FACULTY
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Masaryk University

Czech Legal Philosophy

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Legal Science / Legal Doctrine / Jurisprudence

- Systematic, analytically evaluative exposition of the substance of law.
- Descriptions of the literary sense of statutes intertwined with many moral and other substantive reasons.
- Legal scholar has no power to make binding decisions – but in many cases the judge has no time to prepare a general and extensive justifications.
- Legal doctrine pursues a knowledge of existing law, yet in many cases it leads to a change of the law.
- **Descriptive x normative**

Influence on the Law and Legal Practice

- Giving the law precision, coherence and transparent structure
- Promoting justice and morality
- Promoting trust in the law
- Promoting stability in a world dominated by political dynamics
- Codification of legal methods

Czech Legal Philosophy - beginnings

- Historical school of law (inspired by Carl Friedrich von Savigny)
- **Josef Trakal** (1860 – 1913): sociology of law
  - „Main Trends in in More Recent Legal and State Philosophy“
- 1900 dispute over natural law and historic law
  - Czechia as part of Austro-Hungarian Empire
  - Bohuš Rieger vs. Tomáš Garrique Masaryk

Brno Legal School

- Inspired by Kant´s critical idealism
  - Explores purely in what form appears prior principles of legal cognition
  - Analyzing practice of legal science

- Three lines:
  - František Weyr
  - Jaroslav Kallab
  - Karel Engliš

František Weyr (1897 – 1951)

- Founder of normative theory in Czechoslovakia – inspired by Hans Kelsen
- Rejected existing system of legal conceptions and replaces it by new conceptual system
- Legal science must be based on legal philosophy
- Knowledge x will
- Purpose of normative theory is to purify the traditional science of law by removing from it many foreing elements: the purpose is to establish a pure method of legal cognition

František Weyr (1897 – 1951)

- In its origins normative theory attacks traditional legal theories or doctrines. Normative theory especially stood against differences between private and public law.
- Normative theory is a basically theory of methodology in realm of law. This theory tries to recognize norms.
- The essential normative conception is the conception of force of legal norms. We ought not to recognize content of legal norms what means that we have to recognize what has to be conform to that norm.
- Legal order and law-creator (state) are one. There is no distinction between them.

Jaroslav Kallab (1879 – 1942)

- Methodological pluralism: Law can be discovered by different methods and many of them can be right.
- Problems of science in law:
  - **Legal Noesis**: investigates form of legal norm as well as forms of our knowledge.
  - **Exact Legal Science**: investigates what kind of thinking is suitable for forms of thinking about law (content is also important).
  - **Empirical Legal Science**: investigates content of legal norm. Legal norm is the result of the process of cognition.
- Norms as a subject of congnition x to create legal norm (what ought to be)

Karel Engliš (1880 – 1961)

- National economy
- Ontology, teleology and normology
  - In ontology we try to find cause, in teleology we try to find purpose and means and in normology we try to find why the norm is valid (in force).
- Importatnt is purpose – why there is a specific legal norm (inspired by Rudolf von Jhering)

Followers of normative theory

- Jaromír Sedláček (1885 – 1945)
- Oto Weinberger (1919 – 2009) - neoinstitutionalism

- Viktor Knapp (1919-1996); specific approach