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THE NATURAL LAW TRADITION IN SCANDINAVIAN PHILOSOPHY AND JURISPRUDENCE
ТРАДИЦІЯ ПРИРОДНОГО ПРАВА В СКАНДИНАВСЬКІЙ ФІЛОСОФІЇ ТА ЮРИСПРУДЕНЦІЇ

Summary. *Introduction. This article examines the development and interpretation of natural law within the context of Scandinavian philosophy and jurisprudence. Unlike the dominant continental and Anglo-Saxon traditions, Scandinavian thought exhibits a distinct skepticism toward metaphysical and theological foundations of law. Nevertheless, certain Scandinavian thinkers – particularly in Denmark, Sweden, and Norway – have engaged critically with natural law, reinterpreting it in light of realism, pragmatism, and humanistic ethics. This study explores how the Scandinavian philosophical milieu, shaped by empirical rationalism and legal realism, has transformed the classical notion of natural law into an ethical-legal construct grounded in human reason and social experience rather than divine or metaphysical order.*

The purpose of writing this scientific work was the need for a more detailed study of this topic for a better understanding and more detailed study.

The methodological basis of the study was general scientific methods of scientific cognition. In particular, the dialectical method, methods of analysis and synthesis were used. The comparative method, the method of idealization and formalization were also used.

Results. In Scandinavia the analytic disposition of legal theory and the empirical ambitions of the philosophy, theory and sociology of law have long been in dialogue. Vilhelm Aubert (Norway), Thomas Brudholm (Denmark), and Stig Strömholm (Sweden) represent three faces of that dialogue: Aubert as the formative sociologist of law who brought empirical methods into legal scholarship; Brudholm as a moral philosopher who has developed a careful, normative account of emotions and moral agency after atrocity; and Strömholm as a legal theorist and jurist whose work interrogates legal reasoning, judicial decision-making, and the sources of law. Taken together, their writings help us see how normative inquiry, empirical description, and moral psychology can co-here in a philosophy of law attentive to social reality. The Scandinavian approach to natural law reveals a complex intellectual trajectory: from early rational natural law inspired by Grotius and Pufendorf, through the Enlightenment's moral rationalism, to the twentieth century's realist critique, and finally toward a humanistic reinterpretation in contemporary legal ethics. What distinguishes the Nordic tradition is its persistent effort to harmonize rationality, empiricism, and moral concern without resorting to metaphysical absolutism. The "natural law of Scandinavia" thus embodies a distinctive synthesis - an ethical empiricism that grounds justice in the lived realities of human reason and community, rather than in transcendent ideals.

***Key words**: natural law, positive law, legal realism, pragmatism, living law, ethical empiricism.*

Анотація. *Вступ. У даній статті розглядається розвиток та інтерпретація природного права в контексті скандинавської філософії та юриспруденції. На відміну від домінантних континентальних та англосаксонських традицій, скандинавська думка демонструє виразний скептицизм щодо метафізичних та теологічних основ права. Тим не менш, деякі скандинавські мислителі, зокрема в Данії, Швеції та Норвегії, критично розглядали природне право, переосмислюючи його у світлі реалізму, прагматизму та гуманістичної етики. Це дослідження розглядає, як скандинавське філософське середовище, сформоване емпіричним раціоналізмом та правовим реалізмом, перетворило класичне поняття природного права на етико-правовий конструкт, що ґрунтується на людському розумі та соціальному досвіді, а не на божественному чи метафізичному порядку.*

Метою написання даної наукової праці постала потреба більш детального дослідження даної теми, для кращого її розуміння та більш детального вивчення.

Методологічною основою дослідження стали загальнонаукові методи наукового пізнання. Зокрема, застосовано діалектичний метод, методи аналізу і синтезу. Також використано порівняльний метод, метод ідеалізації та формалізації.

Результати. У Скандинавії аналітична диспозиція юридичної теорії та емпіричні амбіції філософії, теорії та соціології права вже давно перебувають у діалозі. Вільгельм Оберт (Норвегія), Томас Брудгольм (Данія) та Стіг Стрьомгольм (Швеція) представляють три обличчя цього діалогу: Оберт як соціолог права, який привніс емпіричні методи в юридичну науку; Брудгольм як філософ-мораліст, який розробив ретельний, нормативний аналіз емоцій та моральної активності після злочину; та Стрьомгольм як теоретик права та юрист, чиї роботи досліджують правові міркування, прийняття судових рішень та джерела

права. Разом їхні праці допомагають нам побачити, як нормативне дослідження, емпіричний опис та моральна психологія можуть співіснувати у філософії права, уважній до соціальної реальності. Скандинавський підхід до природного права демонструє складну інтелектуальну траєкторію: від раннього раціонального природного права, натхненного Гроцієм та Пуфендорфом, через моральний раціоналізм епохи Просвітництва до реалістичної критики XX століття і, нарешті, до гуманістичного переосмислення в сучасній правовій етиці. Нордичну традицію відрізняє наполегливе прагнення гармонізувати раціональність, емпіризм та моральні інтереси, не вдаючись до метафізичного абсолютизму. «Природне право Скандинавії» таким чином втілює особливий синтез — етичний емпіризм, який ґрунтує справедливість на життєвих реаліях людського розуму та спільноти, а не на трансцендентних ідеалах.

***Ключові слова**: природне право, позитивне право, правовий реалізм, прагматизм, живе право, етичний емпіризм.*

Statement. Natural law is traditionally considered the basis, a certain foundation on which positive law is built in the form of laws and regulatory legal acts of a particular state. The question arose of how natural law manifests itself in the Scandinavian philosophy of law and jurisprudence, what forms it takes in the course of its development and historical transformations.

Analysis of recent research. In Ukraine, there is certainly a galaxy of talented scientists who have repeatedly addressed the topic of law of the Scandinavian countries, in particular: Kuznetsov V. I., Hryshchuk V. K., Tsymbalyuk M. M., Kuzmenko V. V., Melnyk M. O. and a number of others. However, there is a need for a more detailed study of this topic, for a better understanding of it, which was **the purpose** of writing this scientific work.

The methodological basis of the study was the general scientific methods of scientific cognition. In particular, the dialectical method, methods of analysis and synthesis were applied. The comparative method, the method of idealization and formalization were also used.

Presentation of the main material. The natural law tradition, grounded in the idea that law derives from universal principles of justice inherent in human nature or reason, has occupied a central place in Western legal thought from antiquity to modernity. However, in the Nordic countries – Denmark, Sweden, Norway, Finland, and Iceland – the doctrine of natural law underwent significant transformation. The Scandinavian context, influenced by Lutheran theology, Enlightenment rationalism, and later positivist empiricism, fostered a unique intellectual environment in which the metaphysical underpinnings of natural law were critically examined. Rather than being dismissed entirely, natural law in Scandinavia evolved into a more human-centered and pragmatic doctrine.

The early modern period introduced natural law theory to Scandinavia primarily through the works of Hugo Grotius and Samuel Pufendorf, whose ideas found resonance in the universities of Copenhagen and Uppsala. Pufendorf's appointment as professor at the University of Lund in 1670 marked a decisive moment for natural law in the North. His *De jure naturae et gentium* emphasized the rational basis of law and morality independent of theological revelation. This secularization of natural law harmonized with the Protestant emphasis on individual conscience and reason, laying the foundation for a rational ethics that influenced Nordic political and legal thought well into the eighteenth century [12].

During the eighteenth century, Scandinavian intellectual life absorbed Enlightenment ideals, and natural law came to be understood as an instrument of rational legislation and moral education. Thinkers such as Anders Chydenius in Finland (then part of Sweden) advanced a version of natural law that grounded

human rights and economic freedom in natural reason. Chydenius's *Den Nationnale Winsten* (1765) prefigured liberal economic and political theories by linking natural rights to individual freedom and societal welfare [3]. In Denmark, Ludvig Holberg and Henrik Stampe promoted a rational and moral conception of natural law compatible with utilitarian and civic humanist values. Thus, the Enlightenment era witnessed a "secular natural law," centered not on divine command but on human rationality and social harmony.

The twentieth century brought a profound shift with the emergence of Scandinavian Legal Realism, spearheaded by Axel Hägerström, Karl Olivecrona, and Alf Ross.

Hägerström's philosophy arose from a deep dissatisfaction with the idealist and theological currents dominating nineteenth-century Scandinavian thought. Influenced by Kant, Nietzsche, and later the logical positivists, Hägerström sought to demonstrate that metaphysical and normative statements lack objective reference.

In his view, all claims about "value," "good," or "justice" are non-cognitive – they do not describe facts about the world but merely express emotional attitudes. This position, later termed *value nihilism* or *ethical non-cognitivism*, entails that moral and legal norms cannot be true or false. They are, rather, expressions of approval or disapproval shaped by social conditioning [7].

Thus, when one says "this law is unjust," one does not report a fact but expresses an emotional reaction. Hägerström's project was not moral relativism but epistemological clarification – he sought to demonstrate that the objectivity ascribed to moral and legal values is an illusion sustained by language and tradition.

Hägerström's redefinition of law follows from his critique of value judgments. Since legal norms cannot be grounded in objective morality, law must be understood empirically – as a set of social facts. In his major work *Inquiries into the Nature of Law and Morals* (published posthumously in 1953),

he argued that law is not an expression of reason or divine will, but a social construct supported by the collective beliefs and attitudes of individuals [6].

Legal obligations, for Hägerström, are not metaphysical entities but psychological phenomena rooted in shared feelings of obligation and authority. When a citizen obeys the law, they do not act because of some transcendent duty; they act because social conditioning and institutional pressure have made obedience seem natural or necessary[6].

Hence, Hägerström anticipated a sociological and psychological understanding of law long before such perspectives became common in legal theory. His approach viewed law as a function of social cohesion, maintained through collective acceptance rather than rational justification.

Hägerström's philosophy was equally critical of natural law and legal positivism. Against natural law theorists, he rejected the notion of an objective moral order inherent in human nature or divine reason. For him, the idea of a "just law" is an emotional projection, not a rational truth.

At the same time, he found traditional legal positivism – as formulated by John Austin or Hans Kelsenin – sufficiently radical. While positivism correctly separates law from morality, it still relies on the concept of *binding authority* or *validity*, which Hägerström considered a residual metaphysical fiction. For him, the authority of law is not an abstract norm but a psychological fact: the belief of the community in the legitimacy of legal institutions.

Thus, Hägerström went beyond positivism by eliminating all traces of normativity from legal theory. Law is real not because it is "valid," but because it exists as a social phenomenon within human consciousness and practice.

Hägerström's students and intellectual heirs – Karl Olivecrona, Vilhelm Lundstedt, and Alf Ross – transformed his philosophical insights into a comprehensive movement known as *Scandinavian Legal Realism*.

Olivecrona, in *Law as Fact* (1939), extended Hägerström's view by emphasizing the psychological function of legal language. Lundstedt developed

a *social welfare jurisprudence*, arguing that law should be evaluated in terms of its practical effects rather than moral ideals. Ross, in *On Law and Justice* (1953), refined Hägerström's ideas using logical analysis and linguistic philosophy, proposing that legal statements predict judicial behavior rather than describe moral truths [11].

Through these thinkers, Hägerström's philosophy evolved into a pragmatic legal science – one focused on describing how law operates in society rather than prescribing how it ought to be. His legacy thus redefined the purpose of jurisprudence itself: from the pursuit of moral truth to the analysis of legal reality.

In the postwar and contemporary period, Scandinavian jurisprudence has witnessed a subtle revival of natural law under the guise of human rights discourse and ethical universalism. Jurists and philosophers such as Vilhelm Aubert, Thomas Brudholm, and Stig Strömholm have sought to reconcile the empirical legacy of realism with moral objectivity. This synthesis takes the form of a secular humanism that acknowledges universal human dignity as a normative foundation for law. While these approaches avoid metaphysical speculation, they implicitly reintroduce the core idea of natural law: that law must reflect fundamental human values transcending mere legislative will.

Vilhelm Aubert (1922–1988) is widely regarded as Norway's first major sociologist of law and one of the formative figures in postwar Nordic legal sociology. He helped institutionalize sociological approaches to law in Norway and beyond, emphasizing the social functions of legal rules, the preventive and organizational aspects of sanctions, and the methodological need to couple doctrinal study with empirical inquiry. Aubert's program argued that understanding law requires attention to how legal norms operate in social practice – how law is perceived, how institutions instantiate rules, and how legal expectations are formed within communities. His edited collections and monographs helped to translate continental social theory into tools for empirical

legal research and to promote an empirically informed, policy-relevant jurisprudence [1].

Philosophically, Aubert resisted a purely normative or metaphysical account of law. He saw legal norms as social phenomena whose normative force depends on institutional practices, socialization, and the expectations of actors. This placed him in constructive tension with the Scandinavian realists (who emphasized psychological and linguistic bases of law) and with doctrinal positivists (who emphasized legal validity independently of social practice). Aubert's distinctive contribution is methodological: by insisting on empirically grounded theory, he made normative questions – equality, fairness, legitimacy – amenable to sociological investigation without abandoning their moral importance. His major works and edited volumes (including readable English selections) have served as standard introductions for generations of students in law and sociology [1].

Thomas Brudholm's philosophical oeuvre addresses the moral psychology of victims and societies after mass atrocity. He is best known for *Resentment's Virtue* (2008), where he challenges the dominant assumption that forgiveness is always the superior response to wrongdoing. Drawing on Jean Améry and on experiences of transitional justice, Brudholm argues that negative moral emotions such as resentment can have moral legitimacy: under certain conditions they constitute a morally intelligible and even morally necessary protest against injustice. Brudholm's work investigates when insisting on resentment and refusing to forgive might preserve the moral autonomy and dignity of victims, and when calls for reconciliation unjustly instrumentalize victims for political or communal peace [2].

Brudholm's method blends conceptual analysis with careful appeal to historical cases (Holocaust testimony, truth commissions) and to the aesthetics and narratives of moral life. Rather than offering a simple normative rule, his position is a posture of moral-epistemic humility: emotions must be parsed

according to their objects, histories, and social functions [2]. For transitional justice theory and practice, this yields a striking conclusion – reconciliation policies should not automatically privilege forgiveness over other legitimate moral responses; policymakers must attend to victims' needs, agency, and reasons for resistance. Brudholm's later edited volumes and articles extend this framework to hate, moral disgust, and the ethical limits of political forgiveness.

Stig Strömholm (b. 1931) is a prominent Swedish jurist and scholar whose work spans doctrinal analysis, the philosophy of law, and reflections on judicial practice and legal education. As a scholar and university leader he was centrally involved in debates about legal sources, methods of legal interpretation, and the place of values in judicial reasoning. Strömholm's writings on *rättskällor* (sources of law), *allmän rättslära* (general jurisprudence), and the reasoning of judges bring philosophical clarity to questions about how law binds, how judges justify decisions, and how law relates to extra-legal values [15].

Philosophically, Strömholm occupies a middle ground: skeptical of metaphysical claims to absolute legal foundations, he nonetheless insists that the integrity of legal deliberation requires explicit engagement with moral and institutional values. His work on judicial decision-making is empirical in orientation (it recognizes the reality of judicial psychology and institutional practice) but normative in ambition: courts must justify their rulings in ways that render legal authority intelligible to the community. This balanced concern for both the "how" and the "why" of judging makes Strömholm a natural interlocutor for both Aubert's sociology of law and Brudholm's ethics of moral responses [15].

Taken together, Aubert, Brudholm, and Strömholm form a triad that maps key concerns of contemporary Scandinavian legal thought: (1) the empirical-methodological insistence that law is socially embedded (Aubert); (2) the moral-psychological sensitivity to victims, emotions, and moral responses after severe wrongdoing (Brudholm); and (3) the doctrinal and institutional analysis of legal

reasoning and the sources of law (Strömholm). Each thinker thus complements the others: Aubert supplies tools and methods for empirical description; Brudholm provides a moral grammar for assessing blame, resentment, and forgiveness; and Strömholm articulates standards of legal justification that bind law to democratic legitimacy [16, p. 596].

Philosophically, they share a modest epistemology: skepticism about metaphysical foundations, a preference for clarity in conceptual analysis, and a respect for contextually informed judgment. Normatively, however, they converge on the conviction that law should be assessed not only by rules but by its social functions and ethical effects – an orientation that preserves both analytic rigor and humane concern.

When compared to continental European traditions, the Scandinavian conception of natural law appears both critical and reconstructive. Continental natural law, particularly in the German and Thomistic traditions, often emphasized ontological and theological universals – a moral law embedded in the structure of reality or divine reason. The Scandinavian response was to demystify such concepts, translating them into the language of empirical reason and social ethics.

This pragmatic reinterpretation aligns the Scandinavian approach more closely with American pragmatism (notably John Dewey) than with the metaphysical rationalism of classical European thought. Both traditions reject transcendental justifications of law and instead focus on its instrumental and experiential dimensions. Nevertheless, unlike the purely instrumental legal positivism of certain Anglo-American schools, Scandinavian thinkers retained a commitment to humanistic values as indispensable to legal reasoning.

Thus, the Scandinavian tradition stands as a bridge between moral realism and legal empiricism: it affirms the necessity of ethics in law but insists that such ethics arise from human experience, social context, and rational discourse rather than divine or natural order [16, p. 595].

In the twenty-first century, the Scandinavian reinterpretation of natural law continues to exert influence in discussions on human rights, bioethics, environmental law, and social justice. As global legal discourse increasingly grapples with issues of universality versus cultural relativism, the Nordic model offers a compelling paradigm: a universalism grounded not in metaphysics but in shared human experience.

Contemporary Scandinavian thinkers, including Thomas Brudholm, Håkan Hydén, and Ola Wiklund, have expanded this framework to address ethical responsibility, collective memory, and restorative justice. Their works demonstrate that while natural law in its classical sense may have lost authority, its ethical impulse endures in modern democratic societies.

By anchoring justice in rational empathy, human rights, and the common good, Scandinavian jurisprudence provides a secular moral compass that reconciles objectivity with pluralism. In this sense, the natural law of Scandinavia functions as an ethical realism – an ongoing effort to articulate the moral foundations of law within the bounds of empirical reason and humanistic values.

Conclusion. The trajectory of natural law in Scandinavian philosophy reflects a profound transformation from metaphysical universalism to ethical empiricism. From Pufendorf's rational natural law to Hägerström's legal realism, and from Ross's pragmatic jurisprudence to contemporary humanistic ethics, the Scandinavian tradition demonstrates a remarkable adaptability and philosophical depth.

Axel Hägerström's philosophy of law represents a turning point in modern jurisprudence. By rejecting metaphysical foundations, he transformed legal theory into a scientific inquiry into human behavior and institutions. His critique of value judgments and legal authority dismantled centuries of moral absolutism, opening the way for an empirical and pragmatic study of law.

Though often misunderstood as a radical nihilist, Hägerström's thought reflects a deep concern for intellectual honesty and rational clarity. His influence endures not only in Scandinavian Legal Realism but also in contemporary debates on the nature of normativity, the sociology of law, and the philosophy of values. Ultimately, Hägerström's work reminds us that the law, stripped of metaphysical illusion, remains a profoundly human endeavor – rooted in belief, emotion, and the shared realities of social life.

Vilhelm Aubert, Thomas Brudholm, and Stig Strömholm are distinct thinkers whose projects collectively illustrate a Scandinavian way of doing legal philosophy: empirically informed, philosophically sober, and ethically serious. Aubert reminds us that law is a social fact requiring social science methods; Brudholm insists that moral emotions must be understood in their particularity and sometimes respected as morally appropriate responses; and Strömholm emphasizes that legal practice must be intelligible and justifiable. Their combined oeuvre furnishes philosophers, jurists, and policymakers with conceptual tools to approach law as a human institution that is at once practical, normative, and responsive to history.

What emerges is not a denial of natural law but its reconstruction: a natural law without metaphysics, grounded in human dignity, rational discourse, and social cooperation. This "Nordic naturalism" integrates empirical insight with moral aspiration, embodying a legal philosophy both realistic and humane.

Ultimately, the Scandinavian approach challenges us to reconsider what it means for law to be "natural" in the modern world. It suggests that the true foundation of law lies not in transcendent universals, but in the shared moral capacities of human beings – the capacity to reason, to empathize, and to live together in justice.

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