीम ऑथॉरिटी के द्वारा दिया गया आदेश है।

New topic

Analytical school विश्लेषणात्मक विचारधारा

- A Bentham
- * utilitarian for individual
 - * Expository (act of parliament or what is law?)
 - * Censorial (art of parliament) (what is ought to be?)

B Austine CDS Formula

- * Command, duty, sanction formula
- * Command theory
- * Sovereign (raja, or samprabhu)
- * Sanction (fine)

C H L A HART

- * Law is primary and secondary

D kelson's theory

- * Pure theory of law (विधि का विशुद्ध सिद्धांत)
-
-

Perfect 🍌 You've already made a **nice skeleton table** of the **Analytical School** (विश्लेषणात्मक विचारधारा). I'll polish it, add **clarity + 1-2 explanatory lines** for each thinker, so it becomes exam-ready.

 **Analytical School of Jurisprudence (विश्लेषणात्मक विचारधारा)**

Thinker	Key Points	Explanation
A. Jeremy Bentham (1748–1832)	<ul style="list-style-type: none"> Utilitarian for individual Expository → "What law <i>is</i>" (Act of Parliament) Censorial → "What law <i>ought to be</i>" 	<p>Founder of legal positivism. He believed law should promote the greatest happiness of the greatest number.</p>
B. John Austin (1790–1859)	<ul style="list-style-type: none"> CDS Formula → Command, Duty, Sanction Command Theory → Law = command of sovereign backed by sanction Sovereign → राजा / सम्राट (ultimate authority) Sanction → fine, punishment 	<p>First to define law scientifically. Separated law from morality & religion.</p>
C. H.L.A. Hart (1907–1992)	<ul style="list-style-type: none"> Law consists of Primary & Secondary rules Primary = impose duties Secondary = rules about rules (recognition, change, adjudication) 	<p>Improved Austin's theory. Said law is not just commands, but a system of rules.</p>
D. Hans Kelsen (1881–1973)	<ul style="list-style-type: none"> Pure Theory of Law (विधि का विशुद्ध सिद्धांत) Law is hierarchy of norms At top = Grundnorm (basic norm) 	<p>Focused only on law (free from morality, sociology, politics). Saw law as a normative system.</p>

📌 **Quick Memory Aid:**

- **Bentham** → Utilitarian, Expository vs. Censorial.
- **Austin** → CDS (Command–Duty–Sanction).
- **Hart** → Primary & Secondary rules.
- **Kelsen** → Pure Theory, Grundnorm.

👉 Do you want me to also make a **comparison table: Austin vs. Hart vs. Kelsen** (since this comes a lot in exams as "Compare Analytical thinkers")?

Great 👍 Here's a **clear comparison table** of the main Analytical School thinkers — **Austin vs. Hart vs. Kelsen**. This is one of the most common exam questions.

📊 **Comparison: Austin vs. Hart vs. Kelsen**

Aspect	John Austin	H.L.A. Hart	Hans Kelsen
Core Theory	Command Theory → Law is command of sovereign backed by sanction.	Primary & Secondary Rules → Law is a system of rules, not just commands.	Pure Theory of Law → Law is hierarchy of norms, separate from morality/politics.
Sovereign	Sovereign = authority habitually obeyed (राजा / राज्य सत्ता).	Rejects absolute sovereign; instead, authority is recognized through rule of recognition .	No sovereign; law's validity depends on higher norm, ultimately the Grundnorm .
Nature of Law	Law = Command + Duty + Sanction.	Law = Combination of primary rules (duties) + secondary rules (power to create/change/adjudicate rules).	Law = Normative order ; each norm valid because authorized by higher norm.
Sanction	Essential → Without sanction, no law.	Sanction is not central; laws work because society accepts rules.	Sanction exists but derived from hierarchy of norms, not sovereign command.
View on Morality	Law is separate from morality .	Distinguishes law & morality , but admits they can overlap (e.g., justice, fairness).	Law must be "pure" → studied without morality, politics, or sociology.
Weakness	Too rigid, ignores constitutional limits, customs, international law.	Complex theory, but criticized for vagueness of "rule of recognition."	Overly abstract; Grundnorm is hypothetical, not practical.
Key Contribution	First scientific/legal positivist definition of law.	Made legal positivism more realistic by including social practices.	Gave a scientific structure to law through hierarchy of norms.

✦ **Memory Shortcut:**

- **Austin** → **CDS (Command–Duty–Sanction)**.
 - **Hart** → **P+S Rules (Primary & Secondary)**.
 - **Kelsen** → **Grundnorm (Basic Norm)**.
-

👉 Do you also want me to prepare a **model 20-mark exam answer** like: *"Discuss and Compare the theories of Austin, Hart, and Kelsen with reference to their contribution to Analytical School?"* That way you'll have a full essay ready to write.

Question

"Discuss and Compare the theories of Austin, Hart, and Kelsen with reference to their contribution to Analytical School?" T

Answer

Perfect 👍 Here's a **model 20-mark exam answer** on:

"Discuss and Compare the theories of Austin, Hart, and Kelsen with reference to their contribution to the Analytical School of Jurisprudence."

■ Model Answer

Introduction

The **Analytical School of Jurisprudence** (विश्लेषणात्मक विचारधारा) studies law as it is, not as it ought to be. Its focus is on the structure of law, its commands, rules, and norms, separate from morality or religion. Three of its major thinkers are **John Austin, H.L.A. Hart, and Hans Kelsen**, who developed influential theories of legal positivism.

1. John Austin (1790–1859): Command Theory

- Defined law as:

"Law is the command of the sovereign backed by sanction."

- **Elements:** Command → Duty → Sanction → Sovereign.
 - **Contribution:** Provided a clear, scientific definition of law independent of morality.
 - **Criticism:** Too rigid, cannot explain constitutional democracies, customary law, or international law.
 - **Case Reference:** *State of West Bengal v. Union of India (1963)* – Constitution is supreme, not Parliament as absolute sovereign.
-

2. H.L.A. Hart (1907–1992): Law as System of Rules

- Rejected Austin's narrow view of law as mere commands.
- Introduced **Primary Rules** (impose duties) and **Secondary Rules** (rules of recognition, change, adjudication).

- **Contribution:** Made legal positivism realistic by showing law as a **union of rules**, not just sovereign orders.
 - **Criticism:** "Rule of recognition" criticized as vague.
 - **Case Reference:** *Maneka Gandhi v. Union of India (1978)* – Law must be fair, just, and reasonable; reflects Hart's acceptance of moral overlap.
-

3. Hans Kelsen (1881–1973): Pure Theory of Law

- Law is a **hierarchy of norms**, each valid because of a higher norm, ultimately resting on the **Grundnorm (Basic Norm)**.
 - **Contribution:** Separated law from morality, politics, and sociology → law as a **pure science of norms**.
 - **Criticism:** Very abstract; Grundnorm is hypothetical, not practical.
 - **Case Reference:** *Kesavananda Bharati v. State of Kerala (1973)* – Constitution seen as higher norm controlling legislative power, echoing Kelsen's hierarchy.
-

Comparison

- **Austin:** Law = Command of sovereign backed by sanction.
 - **Hart:** Law = Union of primary & secondary rules, with social acceptance.
 - **Kelsen:** Law = Hierarchy of norms, resting on Grundnorm.
 - **Common Point:** All three are positivists, separating law from morality.
 - **Difference:** Austin = rigid & sanction-based; Hart = flexible rule-based; Kelsen = abstract normative structure.
-

Conclusion

Austin, Hart, and Kelsen, though different, shaped the **Analytical School** by giving systematic and scientific approaches to law. Austin laid the foundation, Hart modernized it with rules, and Kelsen gave it a hierarchical and "pure" structure. Together, they mark the evolution of legal positivism from **command** → **rules** → **norms**.

✅ **Exam Writing Tip:** Start with intro → discuss each thinker → give case law → make comparison → conclude. That guarantees a well-structured 20-mark answer.

***** ***** ***** ***** ***** ***** *****

Date 25.09.2025 time 09.30 am period 1

Bentham's Doctrine of Utility and Its Role in Legal Reform

Introduction

As a legal reformer, one cannot ignore the foundational role played by **Jeremy Bentham** in shaping modern legal thought. His emphasis on evaluating law through the **doctrine of utility**—judging rules by the happiness or suffering they produce—transformed jurisprudence into a science of social reform. Bentham stood firmly against traditional, rigid interpretations of law and instead introduced an approach that measured the worth of legislation by its ability to **maximize pleasure and minimize pain**.

Expository vs. Censorial Jurisprudence

Bentham distinguished between two branches of jurisprudence: **expository** and **censorial**.

- **Expository jurisprudence** describes law "as it is," without reference to morality. It seeks clarity, definition, and classification of existing laws.
- **Censorial jurisprudence**, on the other hand, evaluates law in light of the principle of utility. It examines law "as it ought to be" and asks whether a given rule contributes to the happiness of the community.

This distinction was crucial. For Bentham, the law could not remain a lifeless record of customs; it had to be **assessed, criticized, and reformed** according to its utility.

Law, Morality, and Utility

Bentham insisted on separating **law, morality, and religion** from each other, thereby rejecting the traditional view that law must always reflect divine or moral commands. Instead, he replaced them with a more rational test—**utility**. He argued that the validity of law should not depend on its conformity with abstract notions of justice or morality, but on whether it serves the **general happiness**.

In his famous words, "Nature has placed mankind under the governance of two sovereign masters—**pleasure and pain**. It is for them alone to point out what we ought to do, as well as to determine what we shall do."

The Doctrine of Utility

Bentham believed that the central aim of legislation must be to **promote pleasure (the good)** and **reduce pain (the evil)**. This doctrine of utility was not merely a philosophical idea but a practical tool for lawmakers. According to him, every law must be tested against one question: *Does it maximize happiness for the greatest number of people?*

He classified human experiences into different kinds of pleasures and pains:

- **Pleasures of the senses:** friendship, knowledge, good reputation, power, etc.
- **Pains of the senses:** hostility, bad reputation, violence, fear, etc.

Laws should encourage the former and prevent the latter.

Bentham's Vision for Legal Reform

As a reformer, Bentham saw law not as a sacred command but as a **social instrument**. His utilitarian approach encouraged lawmakers to:

- Remove outdated and oppressive laws.
- Draft legislation based on reason and social benefit, not blind tradition.
- Ensure laws serve the majority, not just privileged groups.

This scientific evaluation of law—through utility—laid the foundation for modern **law reform commissions**, codification efforts, and the demand for transparency and accountability in legislation.

Conclusion

Bentham's contribution lies in transforming jurisprudence into a science of reform. By insisting that law must be judged by the **pleasure and pain it creates**, he provided a practical test for legislators: does this law increase human happiness? His doctrine of utility remains a revolutionary idea that continues to influence not only legal theory but also democratic governance and human rights discourse.

Q. Explain Bentham's Doctrine of Utility and its Importance in Legal Reform.

Introduction

Jeremy Bentham (1748–1832), an English philosopher and jurist, is regarded as the founder of the **doctrine of utility**. He believed that the object of law should be the promotion of the greatest happiness of the greatest number. His theory marked a turning point in legal thought, shifting the focus from divine or moral standards to **scientific evaluation of laws** based on their consequences.

Expository and Censorial Jurisprudence

Bentham divided jurisprudence into two branches:

1. **Expository Jurisprudence** – It is concerned with describing the law "as it is," without judging it as good or bad. This is purely analytical.
2. **Censorial Jurisprudence** – It evaluates the law "as it ought to be." Here, Bentham's doctrine of utility operates, asking whether the law maximizes happiness or not.

This separation was revolutionary, as it emphasized that law must be subjected to rational criticism and reform.

Law, Morality, and Utility

Bentham rejected the view that law must always reflect morality or religion. For him, the measure of good law is **utility**, not morality. He stated:

"Nature has placed mankind under the governance of two sovereign masters, **pleasure and pain**. It is for them alone to point out what we ought to do, as well as to determine what we shall do."

Thus, law must be evaluated by the amount of **pleasure it promotes** and **pain it prevents**.

Doctrine of Utility

Bentham argued that every law must be tested against the **principle of utility**:

- If a law increases the net happiness of society, it is just and valid.
- If it produces more pain than pleasure, it is unjust and must be reformed.

He classified human experiences into **pleasures** (friendship, reputation, knowledge, power, etc.) and **pains** (fear, hostility, bad reputation, violence, etc.). The task of law was to maximize the former and minimize the latter.

Bentham's Vision of Legal Reform

Bentham considered law an instrument of **social engineering** and reform. According to him:

- Laws should be codified, clear, and accessible to all.
- Outdated customs and oppressive traditions must be abolished.
- Legislation should be based on reason and evidence, not superstition or morality.
- The **greatest good of the greatest number** should be the guiding star of lawmakers.

This practical outlook laid the foundation of **law reform commissions, codification movements**, and modern democratic legislation.

Criticism

1. **Too Mechanical:** Critics argue that Bentham reduced law to a calculation of pleasure and pain, ignoring higher values like justice, liberty, and rights.
2. **Majoritarian Bias:** The principle of "greatest happiness of the greatest number" may ignore the interests of minorities.
3. **Lack of Moral Dimension:** By separating law from morality, Bentham's theory sometimes overlooks ethical values.

Case References

- In **A.K. Gopalan v. State of Madras (1950)**, the Indian Supreme Court initially adopted a narrow view, separating law from morality and justice, resembling Bentham's strict positivism.
- Later, in **Maneka Gandhi v. Union of India (1978)**, the Court took a broader approach, insisting that law must also ensure fairness and justice, thus blending utility with morality.

Conclusion

Bentham transformed jurisprudence into a **science of legislation** by insisting that laws must be evaluated on the basis of **utility**. Despite criticisms, his doctrine of utility remains a milestone in legal theory and reform. It provided lawmakers with a rational test: *Does this law maximize human happiness?* By this standard, Bentham's philosophy continues to influence modern democratic and welfare legislation across the world.

- **Censorial Jurisprudence**
- **Expository Jurisprudence**

Let me explain clearly 🗨️

1. Expository Jurisprudence

- Also called "**expository act of legislation.**"
 - It means explaining and describing law **as it is**, without judging whether it is good or bad.
 - Example: If the law says "theft is punishable with 3 years," expository jurisprudence simply states that fact, without asking whether 3 years is too harsh or too light.
 - Bentham linked this with **the standard art of legislation**—understanding law in its existing form.
-

2. Censorial Jurisprudence

- Also called "**censorial act of legislation.**"
 - It evaluates the law **as it ought to be**, asking whether it is useful, just, or beneficial.
 - Here Bentham brought in his **doctrine of utility**—the test of whether a law maximizes pleasure and minimizes pain for the greatest number.
 - Example: If the law punishes theft with 3 years, censorial jurisprudence would ask—does this punishment really prevent theft and promote social good? If not, it suggests reform.
-

✅ So, to simplify:

- **Expository = "law as it is."**
 - **Censorial = "law as it ought to be."**
-
-

***** ***** ***** ***** ***** *****

ठीक है 👍 अब मैं आपको **Expository Jurisprudence** और **Censorial Jurisprudence** का अंतर हिन्दी में समझा देता हूँ, ताकि परीक्षा में आसानी से याद रखा जा सके।

1. Expository Jurisprudence (व्याख्यात्मक न्यायशास्त्र)

- इसका अर्थ है: “कानून जैसा है वैसा”।
- यहाँ केवल कानून का वर्णन और व्याख्या की जाती है, यह नहीं देखा जाता कि वह अच्छा है या बुरा।
- उदाहरण: यदि कानून कहता है कि चोरी करने पर 3 साल की सज़ा होगी, तो Expository Jurisprudence केवल इतना बताएगा कि ऐसा प्रावधान है। यह नहीं पूछेगा कि 3 साल की सज़ा उचित है या नहीं।

2. Censorial Jurisprudence (आलोचनात्मक न्यायशास्त्र)

- इसका अर्थ है: “कानून जैसा होना चाहिए”।
- यहाँ कानून का मूल्यांकन किया जाता है—क्या यह न्यायसंगत है, क्या यह समाज के लिए उपयोगी है?
- यही पर बेंथम ने **Utility का सिद्धांत** (सुख को बढ़ाना, दुख को घटाना) लागू किया।
- उदाहरण: यदि चोरी करने पर 3 साल की सज़ा है, तो Censorial Jurisprudence पूछेगा—क्या यह सज़ा सच में चोरी रोकने में मदद करती है? यदि नहीं, तो बदलाव सुझाएगा।

सरल तुलना (तालिका)

पहलू Expository Jurisprudence Censorial Jurisprudence

अर्थ कानून जैसा है कानून जैसा होना चाहिए

दृष्टिकोण केवल व्याख्या मूल्यांकन और आलोचना

आधार तथ्य उपयोगिता (Utility)

उदाहरण “चोरी पर 3 साल की सज़ा है।” “क्या चोरी पर 3 साल की सज़ा उचित और प्रभावी है?”

👉 आसान भाषा में:

- **Expository** = कानून का वर्णन
- **Censorial** = कानून की आलोचना और सुधार

छोटा नोट (Expository बनाम Censorial Jurisprudence)

Jeremy Bentham ने न्यायशास्त्र को दो भागों में बाँटा:

1. **Expository Jurisprudence** – यह कानून का **वर्णन** करता है “जैसा है वैसा।” इसमें कानून की अच्छाई-बुराई पर विचार नहीं किया जाता।
2. **Censorial Jurisprudence** – यह कानून का **मूल्यांकन** करता है “जैसा होना चाहिए।” इसमें देखा जाता है कि कानून समाज के लिए उपयोगी है या नहीं, और यही पर Bentham का **Utility सिद्धांत** लागू होता है।

👉 आसान शब्दों में:

- **Expository** = कानून का वर्णन
- **Censorial** = कानून की आलोचना व सुधार

Date 29.09.2025 time 11.30 am period 3

Austine > describe the commanding theory of Austine.

**father of the analytical school is Austine and founder of the analytical school is banthom.
And Austine is the disciple of banthom.

** 📚 **Social Contract Theory – Origins & Thinkers**

1. Early Idea – Hugo Grotius (Crocius)

- Hugo Grotius (1583–1645), sometimes mistakenly written as *Crocius*, was a Dutch jurist.
- He is often called the “**Father of International Law.**”
- He laid early foundations of natural law and hinted at the idea of a social contract (but didn’t fully develop it).

2. Thomas Hobbes (1588–1679)

- Book: *Leviathan* (1651).
- Said humans in the **State of Nature** live in “war of all against all” → life is “*solitary, poor, nasty, brutish, and short.*”
- To escape chaos, people made a **social contract**, surrendering all rights to an absolute sovereign.
- Hobbes → Justified **absolute monarchy**.

3. John Locke (1632–1704)

- Book: *Two Treatises of Government* (1689).

- State of Nature → peaceful, but insecure.
 - People contracted to form government to **protect natural rights** (life, liberty, property).
 - If government fails, people have a **right to revolt**.
 - Locke → Basis of **liberal democracy**.
-

4. Jean-Jacques Rousseau (1712–1778)

- Book: *The Social Contract* (1762).
 - Famous line: “*Man is born free, but everywhere he is in chains.*”
 - Believed sovereignty lies with the **general will of the people**.
 - Advocated for **direct democracy** and collective decision-making.
-

✔ Correct Line

Social Contract Theory was **developed by Hobbes, Locke, and Rousseau**.

Hugo Grotius (Crocus) gave **early hints** of natural law/social order, but **the theory was spread and systematized** by Hobbes, Locke, and Rousseau.

सामाजिक संविदा सिद्धांत (Social Contract Theory)

ग्रोटियस (Hugo Grotius, 1583–1645) पहले आधुनिक विचारकों में से थे जिन्होंने कहा कि समाज की नींव **सामाजिक संविदा (Social Contract)** पर टिकी है, न कि केवल ईश्वर की इच्छा पर।

बाद में अन्य विचारकों ने इसे आगे बढ़ाया :

- **हॉब्स (Hobbes)** – सामाजिक संविदा से एक *सर्वशक्तिमान संप्रभु* का जन्म होता है जो शांति और सुरक्षा बनाए रखे।
 - **लॉक (Locke)** – सामाजिक संविदा का उद्देश्य मनुष्य के *प्राकृतिक अधिकार* (जीवन, स्वतंत्रता, संपत्ति) की रक्षा करना है।
 - **रूसो (Rousseau)** – सामाजिक संविदा के माध्यम से *सामूहिक इच्छा (General Will)* और *जनसत्ता (Popular Sovereignty)* की स्थापना होती है।
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John astine

📖 John Austin and Analytical Positivism

John Austin was a disciple of Jeremy Bentham, who shared Bentham’s **positivist** and **utilitarian** approach to law. He is popularly credited with founding **Analytical Positivism** in legal theory, and for this reason, he is styled as the “**Father of English Jurisprudence.**”

Austin found the existing works on jurisprudence to be **confused and unscientific**. Therefore, he decided to confine jurisprudence strictly to the **study of law as it is**, leaving the study of the **ideal form of law** to the science of legislation, which he considered part of philosophical or normative jurisprudence.

Building upon the foundation of **expository jurisprudence** laid by Bentham, Austin restricted jurisprudence to the analysis of **positive law** only, excluding all considerations of morality, justice, or natural law. He clearly demarcated the **boundaries of jurisprudence**, thus limiting its scope.

As a **positivist**, Austin sought to explain **what law really is**, as opposed to what it **ought to be**. According to him, law is a **command of the sovereign**, backed by sanctions, and binding upon the subjects. In this way, Austin separated law from extra-legal norms and moral considerations, creating the basis of **Analytical School of Jurisprudence**.

✓ In short: Austin emphasized **law as it is (positive law)**, not **law as it ought to be (moral/natural law)**.

He narrowed jurisprudence to a **scientific study of commands of the sovereign**, laying the foundation of **Legal Positivism** in modern times.

Positivist ***** who himself makes law.

What is law? "Law is a command of the sovereign, backed by sanction."

Banham and Austine both are positivist. Both are neglect the natural law.

Austian command theory of law. **समादेश का सिद्धांत**

"Law is a command of the sovereign, backed by sanction."

Key Elements:

1. **Command** – A law is essentially a command, i.e., an expression of the sovereign's wish or order.
2. **Sovereign** – The command comes from a **politically superior authority** (the sovereign) to whom the bulk of society habitually obeys, and who does not habitually obey anyone else.
3. **Sanction** – The command must be backed by the threat of punishment or penalty in case of disobedience.
4. **Habitual Obedience** – The people must generally obey the sovereign; otherwise, the sovereign loses authority.

✓ Example

- If Parliament enacts a law prohibiting theft → this is a **command**.
- The **sovereign** (State) issues it.
- It is **backed by sanction** (punishment under IPC if violated).

 **Importance**

- Austin separated law from **morality** and **religion**.
 - He made jurisprudence a **scientific study of positive law** (law as it is, not as it ought to be).
 - This became the foundation of the **Analytical School of Jurisprudence**.
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 **Subject of Jurisprudence According to John Austin**

The subject of jurisprudence, according to Austin, is **positive law**. As a positivist, Austin aimed to provide a **concrete and scientific theory of jurisprudence**. He was concerned with **what law is**, and not with **what law ought to be**—that is, jurisprudence deals with law “*as it is*”, and not with moral or ideal standards.

The significance of Austin’s theory lies in the fact that he brought **certainty and definiteness** to the English legal system. Before Austin, the sources of law such as **customs, usages, judicial precedents, and even dictates of the Church** created ambiguity about what actually constituted law.

Austin clarified this confusion by holding that only **positive law**, i.e., laws laid down by the sovereign and backed by sanctions, fall within the province of jurisprudence. In doing so, he excluded customs, morality, and religion from the scope of jurisprudence, thereby laying the foundation of the **Analytical School of Jurisprudence**.

 In short: Austin limited jurisprudence to the **study of positive law** and gave it a **clear, scientific character**, distinguishing law from morality and religion.

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