

## A modern view on the doctrine of natural law

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**Abstract.** The article examines the place and role of natural rights and laws in the legal life of society. Natural law as a valuable phenomenon, analyzed by scientists of all historical periods, continues to attract the attention of thinkers even in our time. The doctrine of natural law (both in the present and in the past) has both its adherents and opponents. The relationship to it acquires a significant practical and theoretical significance in the conditions of the development of civil society and the establishment of the rule of law.

Natural law ideas are explored through the prism of historical achievements and modern vision. The research analyzes thoughts, ideas and doctrines of the historical vision of natural law. The connection of law with both moral norms and positive laws is demonstrated.

Natural law is revealed as a spiritual and social phenomenon that undergoes evolutionary changes that are in constant dynamics. It is emphasized that natural law, like other areas of social life, must develop through the analysis of existing patterns, the content of events and phenomena.

In the article, a coherent system of natural human rights is specified and logically substantiated. They are proven to be inalienable, absolute, independent in use and permanent. The article also shows how the objectively existing system of natural human freedoms resonates with positive law. The significant role of regulatory principles, in particular equality and justice, is noted.

It was concluded that a high level of legal awareness and legal culture of society ensures its social and legal prosperity and development in terms of achieving priority interests, rights and freedoms of each member.

**Keywords:** natural law, legal laws, human rights, legal awareness, legal norms.

### Сучасний погляд на доктрину природного права

**Анотація.** У статті розглядаються місце і роль природних прав і законів у правовому житті суспільства. Природне право як ціннісне явище, проаналізоване вченими всіх історичних періодів, продовжує привертати увагу мислителів і в наш час. Доктрина природного права (і в нинішньому, і в минулому) має як своїх приверженців, так і противників. Відношення до неї набуває вагомое практичне і теоретичне значення в умовах розвитку громадянського суспільства і становлення правової держави.

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Природно-правові ідеї досліджуються крізь призму історичних здобутків та сучасного бачення. За допомогою дослідження аналізуються думки, ідеї та доктрини історичного бачення природного права. Продемонстровано зв'язок права як з моральними нормами так і з позитивними законами.

Розкрито природне право, як духовне та соціальне явище, яке зазнає еволюційних змін які знаходяться в постійній динаміці. Підкреслено, що природне право, як і інші галузі суспільного життя, має розвиватись через аналіз наявних закономірностей, змісту подій та явищ.

У статті зазначена та логічно обґрунтована цілісна система природних прав людини. Доведено, що вони є невідчужуваними, абсолютними, самостійними у використанні та постійні. У статті також показано, як об'єктивно існуюча система природних свобод людини перегукується із позитивним правом. Підмічена значна роль принципів регулювання, зокрема рівність та справедливість.

Зроблено висновок про те, що високий рівень правосвідомості та правової культури суспільства забезпечує його соціальне та правове процвітання та розвиток у плані досягнення пріоритетних інтересів, прав і свобод кожного його члена.

**Ключові слова:** природне право, правові закони, права людини, правосвідомість, правові норми.

### Introduction

Human rights and freedoms have always been and are in the center of attention of researchers. The idea of natural rights belonging to people accompanies the development of civilization at all stages. Special interest in it is manifested in the period of deep crises, covering the entire complex of human life: economic, political, moral and aesthetic aspects.

The ideology of natural rights in such historical periods performs the role of a spiritual catalyst. With its help, they torpedo the official ideology, completely destroying it. The importance of ideology is that it easily wins the hearts of millions, without requiring them to work hard, reduces responsibilities, promises unlimited happiness and well-being. Because rights are the key to social values.

Natural human rights are correlated with the ideas of civil society, which were classically within the worldview of Western civilization. It is in civil society that each person becomes the most interested subject of the assessment of the legal life of society and the legal system, since the fate of ensuring and protecting vital rights and freedoms depends on their condition. The individual is the main actor in the struggle for their own rights and freedoms. In this regard, the words of R. Jhering are relevant: "Who does not feel that when his right is unceremoniously violated, the question arises not only about the object of this right, but also about his personality, who in this situation does not see an inclination to defend himself and his right, this is already a hopeless person" [9, p. 3]. This conclusion sounds harsh in conditions when many members of society in practice do not feel that they are individuals who, together with their rights and freedoms, constitute social value.

The history of mankind was enriched through man, it was always connected with his existence [13, p. 79]. The values of natural law, legal laws, human rights and freedoms, a dignified life of an individual are the basic structure of the legal life of civil society.

The difference between natural and positive law is already found in Greek philosophers, is repeated in Roman lawyers, develops in the Middle Ages and dominates in modern times [4, 56]. However, the unity of ideas did not provide a single content of natural law over the centuries. The different content of natural and positive law can be seen on the example of the views of the sophists, Socrates, the teachings of Plato and Aristotle, the Stoics, Roman lawyers, and Thomas Aquinas.

Natural law was presented as a system of principles and norms existing by nature, regardless of those established by the legislator. The source of the norm was in the inner understanding of individuals or social groups, so natural law was presented as a set of ideal, moral ideas about law.

The teachings of Hugo Grotius marked the beginning of the separation of natural law from theology, the emergence of rationalist methodology (*jus nature* instead of *lex nature*). Hobbes used the natural concept of law to justify state absolutism.

The German philosopher Pufendorf introduces elements of systematization into the idea of natural rights; the teachings of Thomasius and Leibniz appeared as "systems of superficial dogmatism", and Wolff's views - as "systems of moral despotism".

An important step in the development of this theory was made by J. Locke, who substantiated the natural rights of man. It is because of this idea (human rights) that the entire theory of natural law was oriented towards the knowledge of the legal autonomy of the individual, its independent existence in relation to the state, which is designed to ensure natural, inalienable rights.

In the 18th century J.-J. Rousseau deepened the radical orientation of the ideas of natural law, creating the theory of popular sovereignty. The main features of the natural and legal philosophy of the XVIII-XIX centuries. - the hypothesis of the state of nature, the theory of the original contract, the theory of popular sovereignty - unites the general opinion that law existed before the emergence of the state, accordingly, the independence of the moral consciousness of law from the authority of the prevailing law was proclaimed.

Kant's teachings brought a qualitatively new meaning to the concept of natural law: he replaced the concept of the universal will of the people with the category of a priori universal will. Natural law is the right of the mind, accordingly, the transition from the subjective direction of natural law to the objective understanding of law can be seen. Kant's views are of particular importance, combining with the concepts of the autonomy of the will in his philosophy.

The idea of natural law received further development in the doctrine of the objective spirit of H. Hegel. According to his teaching, there are two types of laws — the laws of nature and the laws of law. The idea of natural law (similar to the absolute idea) is carried out in the process of gradual development. This idea was adopted by Hans, a student of Hegel, and to an even greater extent by Marx and Engels, who sought to combine natural law with the idea of historical development.

Representatives of the historical school of lawyers fundamentally rejected natural law, but the last representative of this direction, Iering, returns to Hegel's ideas. Having created the theory of the involuntary self-disclosure of the people's spirit (the doctrine of the complex process of law-making), Iering concluded the recognition of the ideas of natural law as a criticism of the past and the search for better conditions for the present and the future.

Stammler saw the problem of natural law in a new way. By natural law, he understood the ideal construction of the future and with it a critical evaluation of the existing law. This is the atmosphere in which law is made. "As long as consciousness is not transformed into a form of law, it is a moral demand; in this capacity, it acts on the existing law, softens its harshness and one-sidedness" [12, p.48].

No matter how different the understanding of natural law is, supporters of this theory agree that it has as its source norms that are binding on themselves, regardless of external legislation, regardless of any external authority. Mandatory norms of natural law are based on their reasonableness.

Such was the position of the classical theory of natural law of the XVII-XVIII centuries, whose representatives defined the list of natural human rights in different ways, but did not allow the idea that this list, created once and for all by nature, could change in the course of

history. As is known, most theorists of the 19th century were generally not inclined to the idea of natural law, preferring positivist and historical methodology.

At the turn of the XIX-XX centuries, the idea of natural law is experiencing a kind of renaissance. "Revived natural law" of the 20th century - these are no longer the theories of Locke, Rousseau or Kant. First, the position that human rights and freedoms are not only their protection against despotic manifestations of power was recognized, but also the possibility of demanding "positive favors" from the state. Secondly, it became clear that the very existence of rights and freedoms depends on the level of development of society, its material and spiritual culture.

Law and legal consciousness change, they are mobile and affect the fact that law can contradict itself or the idea of justice. The problem is that in the process of improving the law reform, one should not go beyond moral criteria and, even more importantly, direct law-making in accordance with the ethical ideal to the extent and degree to which only this is possible in the given, actually defined measure of society. What is impossible to do in one society is possible in another: the Hegelian idea of history as the development of freedom, its embodiment in human relations, the philosophers of law sought to organically connect with Kant's ethical theory.

The result of this connection is the idea of "natural law with a variable content", which expresses the idea of progress in legal consciousness with the unusualness of moral principles based on the recognition of the value and dignity of the human personality.

One of the main trends in the philosophy of law of the second half of the twentieth century was the emergence of new forms of legal naturalism as theoretical and methodological approaches of legal positivism. New theories of natural law differ significantly in content from previously created concepts in the classical tradition. The specificity of the interaction of naturalism and positivism in modern analytical philosophy is due, first of all, to differences in the conceptual understanding of the general conditions of the "legal validity" of legal norms [8, p.55-67]. Understanding law as a regulatory regulator of human behavior, it is not justified to raise the question of the distinction between law and morality as standards for regulating human behavior.

In this sense, legal positivism is characterized by the recognition as conditions of "legal validity" of legal norms of certain social facts that have an empirical meaning, and in legal naturalism - the moral meaning of legal prescriptions.

However, legal naturalism is a special way of philosophical reflection on justice, which has a deep history and is aimed at substantiating the moral nature of legal regulations, the source of which are the ideas and principles of natural law [4, p.56].

Since Antiquity, similar ideas retain their importance in modern concepts of natural law, and have received the single name of "conceptual naturalism", within which natural law is highlighted as an immanent and fundamental characteristic of a positive legal system. Representatives of modern theories of natural law in their criticism of positivist arguments regarding justice retain a number of well-known postulates of the classical tradition: there are objectively defined moral norms and principles that underlie the world order and are cognizable by the human mind; natural law is the legal form of certain moral principles that form the basis of the normative legal order; an individual possesses a set of natural and intangible rights, the creation of which objectively involves the manifestation of the norm of positive law; norms of positive law must comply with the principles of natural law, as well as the principle of "lex injusta non est lex", given in the sense that unjust laws do not create moral obligations.

Modern concepts of natural law are characterized by criticism of positivist methodology and theses about the distinction between law and morality, "existing" and "proper" in justice. As noted by the American scientist B. Bix, conceptual naturalists consider law as a teleological

concept and a means of building a just society, denying the descriptive morally neutral approach of neopositivists [2, p.21].

In this sense, the teleological approach in the concept of L. Fuller, based on the functional analysis of law and its procedural content, is interesting. The peculiarity of Fuller's methodological approach lies in the understanding of all legal knowledge. Legal theory is aimed at knowing how "human powers" are realized, and cannot be a descriptive theory used in the analysis of legal empirical data, as in natural science. The goal of most modern concepts of natural law is the search for the optimal interaction of legal norms with fundamental legal principles and legal procedures [5, p.55–60] and the general good of the political community.

At the same time, Fuller's procedural concept of natural law represents an attempt to build a natural-law theory based on the recognition of certain arguments of legal positivism and the justification of the value and moral burden of legal norms. However, the object of research in its concept is not legal rules, but legal relations as a set of legal procedures for the implementation of legal norms. The sphere of legal relations is quite broad and includes relations arising on the basis of customs, contracts, judicial, administrative and management decisions, as well as regulated by law. In this sense, the legal force of a legal norm depends not only on the legitimacy of the legislator and compliance with law-making procedures, but also on the internal moral content of the legal norm [5, p.61–65].

The specificity of L. Fuller's analytical concept of natural law is that natural law is immanent to the positive legal system, it characterizes reasonableness in the legal order and is externally manifested in legal principles and procedures. The procedural approach is somewhat abstracted from the substantive characteristics of the essence of natural law. John Finnis tries to eliminate this shortcoming in his concept.

Finnis builds his concept on other methodological foundations. Revealing the meaning of the concept of "natural law", he formulates the principles of practically permissible rationality, which more clearly define the goals and means of legal regulation, as well as substantiate the idea of "common good" in the political community. Natural law is "a set of basic practical principles that define the basic forms of human development as goods obtained and realized" [4, p.135–139]. The natural law theory itself determines the list of basic goods and directs people to more effectively satisfy their needs regarding basic goods, motivates them based on the understanding of such goods to a better life. In this sense, Thomas Aquinas' classical ideas about natural truth were developed in Finnis' concept.

Differences regarding the moral justification of human actions are also possible, since the principle of practical rationality allows for a "sphere of flexibility" in the methods of obtaining the main good, and the ambiguity of moral reasoning. Nevertheless, Finnis provides a list of the basic benefits and requirements of practical rationality.

In the concept of the common good of J. Finnis, there are seven basic goods that every person as a member of society is interested in obtaining - life, knowledge, play, aesthetic experience, sociality (friendship, communication), practical rationality and religion. In the interpretation of knowledge as a virtue, Finnis actually opposes Fuller's procedural approach, which takes the acquisition of knowledge as self-evident.

Finnis refers to the self-evident nature of the list of basic goods that can be realized by all people. At the same time, the common good consists of "an integral ensemble of material and other conditions", which includes the preservation of certain social institutions (for example, the institution of the family), the moral environment necessary for the prosperity of people during their lives. In this sense, Finnis presents the instrumental tract of the common good as a means of providing people with specific "basic goods" [10, p.139]. At the same time, none of the seven basic goods can be analytically reduced to other goods and cannot serve as a means of obtaining other basic goods. At the same time, the list of basic goods does not depend on the moral evaluation of these goods.

Natural law as a valuable phenomenon, analyzed by scientists of all historical periods, continues to attract the attention of thinkers even in our time. The doctrine of natural law (both in the present and in the past) has both its adherents and opponents. The relationship to it acquires a significant practical and theoretical significance in the conditions of the development of civil society and the establishment of the rule of law.

A certain ideal legal beginning is directly related to the awareness of what the effective law should be, having received the most complete expression in the doctrine of natural law [11, p. 102]. Natural law represents requirements, principles, ideas of a value nature, which indirectly or directly affect the active positive law and thus are able to ensure and protect human rights and freedoms.

Natural law means "different (in terms of its content, essence and concept) variants of natural law, different meanings, which its past and present supporters and opponents put into this widely used collective concept" [11, p. 148]. The perception of natural law as a valuable phenomenon acquires practical significance in the conditions of radical social transformations, defined approaches to the position of a person in society.

In natural law, those ideas, principles and requirements that "formed the basis for further legal development" are marked. These include: freedom, security from the arbitrariness of the authorities, equality, inviolability of property, etc. Knowledge of the essence and social purpose of law as a special social phenomenon is "impossible without an understanding of human nature in all its manifestations, without insight into human needs, abilities, and aspirations.

For centuries, humanity produced the most reasonable and useful standards of behavior and activity, fixed them in mythology, moral standards, and religion. These standards reflected the idea of truth, justice, were the scale of freedom and equality and were perceived as "natural law" [3, p. 218].

In natural law, people's hopes, wishes, aspirations for a better life were consolidated. A stereotype of natural law was created as a right related to the fact of life of people, of any particular person. The ideas of natural law were already associated by the thinkers of the Ancient world with the natural nature of human existence.

It is the law of the essence of nature that creates peace and security for all people, therefore it does not need subjective guarantees. In the context of such approaches, the need to realize the practical relationship between natural law and positive law is followed. However, reaching a certain peak in justifying the priority of natural law values is replaced by increased attention to legal positivism. This was ensured by the intensification of law-making activity, which reflects the interests of the state authorities.

Orientation to the rights, freedoms, and dignity of human life is evidence of the moral content of natural law, since the full-blooded life activity of members of civil society involves the predominance of good over evil. Those moral values that are practically addressed to every person, his basic vital interests, are adequate to natural law.

The valuable potential of natural law is expressed in the fact that it is addressed to a free individual who professes spiritual and moral life principles, rejecting evil in any form. The potential of natural law and spiritual and moral values interact with each other in a single way, determine the necessary conditions for a dignified position of a person in society. Freedom as the most important valuable element of natural law means "a real opportunity for each individual to realize his interests and attraction in a civilized form, i.e. without being exposed to the danger of arbitrariness, self-management or infringement of individual rights by the state or other individuals" [7, p. 24].

The essence of the purpose of natural law is not to directly regulate specific social relations (it cannot perform such functions, since it does not contain detailed legal norms), but to enrich the system of positive law with its content, to initiate the preparation and adoption of legal norms, laws. The strength of natural law lies in the fact that it is "the sum of requirements,

based on its original basis, directly, without any direct human participation, born of the very natural life of society, the "nature", "essence" of human life, objective conditions of life, natural the course of things" [1, p. 41].

The values of natural law are addressed to a person who realizes the born right to life regardless of what legal provisions on this account come from the legislative body.

Natural law, in its essence, is completely independent of the arbitrariness of the state, as it is mediated by human nature. It contains the valuable potential that determines the full-fledged life of free people, aimed at the realization of interests and needs that determine their dignified existence. In the course of the development of institutions of civil society, positive law becomes increasingly dependent on the influence of the values of natural law. Natural law in the form of ideas of the mind acts as the well-known basis of positive law, its pre-foundation of a kind. The ideas and principles of natural law are the basis of the transformation of positive law, ensuring and protecting the rights and freedoms of a person and a citizen.

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