

# The Rise and Fall of Natural Law

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Friedrich Julius Stahl

THE PHILOSOPHY OF LAW

VOLUME I: *The History of Legal Philosophy*

1A: *The Rise and Fall of Natural Law*

1B: *The Recovery of Historical Law*

VOLUME II: *The Doctrine of Law and State on the Basis of the Christian World-View*

PART I: *General Doctrines and Private Law*

BOOK I: *Philosophical Presuppositions*

BOOK II: *Principles of Law*

BOOK III: *Private Law*

PART II: *The Doctrine of State and the Principles of State Law*

BOOK IV

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Volume 1A of the Philosophy of Law:  
The History of Legal Philosophy

Friedrich Julius Stahl

Translated, edited, and prefaced by  
Ruben Alvarado

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## PREFACE

It is obvious to even the most casual observer that our age is in thrall to radical subjectivism. Which is to say: the individual and his or her<sup>1</sup> conviction is the driving force in the determination and assessment of social, cultural, political, and juridical mores, standards, values, and goals. There is no overarching standard that transcends individuals and what they, each in and for themselves, determine to be right and wrong, good and evil, worthy of praise or of opprobrium. As a result, there is no shared set of values by which individual self-determination can be guided or restrained; instead, what passes for a shared set of values is simply the aggregation of individual legislations pitted against similarly aggregated yet opposed legislations, whereby the winners impose their aggregated mass of particular interests on the entirety.

It used to be that such a result was accepted until the next election. But nowadays even that threadbare concession to objectivity has been jettisoned, at least by the subjectivist vanguard. If their approach ends up triumphing, the end result will be the termination of the experiment and the imposition of the permanent reign of whoever is able to secure and maintain power. Such does seem to be the next stage in our lengthy downward trajectory.

It is to such straits that we have been reduced; and it is rather a chore to have to trace out the origins, seeing as how there is so little prospect of redressing this catastrophic farce of a public order so as to restore it on sound foundations. But this is our calling, and we will not shirk it. Thankfully, there are not a few witnesses past and present, who have chronicled the career of the debacle the final stages of which we now are privileged (or condemned) to observe on a daily basis. One of them is presented in his own words, in the book you have before you.

Friedrich Julius Stahl (1802–1861) was a leading statesman and legal scholar in 19<sup>th</sup> century pre-Bismarck Germany. He was one of the century's great parliamentary orators, but because he labored in favor of a Christian-historical order of things, his work has fallen into oblivion. This is no fault of his, but of the

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<sup>1</sup> That even these qualifiers have become problematic as being insufficiently inclusive, is symptomatic of the phenomenon.

turn toward the catastrophic we have noted; for his words are full of wisdom and caution, all which have gone unheeded. But regardless, they are well worth recovering and exploring, for they make clear the depth of depravity to which we have sunk, and how we have gotten there.

This book, which contains over half of Stahl's *History of Legal Philosophy*, traces out the history of one of the major contributing factors to our modern age. That would be natural law, something which hardly anyone talks about, or even knows about. This was not always the case; once upon a time, natural law was the vehicle of choice to propound all manner of systems of law and order. The leading idea in all of them being that in natural law we have a standard by which to judge all existing, "positive" (i.e., man-made) legal systems.

A fine aspiration, one would think. But the devil is in the details. And not even the details: it is in the starting point. For the methodology of natural law already contained in itself the seeds of natural law's destruction. And Stahl here traces out that course with masterly hand.

Before we proceed any further, we need to ask the question: whence cometh this thing we call natural law? How did it ever become such a central element in learned discourse in ethics, law, politics, and constitutionalism?

Stahl provides a clue when he remarks in passing that natural law is an "expression inherited from the Romans" (p. 179 below). Roman law is of course the primary constituent of the Western legal tradition, and its various rather cursory explorations of the concept mediated its reception in theology and philosophy. But the matter reaches farther back than that, and Stahl accordingly begins his exposition with the Greeks, Plato and Aristotle. Here he is concerned to describe their contribution to "the science of the just" (p. 1), which is his definition of legal philosophy. What he finds is that they contributed essential building blocks for the development of a doctrine of natural law, but without advancing it, without allowing it to run its course. The same is true for the Romans, who incorporate the idea of natural law into their legal philosophy, such as it was; but they, instead of developing it, focused on practice, in order to develop the real-world legal system they inherited.

Opposed to the natural-law philosophy introduced by the pagans was the conception of the will of the personal-infinite God being the source of the ethic and thus of law, characterized by Stahl variously as Jewish, Judeo-Christian, or Christian (pp. 31ff., 34ff., 80ff.). Working from Christian revelation, August-