

International Rights Rely on Natural Law

The Jacob Sundberg *Festschrift*

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"Professor Sundberg's...innovative and devoted efforts to make known the European Convention on Human Rights and its control machinery...can help to pave the way for the effective implementation of the rule of law and the respect for human rights which are our common European heritage....Professor Sundberg's efforts in this connection have been of outstanding value."

—Rolv Ryssdal, President of the European Court of Human Rights



Readers may recall "The Law of Nature, the Uppsala School and the *ius docendi* Affair" reported ten years ago in *VERA LEX* (Vol.IX, no. 1, 1989). In this document, Jacob Sundberg, Professor of Jurisprudence at the University of Stockholm, related his tribulations with Law Faculty members. Bitter debate and personal abuses scared good relations among the faculty, provoked, by and large, by ideological opposition to Professor Sundberg's introducing natural law into his courses in jurisprudence, international and comparative law, legal history, and human rights.



But sometimes justice is done; it does not always wait for our wishes and hopes before it appears in earthly form. Adjunctive to his near-retirement from his post as Professor of Jurisprudence at the University of Stockholm and in recognition of his remarkable contribution to the cause of global morality prevailing over politics, in June of 1993 Professor Sundberg was awarded highest honors at a reception and banquet in Oslo.

Presiding at the Oslo Military Society where the reception and banquet were held to honor Professor Sundberg with a *Festschrift* was the President of the European Court of Human Rights and former chief justice of the Norwegian Supreme Court, Rolv Ryssdal. In attendance were scores of notables: the Rector of the University of Oslo Lucy Smith, Supreme Court members of the five Nordic courts of justice, judges from the European Court of Human Rights and the Geneva court, advocates, local *honoratiros*, and Professor Sundberg's senior students. It was his students' presence in particular and their rallying round his farseeing approach to the international law of rights that confirm the lasting significance and character of Professor Sundberg's tireless work on

behalf of this truth: The success of international human rights depends upon the belief that moral law must be understood as their essential and ultimate foundation, and that human rights are prior to the power of the state.

Professor Sundberg's devotion to the cause of state-under-law and law-under-morals is reflected in his students' participation in his Sporrong Lonroth Human Rights Law Moot Court Competition. This is a series of teams, or clubs, he founded and organized in 1984 to generate interest in the European Convention. The Moot Court Competition prepares law students for arguing the cases in human rights that arise, or can arise, before the international courts at Strasbourg and elsewhere, where the real action lies. The Moot Court directs itself to the level of practice where success counts most in the effective capacity to legally confirm that individual rights, *for everyone, everywhere*, take precedence over national supremacies. This is a lesson that Sweden in particular during the course of Professor Sundberg's tenure, and certainly dozens of other nations today, has found difficult to learn.



That political coercion must always be submissive to moral law is an ancient tenet of natural law. In the *ius docendi* case, the protagonists are natural and positive law vying for supremacy. Still current, philosophical positivism, breeding Scandinavian realism and Marxism and what these statist ideologies mean in legal thinking, characterizes the Uppsala school of law and to a large extent until very recently, the Swedish Supreme Court itself, from which mind-set issued the hostility and rancor shown toward Professor Sundberg's tenure at Stock-

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holm. Indeed, even after its delivery in 1993, his valedictory address was censured by certain members of the Faculty of Law at Stockholm who would have excoriated from its publication (but did not, fortunately, get an opportunity to do so) those passages with which they were in disagreement, corrupting the veracity of Professor Sundberg's delivery.

In the end, however, the European human rights perspective has emerged triumphant. The Nordic Supreme Courts now seem willing to apply the European Convention while they would not have thought of it at the beginning of the 1980s. What this means is that the thinking of the Convention is increasingly being incorporated into national laws. Professor Sundberg himself writes that "I believe that I have much contributed to the Swedish Supreme Court now being inclined to apply the European Convention in Sweden without awaiting any particular enabling legislation."

Professor Sundberg in retirement continues his writing, his leadership of the Sporrang Lonroth Moot Court, his legal practice, and his vigorous involvement in spreading throughout Europe the idea that human rights, when a law is challenged, morally supersede the dictates of the national state. When



human rights receive an ineradicable global acknowledgement and entrenchment, natural law will have proved its moral sovereignty over political sovereignty.

-Virginia Black, Ed

Without wishing to give a rigid or an all-embracing definition of natural law, I would in general use the term to denote certain fundamental principles of justice whose recognition and observance is indispensable, or at least highly necessary, in a workable order of society.... It is my opinion that a solidly grounded philosophy of law must pay attention to the problem of natural law...which...forms a rock bottom on which the edifice of law and justice must rest.... Natural law thinking should be nondogmatic, flexible, and open-minded.

-Edgar Bodenheimer,
VERA LEX, vol. V, no. 1

19th World Congress on Philosophy of Law and Social Philosophy

The Internationale Vereinigung für Rechts- und Sozialphilosophie (IVR) held its 19th World Congress at Pace University, New York City, from June 24-30, 1999. The general theme for this year's Congress was "The Transformation of Legal Systems and Economies in an Age of Global Interdependence." With the exception of one day at the United Nations, all activities - working groups and parallel and plenary sessions - took place at Pace University's main campus located directly across from City Hall and at the University's World Trade Institute on the 55th floor of the World Trade Center.



It is not difficult to understand why the theme of global change was chosen for this conference. Many contemporary legal theorists, orthodox economists, political scientists and philosophers now recognize that the rise of the multinationals combined with the growing integration of the global economy has seriously undermined the capacity of states to control their own societies. Globalization presents urgent legal and philosophical challenges. Appropriately, conference concerns focused on the place of sovereign states in an increasingly integrated world, legal reasoning in a multicultural perspective, the desirability and possibility of cross-cultural legal norms, and a plethora of rights issues: minority rights, women's rights (along with feminist legal theories), children's rights, environmental rights, property rights (intellectual and material), the rights of indigenous populations, rights without borders, and, of course, natural rights - to name only a few of the topics under consideration at the 33 working sessions.

As one might expect from more than 150 presentations, a wide variety of philosophical dispositions and perspectives was expressed - Neo-Kantianism, Neo-Hegelianism, Phenomenology, existentialism, and Natural Law, along with a host of postmodern pluralisms. Surprisingly, a serious critique of the unifying theme of the Congress - globalization (globalism) - was missing from an otherwise comprehensive array of approaches. Only briefly at the final plenary session, *Fundamental Legal Concepts for a Global Society*, was the question of the desirability of globalism raised, and only under the heading of sovereignty. Participants' concerns were genuine fears that transnational corporations will universalize business law, and thus constitutionalize the rights of corporations. This topic, which is really the convergence of many themes, needs more discussion of the high caliber I witnessed throughout this wonderfully successful conference. Perhaps the theme will be taken up at the 20th World Congress in Amsterdam in 2001.



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