AXEL HÄGERSTRÖM
AND MODERN SOCIAL THOUGHT
Axel Hägerström
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Axel Anders Theodor Hägerström (1868–1939) is one of the fairly few, if not the only, Swedish philosophers of international significance—yet, he remains in many ways unknown. A major contribution is his theory on the nature of norms and values, which came to be known as value-nihilism, celebrated by some and vehemently rejected by others: Hägerström was the first who formulated a noncognitivist moral theory and debate still continues about the exact significance, scope and implications of this theory. Together with Adolf Phalén, he was one of the two founders of the so-called Uppsala School. He was also the inspirational source of Scandinavian legal realism.

Hägerström can be said to be a significant thinker for three reasons: An extraordinary interpreter of his own time, he left his mark on his contemporaries; his thought continues to suggest interesting and contrasting readings, which is indicated by the fact that he is repeatedly re-read by new generations of scholars; finally, he developed general categories that we still use today to understand the world we now live in.

Originally educated in nineteenth-century idealism, and later converting to early twentieth-century neo-Kantianism, Hägerström developed theories in parallel with—yet independently from—some of the
major philosophical currents in Europe. In his work, he was concerned with both practical and theoretical issues. Today, the most important part of his scholarship is considered to be his teachings in the social, moral and legal aspects of philosophy, and his quite controversial studies on the history of legal thought. His scholarship focuses on the nature of norms and value-judgements that are, in his words, “neither true, nor false”. It is this approach that came to be labelled *axiological nihilism* or *value-nihilism* (värdenihilism)—a nutshell variant of which can be found in the closing sentence of his inaugural lecture, *On the Truth of Moral Ideas* from 1911, of which a new translation by Thomas Mautner can be found in this volume: “there can never be a scientific morals, but only a science of morals”.

More generally, it is possible to claim that he developed a comprehensive philosophy, in the sense that he was involved with most fields in philosophy, with the exception perhaps of aesthetics and formal logic. He first directed his attention to theoretical philosophy, more specifically to the neo-Kantian movement quite popular at that time. Holding the chair of practical philosophy in Uppsala from 1911 until 1933, he focused more on moral, political, and legal philosophy, thus the greater part of his later writings leaves in the background the theoretical problems he dealt with in the earlier stages of his scholarship. The thread of Ariadne in his philosophy is his criticism of what he calls metaphysics and its impact of the theory of norms. In his account of his own philosophy in *Die Philosophie der Gegenwart in Selbstdarstellungen* from 1929, he adopted as his motto a modified version of Cato’s aphorism, *praeterea censeo metaphysicam esse delendam*. To him, metaphysics is nothing but a compilation of words which happen to be connected with emotions. What distinguishes this assumption from other anti-metaphysical positions—quite recurrent in the history of ideas—is that the “superstitious” web of metaphysical beliefs spreads its mantle not only over the humanities, but over natural science as well; this is a position that has been gaining ground in contemporary debates, namely in those concerned with conditions enabling the production of science and knowledge management more generally.

Whereas some of his early theoretical writings received attention only in academic circles and for a limited time, his practical philosophy, especially his axiological nihilism became a matter of public debate
and has been widely discussed and often harshly criticised. This is the specific point that many later jurists found attractive and which makes him the “father” of Scandinavian legal realism. However, he remains unknown, in two different, yet connected ways.

On the one hand, there is a problem concerning the sources and, on the other hand, there are issues concerning the interpretation of his philosophy. As far as his philosophical theories are concerned, many aspects remain open to debate: If norms are neither true nor false, how can they be adequately understood on the basis of Hägerström’s theory of knowledge? How can we understand the nature of judgement and propositional truth? Did the founder of the Uppsala school uphold emotivism in moral philosophy? What consequences does such a standpoint entail in practical philosophy? Is he really the inspiration behind a specifically Scandinavian way of approaching the problem of principled decision-making? Clearly, Hägerström is by no means the object of any simple interpretation. But, then again, which classic author is?

Concerning the sources, there are issues concerning the primary literature, the correspondence, the biographical data, and the secondary literature. Therefore, there is also an overall problem with demonstrating systematically many aspects of his thought and investigating properly the impact of his theories, which calls for greater scholarly attention.

Axel Hägerström was a prolific writer and lecturer. He left a significant amount of manuscript material at his death. Yet the primary published material has not received the attention it deserves. In 1946 Rector Magnificus Nils von Hofsten and Gunnar Myrdal gathered to form a committee for the publication of the complete works, but the project was never implemented. Today some of his published writings are quite hard to come across. A catalogue of Hägerström’s manuscripts, which are kept in the Carolina Rediviva at the Uppsala University Library, was first made by Martin Fries, and later revised and improved by Thomas Mautner. The complete bibliography of Hägerström’s writings can be found in Mautner’s Vägledning till Hägerströmstudiet (Guide to the study of Hägerström, 1994) which also includes listings of lectures, seminars, papers and correspondence; a systematic overview of Hägerström’s published work, based on a classification into genres of scientific writings, can be found in the Appendix in Patricia Mindus, A Real Mind (2009). Yet, no critical and complete edition of Hägerström’s
published and unpublished works has so far been produced. Nor has much been done in order to provide a complete overview of his correspondence. There is a useful listing of letters in Mautner’s *Vägledning till Hägerströmstudiet* but, since its publication in 1994, more letters have come to light and have been included in the Uppsala University Library archive.

As far as biographical data is concerned, no critical biography has been published. His own autobiographical statement, his *Selbstdarstellung* (1929), details his intellectual development, especially his rejection of neo-Kantianism. The most detailed biographical description can be found in the biography written by his daughter Margit Waller, *Människan som få kände* (The man few knew, 1961), which also includes family portraits and pictures. An account based on this book in English can be found in Jes Bjarup’s PhD thesis *Reason, Emotion and the Law* from 1982. Another source in English is C.D. Broad’s “Memoir of Axel Hägerström” in *Philosophy and Religion* (Sandin, ed. 1964). A chronology offering a brief synopsis of the major events in his life, both private and intellectual, is included in the Appendix in Mindus (Mindus: *op. cit.*). Most other sources in the secondary literature repeat information found in the aforementioned titles. There is thus a need to check biographical data against a broader set of historical sources so as to enable critical assessment before Hägerström’s life evaporates into the realm of myth.

In addition to this, the secondary literature on Hägerström is of extremely variable quality: It stretches from old-school literary analysis to short papers that require a wide range of technical skills; it includes voluminous and broadly circulating academic material of the regular kind and narrow biographical sketches, not to mention that the inexperienced reader is unlikely to stumble upon the best studies. Moreover, the secondary sources are written in a variety of languages, including Swedish, English, German, French, Italian, and Spanish, and cover many fields of inquiry from legal science to the history of physics.

In the same way we lack a critical edition of Hägerström’s work; the secondary literature offers no general outline or critical review of the studies made. In very general terms, as far as the *status quaestionis* concerned, the different readings can be ordered into two major currents. On one hand, there are those who developed an interest in Hägerström
Introduction

primarily as the founder of the Uppsala school, and specifically as the founder of modern noncognitivism in ethics; therefore these scholars directed their attention to his role in the history of twentieth-century philosophy, concerning foremost practical but also theoretical philosophy. In this group, names such as Alfred Ayer, Charles L. Stevenson, R.M. Hare, Steven Satris should be listed, along with the translators and editors Robert Sandin, Martin Fries, C.D. Broad, and Thomas Mautner; and more broadly the Swedish intellectuals Ingmar Hedenius, Konrad Marc-Wogau, Anders Wedberg, Herbert Tingsten, Gunnar Myrdal, Manfred Moritz, Svante Nordin, Sven Danielsson, Bo Petersson, and Hans W. Ruin. Many of these authors were themselves philosophers and focused on Hägerström because he was held to be the first thinker to have developed an elaborate version of what was to become one of the most important—and criticized—currents in contemporary meta-ethical theory.

On the other hand, there are those interpreters who discovered a “third way” in Hägerström; a position different from both natural law theories and legal positivism. This position of Hägerström naturally led to criticisms as well as to further the interest for his controversial insertion into the dichotomy of the two traditional schools of thought in jurisprudence and philosophy of law. The alternative that he came to represent as the spiritual father of Scandinavian legal realism, in legal and political theory, may be mentioned as motivation behind the interest of scholars such as Vilhelm Lundstedt, Karl Olivecrona, Alf Ross, H.L.A. Hart, Silvana Castignone, Enrico Pattaro, Liborio Hierro, Carla Faralli, Jes Bjarup, John Rawls, N.E. Simmonds, Åke Frändberg, Dennis Lloyd, Jacob Sundberg, Stig Strömholm, and many more. This reading has been particularly important outside Scandinavia and most especially in the Romance language-speaking world. The idea was that if Scandinavian realism represented a live option and was often called on to offer new perspectives on some fundamental issues in philosophy of law, Hägerström was seen as the key unlocking the door to an innovative jurisprudential debate. Perhaps, another course to the mainstream readings could be added: Special mention should be made of Ernst Cassirer whose analysis differs from the abovementioned outlooks since his interpretation is both a methodological criticism and a philosophical dialogue against the background of his own thought.
Thus, as far as the secondary literature is concerned, we still lack a general and critical outline of the studies previously conducted. Such a report would therefore constitute another key undertaking. Svante Nordin, an expert on the history of Scandinavian philosophy, once claimed that the scholar who wants to write on Hägerström has to struggle with a quite vast secondary literature; and that it varies in quality and leaves, notwithstanding its width, many problems unsolved. This remains true.

Besides investigating the reception of Hägerström’s ideas within and beyond the scientific community, another key undertaking that awaits future scholars is to map and understand the sources Hägerström himself used. Truly erudite, he drew on a broad range of sources—from Ancient Greek inscriptions to Einstein’s theories, from Roman public law to empirical psychology, and so forth. An avid reader with a keen sense for detail he did not always give clear indications of the sources of his ideas. He famously claimed “I have not been significantly influenced by contemporary philosophy, on account of what is, in my opinion, its uncritical point of departure” (1964: 38). Often depicted as the great pioneer whose sources and influences need not be mapped, scholarly work on Hägerström’s sources is rather scarce. Yet, he was well anchored both in the past and the present. For example, investigation should be made into his relationship to Hume and Bentham in his radical anti-natural law position; he is also clearly inspired by Austrian and German sources, such as Alexius Meinong and Franz Brentano; his relation to Nietzsche is controversial but better documented (Hans Ruin 2000, and in this volume); he seems to have been influenced also by French radicalism.

It is noteworthy that strands of thought similar to the one Hägerström developed appear roughly simultaneously and, moreover, to a large extent independently of each other. From the general viewpoint, according to which he is a forerunner of “scientific” approaches in ethics, a predecessor of Carnap, Ayer, Stevenson and contemporary meta-ethics, it seems that Hägerström gave expression to something that was really “in the air”. In point of fact, the rejection of Geisteswissenschaften in Dilthey’s sense and the plea for a more scientific philosophy were rather recurrent topics in those days: just to name a few cases, Henri Poincaré claimed that “there can be no scientific morals and no immoral science” (1913: 225); Émile Durkheim, at the international
conference in philosophy in 1911, also distinguished between judg-
ments of value and judgements of reality (Durkheim 1911); the Austrian
legal scholar and sociologist Eugen Ehrlich, in his sociological theory
on freie Rechtswissenschaft, emphasized that the legal norm relies on
the intensity of the underlying emotion, in a way that seems reminis-
cent of Hägerström. In this wider sense, he certainly participated in the
“breakthrough of modernism” along with many others in art, literature,
and science. This generic approach aside, what should be stressed is the
development of his theory of value: Hägerström was the first to formu-
late the negative value-ontology in a systematic manner in his famous
inaugural lecture from 1911.

All these reasons concerning the source material, in combination
with the fact that a great part of Hägerström’s production is in Swedish,
converge with the effect that Hägerström has not really obtained the
attention he would deserve. Of course, mention should be made
of the fact that his core texts are available in two edited volumes in
English (Hägerström 1953 and 1964) as well as his two large volumes
on Der Römische Obligationsbegriff in German—the latter are books so
demanding from the technical point of view that it is safe to say that
they remain more famous than actually read, even though they were
received with a certain interest at the time of publication (Faralli 1982).

As Sven Eliaeson has pointed out, the suboptimal state in which
this voluminous Hägerström material currently lingers is something of
a “national scandal”, since Hägerström is the only Swedish philosopher
of international stature and significance from this very important time
in history, who still recurrently provokes rejoinders, including those of
the weight of Ernst Cassirer, Theodor Geiger, and John Rawls. From
the point of view of scholars working in Sweden, many questions are
left open by the observation that while the Finns are proud of Edvard
Westermarck and the Danes of Sören Kierkegaard, Hägerström’s legacy
in Sweden is not celebrated.

Migrants to Sweden during World War II contributed to the diffu-
sion of Hägerström. We have mentioned Ernst Cassirer. Cassirer only
spent a short time in Uppsala soon after his arrival to Sweden and then
transferred to Gothenburg in 1935 where the provincial governor, also
a philosopher (Malte Jacobsson), arranged a personal chair for him.
Cassirer learned Swedish in amazingly short time. He left for the USA
in 1941. Sweden was then unsafe for a Jew; after the German invasion of Norway and Denmark, Sweden was militarily “hiding out” behind the German lines, under constant threat of a German invasion. When Cassirer died in New York in April 1945, it was as a Swedish citizen.

Theodore Geiger was a refugee in Denmark and Sweden and a founder of *Acta Sociologica*. His controversy with the Uppsala school has a certain affinity with Ingemar Hedenius’s “refinement”: trying to improve on the basic approach; in reality not adding much and paradoxically promoting “backdoor-normativism” (Eliaeson 1993). Geiger explicitly adheres to value nihilism and anti-metaphysics but finds several flaws in Hägerström, regarding semantics and sociology.

There are several reasons that can explain the under-estimation of Hägerström’s work. Let us start with the contextual and historical reasons. The first and second decades of the twentieth-century witnessed the formation of a new “philosophical” school in Sweden: The so-called School of Uppsala, which should be kept separate from Scandinavian legal realism. It not only had a significant influence on the intellectual life of Scandinavia in the twentieth century, it also presented original features in the history of thought: since some claim that the modern analytical movement, in Europe at least, arose independently in three places: Cambridge, Uppsala, and Vienna, the stake in the fatherhood debate, is largely a question of claiming merit to the European history of ideas.

The Uppsala school was consumed by a dispute over “paternity” between Axel Hägerström and his younger colleague Adolf Phalén and their respective followers (Nordin 1984). They both criticised what they held to be the prevailing and incorrect epistemological paradigm, i.e., “subjectivism”. Hägerström was its most prestigious figure and the most important promoter in the field of practical philosophy; Phalén was its advocate in the field of theoretical philosophy. The paternity quarrel was already an issue when Hägerström was alive. Afterwards, the animosity came to be expressed in other ways. Anders Karitz from Lund who was appointed to the chair in practical philosophy had a hard time, a victim of what today might be labelled mobbing, by younger philosophers, involving some amazing incidents. Many young theorists who felt close to Phalén, who died prematurely in 1931, were not especially interested in emphasizing Hägerström’s legacy. For instance,
Hedenius’ memories of Hägerström, published in 1980, were characteristically published under the title “Minnen av Adolf Phalén” (Memories of Adolf Phalén).

A second reason for the underestimation of Hägerström’s work is closely linked to his controversial impact on Swedish culture. There was a time when journalists as well as public opinion made use both of the fame and the notoriety of his name. Paul Britten Austin, Ingmar Bergman’s brother-in-law, once observed that “‘moral judgments’, every educated Swede knows, ‘lack descriptive status’” (1968: 40). This was the claim introduced on the occasion of Hägerström’s inaugural lecture as the professor of practical philosophy in Uppsala on 18th March 1911: The hall was full of prominent people, including theologians, jurists and the two philosophers who had nominated Hägerström, Burman, and Sahlin. Rector Magnificus Henrik Schück presented the new member of the faculty and underlined the academic tradition of the chair, the importance of the legacy of Christopher Jacob Boström.

Many left the room in an altered mood, contributing to making this inaugural lecture both celebrated and controversial. In time, Hägerström’s name became associated with the label “value nihilism”. The formula was coined by the Swedish scholar John Landquist, a legendary adversary of Hägerström, at that time responsible for the political and cultural section of the daily newspaper Aftonbladet and only later re-adopted by scholars following Ingmar Hedenius’ attempt to rescue it by taking away its negative connotations (Om rätt och moral [On law and morality], 1941). This appellation, however, did not make Hägerström’s ideas more palatable to conventional opinion.

During the period of social-democratic hegemony from the mid-century, critics associated Hägerström’s views with “state absolutism”, “social engineering” and the teleological interpretation of statute law. In time, Hägerström’s axiological nihilism as well as his account of the metaphysical character of rights and duties even became associated with the infamous slogan that goes back to Thrasymachus of Chalcedon, “might is right”. During “The crisis of democracy” in the period between the wars, it was often suggested that axiological nihilism, such as that of Hägerström, was to blame for the collapse of European culture in general and for the rise of totalitarian regimes and antidemocratic movements in particular. It was suggested that axiological nihilism had
left people in a spiritual void, which was easily exploited by anti-democratic, populist and power-focused political movements. This reading fuelled later claims that Hägerström’s philosophy was responsible for the rejection of principled decision-making in Swedish courts and more specifically that the fact that Scandinavian legal realism dismissed the possibility of normative arguments about values would ultimately lead to abandonment of normative debate, impoverishing the public sphere.

Yet this popularized version of Hägerström’s value nihilism has never ceased to be contested, not only in its meaning and implications but also in relation to the historical evidence of his own political views. Hägerström was a political radical himself and a specialist on Marx, but not Marxist by any measure. But leading social democrats were inspired by Hägerström, such as Arthur Engberg, Vilhelm Lundstedt, and Gunnar Myrdal. Yet this was not the only strand of influence. Among the group of people he inspired were leading conservative politicians and entrepreneurs, such as his disciple Harald Nordenson. The UN secretary general Dag Hammarskjöld and Gunnar Hägglöf both engaged in a dialogue with Hägerström and discussed his theories during walks in Uppsala as young students. Hägglöf, who later became a Catholic, opposed to Hägerström’s negative value-ontology, recalled in his memoirs that he once dreamed that Uppsala castle took the shape of Hägerström’s head. Many other influential names that were inspired by Hägerström could be enumerated, but this influence often seems to have been rather generic from the contemporary scholar’s perspective. What was in common with those who wrestled with his ideas was this: they used him to overcome the limitations of conventional moral orientations, and the dangers of what Popper called moral futurism, the failure to take personal responsibility that follows from acquiescence to what is supposed to be historically inevitable.

Among the philosophical reasons for the relatively low level of interest in Hägerström’s work, is the fact that Hägerström’s influence has been obliterated through incorporation in later movements of thought. His legal thinking was basic to Scandinavian legal realism, as developed by Karl Olivecrona, Vilhelm Lundstedt, and Alf Ross, and it was assimilated to other movements, such as the sociological jurisprudence of Roscoe Pound, and the legal positivism of H.L.A. Hart, who cited Hägerström extensively in his *The Concept of Law*. A parallel process has
occurred in social science, e.g., through Gunnar Myrdal’s methodological writings on values. In politics, Hägerström’s legacy is said to reappear in “functional socialism”, gradually dismantling property rights, and still inspires debate in Swedish dailies.

As with any major thinker, returning to the texts in the light of changes in the scholarly atmosphere is necessary, because new issues reveal features of their thought that had been ignored or misunderstood in the past. Hägerström requires this, especially with respect to the problem of normativity. Over the last twenty years—i.e., since Saul Kripke’s discussion of the problem of rule-following in Wittgenstein, the publication of McDowell’s *Mind and World* and Brandom’s *Making It Explicit*—the idea that puzzles about the nature of inference, rationality, and mathematics can be solved by appealing to their normative character has become central. The common idea is that naturalism is inadequate to account for how we are bound by reason, or by the normativity of linguistic or mathematical rule-following, and that what is required is a recognition of the irreducibly normative character of these concepts. What has varied among these writers is the notion of the normative itself and the extent to which the relevant notion of the normative character of reason is universal or local. As commentators have noted, this discussion recapitulates the situation and intractable difficulties over “values” of neo-Kantianism at the beginning of the twentieth century (Beiser 2009). Hägerström was a product of this same ambience.

The nature of this challenge may be understood by comparing Hägerström to Hans Kelsen. For Kelsen, the problem of the philosophy of law began with the recognition of the cognitively specific character of the law as a valid form of thought. The problem of philosophical analysis in the face of this form of thought was to identify its constitutive presuppositions that enabled its reasoning to be valid and thus binding. Legal positivism, in Kelsen’s hands, began with the fact of legal validity and asked what the conditions of legal validity were. His answer was that legal validity required a basic validating *Grundnorm*. Hart later produced a variant on this reasoning, preserving its starting point, the fact of legal validity, and the idea that this fact was established by a norm-producing constitutive act, which Hart understood on the model of performative utterances. Hägerström was more radical. He rejected the starting point itself, i.e., the fact of legal validity, or, the
binding character of the law; traditional explanations of this binding character were circular and uninformative. And in his other writings (e.g., 1911) he extended this basic approach to values and normative reasoning generally. The implication of this was clear enough: a radical anti-metaphysical philosophy. Yet the meaning of the argument has been contested ever since.

One reason for this is historical. Hägerström’s argument was constructed at an early stage of a confusing period in neo-Kantianism, before the linguistic turn of Logical Positivism and the Ontological Turn of the 1920s in Continental Philosophy. So there is a metaphilosophical question of what kind of theory he is advancing. Is it, as Thomas Mautner took it to be, a species of noncognitivism in ethics, like that of the Logical Positivists, i.e., a claim that values are not objects of knowledge, but something else? One alternative to treating Hägerström as an analytic philosopher is to focus on his anti-metaphysical stance. There is a problem of consistency: does the argument depend on normative usages of the kind he claims to reject, or is it a selective rejection of normative usages, and if so on what is the selection based? Does it amount to its own metaphysics, a kind of naturalism which excludes values?

The central issue here is this: does Hägerström commit the error of producing a metaphysical rejection of metaphysics, or a value against values? If so, it seems to contradict his anti-metaphysical metaphilosophy. To interpret Hägerström as a consistent thinker seems to require making his negative value metaphysics into a different kind of claim, which would require constructing a more complete consideration of his implicit metaphilosophy. There are good grounds for thinking this can be done. Hägerström’s treatment of values does not reduce them to social facts so much as show that there are no evaluative facts and thus no facts in the relevant domain other than the social facts about which participants form expectations. That they also form folk theories about these facts that appeal to what for Hägerström are quasi-magical notions such as duty does not make these theories true, and therefore the existence of these theories or this language does not mean that we must supply a truth-preserving analysis of it. We can simply treat these terms as erroneous. An approach to Hägerström along these lines is implied by Stephen Turner’s use of Hägerström (2002), based to a large extent upon Hägerström’s investigations into legal history. This approach parallels
similar naturalistic arguments in present philosophy, such as eliminative materialism in the philosophy of mind, which might form a model for the reconstruction of Hägerström’s meta-philosophy as well.

The current philosophical discussion of normativity focuses on versions of these kinds of questions, so it is a resource for understanding Hägerström’s own difficulties in formulating his position, and our difficulties in interpreting him. The potential significance of Hägerström for these current debates is in the possibility that he does provide an alternative to the normativity problematic itself, and thus to the Kantian tradition of understanding the world within the space of reason, understood normatively (Rickert). Even understanding Hägerström as a failed attempt at escaping this problematic would reveal something novel about both Hägerström and the problem itself. This is one possible answer to the question of the meaning of Hägerström’s argument, which would show its relevance to present issues in philosophy, with the virtue of allowing for a discussion of such neglected issues as Hägerström’s epistemology, which might be discussed in terms of such current notions as “direct realism”.

This approach would place Hägerström and the interpretation of his thought at the centre of contemporary philosophy. Values and normativity are also issues in social science, and Hägerström’s legal philosophy is often said to be akin to a form of sociological research, both because it presents an account of the nature of law as a social phenomenon and because it has usually been interpreted to imply that the point of law is social utility rather than the fulfilment of explicitly normative concepts, such as the preservation of rights. As an account of the sociology or anthropology of law, Hägerström’s position is similar to accounts, such as Weber’s, which treat normative ideas as originating in magical beliefs.

In the standard account, Hägerström and some of his followers, such as Vilhelm Lundstedt, rejected the concept of rights and duties tout court. This might be taken as a form of sociological reductionism, especially as this led to the suggestion that social utility was the purpose of legal arrangements and could be used as a standard for legal reform. “Sociological reductionism” would be an answer to the question of the meaning of Hägerström’s argument, but one which would place it into a problematic category of naturalism. There are, however, good reasons
for thinking that Hägerström’s position avoids this result: treating moral theories as false folk theories is not reductionism in the problematic sense of a claim that the original moral ideas are explained in non-moral terms. It is an account of these terms as themselves erroneous.

Any discussion of Hägerström’s “sociology” would raise questions about what sort of social science is consistent with Hägerström’s views. Talcott Parsons, for example, advanced a theory of the irreducibility of the normative that conflicts with Hägerström’s view of the normative as mythical. Does Hägerström provide us with a serious starting point for a conception of social science? Or does it depend on a deeply problematic social theory of values? In this case, the textual and analytic problems need to be approached in a different way, since Hägerström himself made no attempt to answer them directly. Gunnar Myrdal’s uses of Hägerström provide a natural point of departure for a discussion of these questions; same with Theodor Geiger. Among Hägerström’s followers were the earliest Swedish sociologists, including Torgny Segerstedt Jr, and their thought provides another source of relevant textual material. Moreover, Hägerström’s version of value incommensurability (Blegvad 1991), which can be said to be more radical than Kelsen’s legal positivism, Max Weber’s scientific value relativism (Arnold Brecht 1959) and Edvard Westermarck’s anthropological relativism, also indicates a significant rupture in the development of social thought, when the methodological consequences of the radical is/ought-distinction was being institutionalized into research praxis.

The conclusion is that what is needed today is a scholarly reassessment of Hägerström in terms of present issues. Hägerström needs to be rescued as a distinctive voice. This requires a reassessment and reconstruction of his views in current terms. This edited volume, based on a symposium organized at Uppsala University September 23–24, 2011 on the occasion of the centennial of Axel Hägerström’s inaugural lecture, is a step in that direction—making a case for a revival of interest.

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It is mostly for his contributions to meta-ethics that Hägerström is more widely known. He is particularly known for claiming that moral judgements cannot be true. In modern meta-ethics, this denial has two main versions. One view is that moral judgements cannot be true simply because they do not belong to the type of commitments that can have such properties. On this view, moral judgements consist of conative attitudes of some sort (such as emotions or desires) rather than of beliefs about the way the world is. They can therefore neither be true nor false. Another view of his is that moral judgements are false because there are no facts that they can be true of. This is at least supposed to hold for positive moral judgements, judgements that actually do attribute moral properties. Even if Hägerström is most often associated with the first view, both views can be traced in his writings. In this section, Hägerström’s meta-ethical ideas will be considered in relation to the modern meta-ethical discussion.
Chapter 1

Methodological Reflections on Hägerström’s Meta-ethics

Folke Tersman

Introduction

The last volume of Anders Wedberg’s impressive work Filosofins historia (A History of Philosophy) ends with a chapter that discusses the Uppsala school of philosophy.1 Wedberg was a little worried that this would lead people to interpret him as regarding the Uppsala school as a sort of climax, as being the most superior expression of the Western philosophical tradition that so far had emerged. However, if one actually reads the chapter, one is effectively cured from the temptation to make that interpretation. Wedberg was in general a rather grumpy person. But when it came to Phalén, Oxenstierna, Hägerström and the others, he doesn’t appear to have felt any inhibitions at all. Words like “obscure” and “bizarre” are tossed around frequently. In one section of the chapter, Wedberg addresses Hägerström’s meta-ethical ideas, his so-called “value nihilism”. Like others, he takes Hägerström to offer a theory about language, or more specifically about certain sentences, namely sentences of the following kind:
“One should resist one’s jealousy”
“It is our duty to help people in need”
“Pettersson is a good man”
“It is better to be robbed than to rob”

Such sentences are called “value sentences”, and Wedberg attributes to Hägerström the following views, where the first is supposed to provide an argument for the second while the second is in turn supposed to be an argument for the third:

A. Utterances/assertions of value sentences are expressions of emotions.
B. They are not expressions of beliefs (states that are capable of being true and false).
C. They have no truth-values (cannot be true/false).

Regarding these claims, Wedberg raises certain methodological questions. For example, what would it take for them to be incorrect? Suppose it was found—Wedberg imagines—that on a single, unique, occasion, when a value sentence was gently whispered, it was not used to express an emotion. Would that be enough to refute Hägerström’s theory? Wedberg figures that that cannot be right. Instead, he suggests that Hägerström offers a kind of stipulation. That is, he takes him to reason somewhat as follows: Since value sentences are on many occasions used to express emotions rather than beliefs, it is suitable to adopt a notion of a genuine utterance of such a sentence that generates the conclusion that A, B, and C, when restricted to genuine utterances become true by definition. He says little, however, about what purposes such a definition is supposed to serve and thus little about the grounds for assessing its suitability.

What sort of a theory is Hägerström’s value nihilism? That is the question Wedberg asks, and my aim today is simply to pursue this discussion a little further. Claims similar to A, B, and C are often used to express the relevant positions also in contemporary meta-ethics. To see what is at stake in these debates it is crucial, in my view, to consider questions of the kind Wedberg raises. What I am interested in, more specifically, is to find a subject matter that the participants of these
debates can plausibly be seen as disagreeing about. This is less easy than it might seem, at least if one wants to define that subject matter in such a way that it is possible to resolve the debates.

Before I go on, however, I should make one further comment on Wedberg’s treatment of Hägerström. As Bo Petersson explains in his paper, Hägerström had a more complex view than the one Wedberg attributes to him. For Hägerström seems to have held that for example C only applies to some value sentences. In the case of others, he seems to have thought that they do have truth-values, although he also stressed that, given the content of those sentences, they are all false (at least in so far as they actually predicate a value term to the items being evaluated). Such a composite position raises the same methodological worries as the more simplistic one, however.

2. Cognitivism vs. Expressivism

Hägerström was an early participant in the still intense debate between cognitivists and expressivists. On a traditional account of those positions, cognitivists stress that value sentences are used to express beliefs, while expressivists deny this and insist, like Hägerström, that they rather express conative attitudes. Expressivists disagree about the types of conative attitudes that value sentences are supposed to express. Some agree with Hägerström in thinking that they express emotional attitudes, while others stress that they rather express desires of some sort. In any case, given the traditional account, the pertinent positions are characterized as follows.

Expressivism

(E1) Value sentences (are used to) express conative attitudes (desires, sentiments, etc).²

(E2) Value sentences do not (are not used to) express beliefs (states that are capable of being true and false)

Cognitivism

(C1) Value sentences (are used to) express beliefs.

(C2) Value sentences have truth-values.
These claims are usually supposed to be related in various ways. For example, (C1) is sometimes supposed to follow from (C2) and is sometimes supposed to imply (C2), and both (C1) and (C2) are in turn related to other views associated with cognitivism, such as the thesis that predicates such as “right”, “wrong”, etc., refer to “real properties”.

These formulations raise many questions. One set of questions concern their scope. Are they supposed to hold for all speakers, languages, and periods, or only about some? Another set concerns the term “express”. What does it mean to say that a sentence expresses, or is used to express, an attitude, such as a belief? In addition, we may ask: To which items, more specifically, does the phrase “value sentence” refer? I will start with the last question.

On a traditional view, a sentence is simply a (well formed) sequence of words, characters or phonemes that belong to a particular language. And value sentences are distinguished from others on the ground that they contain certain words, namely, in the case of English, words such as “should”, “better”, and so on. As for the notion that an attitude is expressed by a sentence, it is sometimes assumed that to say that a sentence expresses, say, the belief that \( p \), for a given speaker, is to say that, by sincerely uttering the sentence, the speaker represents herself as having the belief that \( p \).

Now, one problem is that, given these views, for example C1 does not seem to capture anything that expressivists and cognitivists can sensibly disagree about. For expressivists must surely concede that value sentences are sometimes used to express beliefs in the pertinent sense. For example, consider the following sentence:

“It is morally wrong for Mormons to have premarital sex”.

… and suppose that it is uttered as an answer to the following question: “What do Mormons think about sex and marriage?”. Since what Mormons think about sex is of course a straightforwardly factual matter, this example conflicts with E2.

One way to handle such trivial counter-examples is to restrict the pertinent claims ((E1), (C1), and so on) to certain contexts, namely those that are in some sense “typically moral”. If restricted in that way, the fact that ethical sentences express beliefs in other contexts is irrelevant. But
a further problem is that, however we pick those contexts out, expressivists cannot reasonably deny that value sentences sometimes express beliefs in them as well.

This holds most clearly for “thick” sentences, such as “Socrates was courageous” which expresses straightforward beliefs about Socrates’ way of facing dangers (see, e.g., Gibbard 1990: 113).

But many expressivists concede, and should concede, that ascriptions of “thin” ethical terms, such as “right”, “wrong”, and so on, might also acquire the capacity to express beliefs, even when they occur in typically moral contexts. For example, Richard Hare suggests that such terms may acquire that capacity “by reason of the constancy of the standards by which they are applied”. In a similar vein, Charles Stevenson, another early expressivist, writes that:

to say that a man is “good” may be to suggest that he has such traits as honesty, humility […], and so on. […] Within communities with well-developed mores these varied suggestions become fixed, and people tend to define “good” in a way that makes the word strictly designate what it formerly suggested (1944: 169. See also 9, 16, and 221).

Do Hare and Stevenson, by holding those views, commit themselves to thinking that, if such constancy were to occur in the case of an idiolect of a given language community, then their expressivism would be false of that idiolect? For example, consider the Swedish of the thirteenth century. In medieval Sweden, there were generally recognized moral authorities (the church and the priests), and, or so I have been told, considerable agreement over the standards by which actions were judged to be right and wrong. On the basis of the views Hare and Stevenson hint at, this may be enough for concluding that their value sentences expressed straightforward beliefs. Would that mean that Hare and Stevenson have to concede that it is cognitivism that gives the best account of thirteenth century Swedish and restrict their expressivism to other periods and idiolects, such as those of more modern societies in which the old authorities have fallen into disrepute and the consensus has withered? That would be an awkward result, given that expressivists, just like cognitivists, typically want to claim that their doctrines hold generally, for all languages, periods and speakers.
3. Primary and Secondary Functions

In order to avoid such a result, expressivists must define their position so that it can somehow be reconciled with (C1). Hare tries to do this by stating it in terms of the “functions” of value sentences. He says that, although value sentences may secondarily express beliefs, their primary function is to express conative states. Cognitivists can accordingly be construed as making the converse claim.

Expressivism
(E3) It is the primary function of value sentences to express conative attitudes.

Cognitivism
(C3) It is the primary function of value sentences to express beliefs.

But how is the talk of “primary” and “secondary” functions to be cashed out?

Hare does not say much about that question, but here is an idea: We can give it some content by construing expressivism and cognitivism as being theories, not about certain particular words or strings of symbols, but rather about the role, or about the features of their use, that, as it were, make them into value terms or value sentences, that make them such that utterances and ascriptions of them are correctly interpreted as expressions of answers to moral questions rather than something else (such as questions about what people think about morality). Obviously, words like “should” and “right” have this role contingently. They can lose that role and it could be acquired by other words. For example, some of the words that are used as value terms today were not used in that way before. Consider for example, the term “uncool”. In some contexts, that term is used for expressing moral evaluations, such as when our children (or my children), say that “depleting the world’s resources is so uncool”. Or consider how Mona Sahlin, the former leader of the social democratic party in Sweden once summarized her political vision:

“Paying taxes is cool!”
So, there are certain features of the use of a set of sentences that make them into value sentences. Which are these features? That is a question we have to ponder when we try to identify the value terms in other languages than our own, which expressivists and cognitivists have to be able to do if they want to claim that their positions hold universally. What does it take in order for a term in the target language to be correctly translated with, say “morally right”? Presumably, that it has a similar role in planning and decision-making, and that the speakers have, in general, some motivation to perform actions they apply the term to. We may also require that the speakers, within broad limits, defend ascriptions of the term in similar ways. The latter type of constraint ensures that we find that there is at least some overlap between ourselves and the alien speakers about what to think about moral matters. We are destined to find, for example, that we agree that “ought” implies “can”. But note that the required overlap is very slim. The constraint still allows us to find that there is also much disagreement. (The pertinent aspects correspond roughly, I think, to what Michael Smith calls “the practicality” and “the objectivity” of moral discourse.)

We can now state the suggestion about how to understand the talk of a “primary” function of value sentences as follows: It is the primary function of value sentences to express whatever it is that they do express solely in virtue of the features of our use of value sentences that make them into value sentences. What they express in virtue of other, non-essential features (non-essential relative to their status as being value sentences) is irrelevant. Cognitivists believe that the features are best explained by assuming that the sentences in question express beliefs, and accordingly that that is their primary function, while expressivists rather believe that the features are best explained by assuming that the sentences express conative attitudes.

Now, the kind of “constancy” Hare and Stevenson wrote about is not among the features that make a set of sentences into value sentences. For, given that such constancy exists, if it were to evaporate, this would not mean that the sentences would no longer be value sentences. It would just mean that people have started to disagree more often regarding moral issues. To take the translation case: If it were found that all the alien speakers are disposed to apply the target term (i.e., the term
we think should be translated with “right”) to exactly the same actions as others in their community, and moreover to exactly the same actions that we think are right, this would be interesting. But it would not be necessary in order for the translation to be correct. Therefore, what we are entitled to conclude on the basis of the existence of such constancy is irrelevant to E3 and C3. This idea explains why expressivists can concede that value sentences that belong to a certain idiolect, such as thirteenth century Swedish, express beliefs in virtue of such considerations and remain being expressivists about it.

A problem is, however, that cognitivists and expressivists are likely to disagree about which the relevant features of the use of our value sentences are. How can that be determined, without begging any questions? In a way, that is the central methodological question.

4. Moral Convictions

Notice that, if the suggestion I just made is on the right track, then the reference to language in the traditional formulations of cognitivism and expressivism is really redundant. The idea is that certain features of our use of value sentences are relevant to the assessment of those positions only to the extent that they make us interpret assertions of those sentences as expressions of moral evaluations. But then it is the evaluations themselves that provide the focus of the interest, rather than the words we happen to use for expressing them.

That thought can be put as follows: Meta-ethics tries to uncover the nature of moral questions, such as the question of whether euthanasia should be legalized. Do such questions allow for answers that can be correct or incorrect? One way to approach that issue is to explore what it is to provide an answer to a moral question. If we provide such an answer, and think, for example, that euthanasia should be legalized, then we have formed a certain conviction, a moral conviction. But what kind of a conviction is this? What is it to think, say, that euthanasia should be legalized? Cognitivists insist that it is to have a true or false belief about the legislation of euthanasia, while expressivists believe that it is rather to have a conative attitude towards it:
Expressivism

(E4) Moral convictions consist of conative attitudes (to think that the legislation of euthanasia should be legalized is to have a conative attitude towards it).

Cognitivism

(C4) Moral convictions consist of beliefs (to think that euthanasia should be legalized is to believe that legalizing euthanasia has a certain property).

Notice that, on this view about how to construe the central claims of expressivism and cognitivism, those positions should not be seen as being theories that are primarily concerned with language. After all, a moral conviction is a psychological entity. So, on the present construal, cognitivism and expressivism are best seen as a type of psychological theories. Meta-ethicists focus on moral language simply because speech behaviour is one of the ways in which our moral convictions manifest themselves. But it is not the only way and it has ultimately no primacy relative to other ways.

Of course, these formulations also raise questions. One set of questions concern the term “belief”, which is ambiguous. On the one hand, it could refer to a psychological state (such as when we say that beliefs are dispositions to act). On the other hand, it rather refers to something—such as a proposition—that might provide the content of such a state (such as when we say that “all those beliefs are false”, thereby denying a given set of propositions, regardless of whether they are in fact believed by anyone). Since a moral conviction is a psychological entity, it is the first sense that is relevant in the context provided by (C4). The question is if moral convictions are instances of the type of psychological attitude we have towards a proposition when believing that it is true.

What distinguishes that attitude from other attitudes, such as desires? Well, the crucial difference is that while beliefs can be true or false, desires cannot. Many participants of the debate elaborate this idea by saying that the pertinent attitudes have different “directions of fit”. Beliefs are states aimed at “fitting with the world”, while desires are states aimed rather “at making the world fit with them”. Michael Smith has tried to clarify this metaphorical talk in the following way. To believe...
that \( p \) is to be in a state such that, if one were to perceive that not-\( p \), it would tend to go out of existence. To desire that \( p \), by contrast, is to be in a state that tends to endure when we perceive that not-\( p \) (see Smith 1990: 111–116).

There are problems with Smith’s suggestion, but, in the present context, I am interested in a different question. For we may again ask Wedberg’s question: What sort of a theory is, say, C4? Is it an empirical hypothesis, on a par with the claim that water consists in H\(_2\)O? Or, should it rather be conceived of as a kind of definition of the phrase “moral conviction”, to be assessed relative to the common usage of that term?

In accordance with the first proposal, it might be tempting to conceive of moral convictions as forming a natural kind, whose nature might be uncovered by examining particular samples. Presumably—and this connects with the question about how to determine which features of our use of value sentences that make them into value sentences—this requires an independent criterion of what counts as such a sample. One option is to consult our intuitions about various cases, real or imaginary. But a problem is that our intuitions come apart. For example, notice that expressivism entails internalism, the idea that it is necessarily the case that if a person thinks that she is morally required to do something then she has at least some motivation to do it. The reason is that, if to think that one is required to do something, is to have a conative pro-attitude towards that action, then having that thought consists in being thus motivated. Now, some people intuit that it is possible for a person to have genuine moral convictions even if she has no tendency at all to act in accordance with them, so called “amoralists”. Since that possibility is ruled out by expressivism, it conflicts with the intuition that fuels amoralism. So, there is at least one set of samples that it seems unable to account for. Moreover, in so far as the intuitions can be seen as manifestations of what phrases like “moral conviction” mean in common language it also undermines E4 when seen as a meaning-claim.

However, expressivists can, and often do, respond to such objections by simply insisting that they do not share the pertinent intuition. For even if the alleged amoralists share some features with people who have genuine moral convictions—we may for example imagine that they
say that they think they are morally required to do various things—a crucial element is lacking, namely that they are not appropriately motivated. This game leads to a lot of fruitless bickering and allegations of begging the question from both sides. Maybe the correct diagnosis is that they simply talk past each other, by focusing on different concepts. Expressivists talk of their use of the notion of a “moral conviction” while cognitivists talk of theirs. If so, a common subject matter is yet to be found.

However, there is a third option, as Wedberg indicated. On the third proposal regarding that status of E4 and C4, the debate about the possibility of amoralists should be construed, not as a discussion about whether the, or some, existing concept of a moral conviction does allow for that possibility but whether it should do so. If participants can agree about the purposes such a concept should serve, there is still room for a substantial disagreement between them.

Of course, to resolve a debate through stipulation may seem unsatisfactory. But what I am considering now is not stipulation just out of the blue. Consider what we may call the “finding” that whales are not fish. It might be tempting to see this as the result of mere stipulation, since the fact that whales, unlike fish, give birth to living children, and so on, was known before the “finding” was made. However, the revision was prompted by the fact that a concept of “fish” that excludes whales is more useful in our overall theory about the species and their origins. The reason is that the animals that belong to the extension of the revised concept have certain other properties in common, properties that set them apart from other creatures in the sea and are assigned a special significance by the theory in question. This is, ultimately, what justifies treating the fact that whales give birth to living children as a crucial difference.

What this example illustrates is that the distinction between stipulations and “real” empirical discoveries is less clear than one might think. It also illustrates that claims of this type are to be tested holistically. I said earlier that construing E4 as an empirical hypothesis may seem to require that there is an independent criterion that allows us to pick out the states that are moral convictions prior to determining if they are beliefs or desires. But that is really a rather naive idea. For the concept of a moral conviction is a theoretical concept, as we cannot
directly observe that a subject has a moral conviction. In comparison, consider the thesis that electrons are negatively charged. Surely, there is little hope of determining whether an electron has been involved in a certain interaction ahead of finding out whether it is negatively charged. Rather, the claim that electrons are negatively charged is justified, if at all, in view of how well the theory to which it belongs as a whole fits the evidence.

Could something similar be said about C4 and E4? Well, one context in which it is natural to assess these claims is provided by the framework or theory philosophers refer to as “folk psychology”. Folk psychology posits a number of different types of psychological states people can be in, such as, besides beliefs, desires and moral convictions, intentions, wishes, hopes and so on. According to the central idea, it is by attributing such states that we best can explain, and predict, intentional behaviour. Now, making these distinctions within the theory, and seeing each of the categories as denoting a distinct type, is justified to the extent that the states belonging to the type are assigned a special explanatory task by the theory, in that attributions of those states are held to explain something that is not best explained by the attribution of (other) states.

As for moral convictions, one such task is to explain why people sometimes act against their (narrow) self-interest in a way that allows them to avoid ending up with the short end of the stick in certain coordination cases. In such cases, if each does what will be better for him—or herself, they will jointly cause an outcome leaving all worse off compared to if they all had acted differently. The phenomenon to be explained is that people in many contexts are able to avoid ending up with such outcomes, which is, for example, why we have societies. And what explains this, it is held, is that people do not always maximize their self-interest. And sometimes they do not do this because they think that that is what morality requires. Indeed, according to some, such as me, it is the crucial role of moral convictions in such contexts that explains why the capacity to form such convictions has evolved.

This provides a context in which E4 and C4 can be assessed. For, as cognitivism and expressivism disagree about what having such thoughts entails, they generate different versions of explanations of the pertinent kind. We may accordingly ask which of these explanations are the best.
If the cognitivist versions are better, then cognitivism obtains some support from its role in the explanation of the relevant behaviour, and if the expressivist versions are better, the same holds for expressivism.

And the expressivist versions have at least some things going for them. For example, in order for the thought that a certain option is morally required to be able to have the pertinent impact, the agent must have some motivation to actually do what she thinks she is required to do. And, given that that thought is constituted by a desire of the kind expressivists have in mind, the motivation is internal to the thought. Cognitivists must tell a more complex story. For as moral convictions, according to cognitivism, are rather constituted by beliefs, then, given that beliefs cannot generate motivation by themselves, they must, in addition to attributing such convictions also assume that the agents have other states that, together with their moral views, generate the relevant motivation.

In addition, on a cognitivist view, we are to assume that all who are saved from their coordination problems by thinking that they are morally required to choose the options that save them ascribe the same particular property to those options. However, this group includes people from rather diverse cultural settings, who are likely to justify their moral assessments on the basis radically different considerations. Given normal views about how to determine belief-content, such differences make the assumption that they ascribe the same property difficult to sustain. On an expressivist view, by contrast, to think that one is required to do something is not to ascribe some property. It just consists in favouring the option in a certain way. And the assumption that two persons share that attitude towards an option is not undermined by differences of the relevant kind.

But my aim today is not to defend expressivism. The point is just that if the expressivist versions of the explanations are better, then we have some justification for adopting an expressivist view even if that can be described as a revision of an existing concept of a moral conviction given that it conflicts with the intuition that fuels amoralism. Indeed, the very idea behind the proposal is that we should try to find a way to go beyond intuitions of that sort when assessing the relevant theories and to expose them to a wider range of evidence. In my view, something along those lines is needed if we are to proceed beyond the
kind of stalemate that contemporary meta-ethicists have manoeuvred
themselves into today.9

**Notes**

1. There is an English edition of this work which is published by Clarendon Press, Oxford, in 1984. However, unfortunately, the English version of the third volume does not include the chapter about Hägerström. The chapter is mentioned, however, in a review of the Swedish edition by C.D. Broad which was published in *Philosophical Quarterly* (1968).

2. Of course, it sounds wrong to say that sentences express something by themselves. Rather, it is *we* who express beliefs, by using sentences. This should be kept in mind in what follows.

3. For example, Frank Jackson and Philip Pettit think that (1) entails that ethical sentences have truth conditions. See their “A problem for expressivism”.

4. That is, the utterance itself (provided that it is sincere) allows us to conclude that the speaker believes that \(p\), even if we know nothing else about him than that he speaks the language to which it belongs.

5. See *The Language of Morals*, 1952: 7, where he suggests that “right” may acquire the capacity to refer to the property of maximizing utility in a society of convinced utilitarians.

6. See chapter 1 of Smith’s *The Moral Problem*.

7. Do moral judgements have contents and, if so, in what do they consist? If they consist in beliefs, the answer is straightforward: Like (other) beliefs they do have contents, and their contents consist in propositions. However, in an expressivist setting the question is more complex.

8. This idea is usually attributed to Elisabeth Anscombe. See her *Intention*.

9. For more discussion of the methodological suggestions made in this contribution, see Tersman (2006).

**References**


Hägerström formulated his axiological nihilism, his emotive theory of ethics, already in 1910–1911 and most explicitly in his inaugural lecture “On the Truth of Moral Propositions”. In these early works Hägerström pays little attention to language and linguistic entities. His subject seems to be mainly psychological. He deals with thoughts and feelings, investigates their contents, and he asks for what kind of mental act our moral judgements might be of. His answer is that a moral judgement or a valuation is a compound, a simultaneous association, between an idea of an object and a feeling. Of course there are some spare references to moral words like “good” and “duty”, and he uses moral sentences as examples, but it is evident that his early meta-ethics is mainly a psychological theory.

However, in later works, especially from 1917 and on, arguments concerning language and linguistic entities are rather frequent. One can even say that in these texts he introduces his own theory of language and communication, and also a theory of moral language and of moral sentences. Therefore, I do not find it unreasonable to formulate Hägerström’s later emotive theory as a theory about sentences, even if...
questions about the truth-value of sentences must be brought back to questions about what they do express, as Hedenius does in his *Om rätt och moral* (On law and morals) (1941).

One of Hägerström’s fundamental theses concerning language states that formal properties of language and grammatical form of sentences and our linguistic habits often deceive us and many times direct us into wrong assumptions and conclusions. So is the case with the grammatical form of moral sentences, according to Hägerström. Language may lead our thinking astray.

The whole of the so called ethics, as it stands out in the history of ethics, depends, so far as it tries to decide objectively the difference between good and bad vis-à-vis persons, on this power of grammatical form over thought (Hägerström 1922: 35).

As we know, similar standpoints are found in other forms of early analytic philosophy.

In this contribution, I will try to explicate Hägerström’s theory of moral language. I use texts from his whole *corpus*, but mainly I refer to and quote from three works: *Till frågan om den objektiva rättens begrepp* (On the question of the notion of law), 1917, his series of lectures titled “Moralpsykologi” (Moral psychology), spring term 1917, and his lectures named “Analys av fråge-, utrops- och ønskesatser” (Analysis of question-, exclamation- and wish-sentences), spring term 1922. When I quote from Hägerström’s unpublished lectures or from other texts that are not included in Broad’s or Sandin’s published translations, the translations into English are my own.

**Ideas and Feelings**

In Hägerström’s psychology mental phenomena are *acts* with their special contents. He distinguishes between two main categories of acts: *ideas* and *feelings*. A certain form of idea is *judgement*, the content of which is, as he says, that something *is* so and so, that something is *real*, that something *exists*. Only acts of that kind can be true or false. The test for truth is in first hand a quest for coherence among our judgements. However, the meaning of “truth”, according to Hägerström, is
not “coherence”, but “correspondence with the given reality”, even if we can never be certain that we have reached such a correspondence.²

There are feelings of different kinds: feelings of approval, disapproval, pleasure, pain, disgust, etc. Also wishes and volitions should be included in the category of feelings, according to Hägerström. Moral feelings are not a separate category, but involve feelings of different kinds (Hägerström 1952 [1917]: 18–32). The characteristic of a feeling is that its content is something that cannot exist separated from the act of feeling. Still, there is of course a distinction between the act and its content to be made also here. Something is experienced also in a feeling. Hägerström is quite explicit about that.

**Social Linguistic Community**

The distinction between ideas and feelings is essential when Hägerström speculates about how children learn a language and become members of a “social linguistic community”:

Within the social linguistic community the child learns a word (e.g., clock) by hearing the word being pronounced with reference to an object with a special nature. When this nature (leaving out of account other qualities of clocks) emerge to the child’s mind, the child is brought about to utter the word. Thus, the word has been learnt, it becomes a reflex of the nature observed in the object. But inverted the directly uttered word serves to arouse the thought and decide for us the thought, under which a certain object is to be subsumed, without that special nature in abstracto already has been observed (Hägerström, 1952 [1917]: 34).

When we have learnt a language we have established connections, that Hägerström calls a “spontaneous reflexes” between things, thoughts and words.³ People belonging to the same social linguistic community have at large the same set of such reflexes and these reflexes are the basis for communication between people. In such a community a word becomes a “natural expression” or an “adequate expression” of a thought, Hägerström says. The connection between thoughts and speech or language, is in fact supposed to be extremely strong. “We must in an inner speech pronounce the word to bring the corresponding thought
into existence” (Hägerström 1952 [1917]: 33). There are no real thoughts without the corresponding words being formulated, even if they are not spoken out aloud.

When people belong to different linguistic communities the speaker has to express oneself in words that are natural expressions for the addressee to succeed in the communication. But when people belong to the same linguistic community “one just uses one’s own natural expressions for this purpose” (Hägerström 1952 [1917]: 34).

Hägerström’s examples refer to concrete objects, e.g., “horse” and “clock”, but evidently he would try to give a similar explanation of how we learn to talk about abstract objects. What is important here is that his theory so far only deals with words that refer to objects we have or may have ideas of.

Judgements are a complex form of ideas.4 In judgements we are not only thinking of certain objects, but e.g., that an object so and so, with properties so and so, perhaps occurring or acting so and so, is real or existing. We think that something is so and so. We have an idea that a certain state of affairs is real.5

The difference between the idea of the round table, and the judgement, that the table is round, is, it seems, only that in the latter case there is a thought of the reality of the thing [i.e., the round table, the table with roundness], in the first case there is not (Hägerström 1922: 9).

Judgements are not ordinarily expressed by single words but by whole sentences. Hägerström does not give any explicit explanation of how we come to learn how to express judgements in sentences, but in his opinion there is, within a linguistic community, a habit to use sentences, grammatically in indicative form, for that purpose.

The very thought of a horse as really running has its spontaneous reflex (but also its existence) in an inner or outer, incomplete or complete, speech: “The horse is running” (Hägerström 1952 [1917]: 33, my italics).

[Every idea of a certain state of affairs as real has at least a tendency to carry with it an involuntary and extra-individually determined expression, viz., a sentence in the indicative form (Hägerström 1953 [1917]: 139).
According to Hägerström the meaning of a word or a sentence according to contemporary theories is determined only through the idea which it arouses in an addressee. But that is wrong, in his opinion. In his discussion he is opposing an assumption formulated by the Swedish linguist and Uppsala professor Adolf Noreen. According to Noreen:

the meaning [of a word or a sentence] is the idea, which a subject gets when receiving the message. […] Noreen does not take notice of the function of language as a spontaneous, inevitable expression of our states of mind. But even if one, as Noreen does, reckons the inner speech as something secondary in relation to the outer speech, it is still not correct not to consider the meaning of language regarding the state of mind, that gets an immediate expression by the speaker, as well as regarding the state of mind that is aroused by the speech in a person that hears or reads it (Hägerström 1922: 15).

In a linguistic community what is expressed by a word or a sentence normally will be the same as what is evoked by the word or sentence in the addressee, Hägerström means. The explanation of this fact is the way we learn language. The thought of X in the speaker expressed in “natural” or “adequate” words will arouse a thought with the same content, i.e., a thought of X, in the addressee. In this way we also get a guarantee that there is only one meaning communicated, not one for the speaker and another one for the addressee.

The meaning of a word is the content of an idea. This content is not a picture of an object, Hägerström means. It is the object itself. But as the content of an idea it stands in a special relation to the mind (Hägerström 1957 [1909]: 74). The word “X” refers to an object X that also is the content of a thought of X, a thought that can be expressed by or aroused by the word “X”. Through the linguistic upbringing a word gets a meaning and for everyone in a linguistic community the word will have the same meaning. The word or words will be the “natural expression” for a thought with a certain content. “It should be noted that it is just the extra-individual character of the involuntary expression that makes communication possible” (Hägerström 1953 [1917]: 139).

Hägerström’s ideas about communication and meaning are so far characterized by his concepts of linguistic community, spontaneous
(involuntary) reflexes and a reference-meaning. He is not explicit about how he will deal with, e.g., ambiguity of words and unsuccessful communication within a linguistic community. There are also words that do not refer to objects (even when “object” is interpreted in a wide way), but still must have some meaning, e.g., “and” and “or”. How would he deal with them? I have to omit such topics. However, his idea of words having a reference-meaning may give an explanation of why he often declares that “good” and other moral words are terms without meaning. In his Selbstdarstellung he specifies: they are meaningless “from the point of view of thought” (Hägerström 1964 [1929]: 70). Evidently, they do not have meaning in the same way as ideas, “thought”. But does it mean that they can have meaning in another way? I will return to that question further on.

**Moral Words and Moral Education**

However, moral words are not learnt in the same way as “horse” or “clock”, which refers to objects. In Hägerström’s opinion such words are learnt at the same time as the individual acquires normative morality. The moral educator’s (parents, teachers, etc.) aim is to get the child to regularly behave or to feel in some special and desired way under certain conditions. The method Hägerström assumes to be used in moral education is a kind of social pressure or social conditioning. The educator clearly and consciously shows when he himself is pleased or displeased with the child’s behaviour and attitudes. He also draws attention to corresponding reactions in society: praise and blame, reward and punishment. Further he gives descriptions of behaviour of persons or conditions for human beings that engage the child’s natural emotive dispositions (Hägerström 1952 [1917]: 45, 48, 71). But the educator also uses a special language. He formulates imperatives: “thou shalt!” and “thou shalt not!”, and he also uses moral words and tells that something is good, bad, right and wrong, etc. In his teaching the educator pronounces his sentences in an emphatic and suggestive way: “It is your duty to tell the truth!” He strongly expresses his feelings in his speech and thereby evokes the same way of feeling and reacting in the child. The educator’s “Thou shalt X!” causes and corresponds to an intention or volition “I will X”, that will be aroused in the child (e.g., Hägerström,
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1917: 55ff; Hägerström, 1953 [1917]: 120ff). Hägerström indeed talks about a “psychic infection” from the educator to the child. With the help of some special words, “good”, “bad” or pure imperatives, feelings and volitions are communicated from one person to another, just as was the case with communication of ideas, when the persons belonged to the same linguistic community.

The aim of moral education is that the child, also when the educator is absent, almost automatically in an inner speech will hear a “thou shalt!” or a “right” or a “good”, etc., when thinking of a kind of action, and also directly feel and react the proper way (Hägerström 1952 [1917]: 49). As a means to reach that aim the educator uses indicative sentences: “This is good”, “This is your duty”, etc., which is the kind of sentences we normally use for expressing judgements. Hägerström writes:

From what is already said it is evident, that such an expression of feeling as this: ‘O, what a noble, what an elevated mentality!’ on the one side in the person, who expresses himself, will strengthen his already present feeling, on the other side in other persons, who catch the expression, will arouse that feeling [the same feeling] or at least a start of arousing that feeling. We can also say that when one through a statement: ‘The trustworthy person is as such worthy of respect’, ‘The forgiving [person] is noble’, will get the feeling of respect to work in the way mentioned, he reaches his aim only by arousing a lucid picture of the expression of feeling: ‘worthy of respect’, ‘noble’, etc. in such a way that this picture will be attached to the idea of the faithful and the forgiving person (Hägerström 1952 [1917]: 48).

It is evident that Hägerström assumes (1) that humans are so constituted that also feelings can be communicated from one person to another and (2) that there are special words that, depending on the way we have learnt them, do express and arouse our feelings. Therefore they can function as a means for communication of feelings within a linguistic community. Hägerström calls them simply “expressions of feeling” [“känslouttryck”]. Besides common moral words Hägerström exemplifies with “noble”, “sublime”, “great”, “beautiful”, “worthy of respect”, “venerable” and others as expressions of feeling (e.g., Hägerström, 1952 [1917]: 52).
Hägerström’s idea that a child learns how to use moral words in a process together with learning morals does not mean that a person’s moral convictions could not change or develop over time. The child, of course, simply takes over the educator’s moral ideas, values and feelings. But a grown up person may through his own reflexion or experience find it reasonable to apply “good” or “bad” also to other actions, circumstances or things, and he may even refuse to use these moral terms on some actions prescribed or forbidden by the educator. In fact, Hägerström hoped for and also believed in a radical change of the content of traditional societal morality, when people finally would realize that traditional morality in parts is determined by false ideas about supposed metaphysical entities and authorities. In his inaugural lecture in 1911 he says:

All the evidence points to the fact, once we have taken the final step and have left behind any patent or suppressed belief in the cosmic and thus objective significance of value, this popular morality will not die away. On the contrary, there is reason to suppose that, like a Phoenix-bird, it will be born anew out of the ashes of the old morality, with a more emancipated and farsighted vision. It will also bear the stamp of a milder judgement on all human aspiration, which follows from viewing things sub specie aeternitatis, from the insight that everything is only a moment in an endless natural context, in which nothing is in itself higher or lower (Hägerström 1964 [1911]: 95).

**Emotive Meaning**

In his discussion Hägerström emphasizes that “noble”, “sublime”, “worthy of respect”, etc., do not refer to any properties in the noble object (e.g., Hägerström 1952 [1917]: 35, 37, 44). Their only function is to express and arouse feelings. As for words with a reference meaning they are spontaneous reflexes, but now for feelings.

[T]he designations, “good”, “bad”, etc., are in themselves expression of feeling or of will. Just as a feeling expresses itself in a reflexive manner, so do also these expressions work back upon the life of feeling (Hägerström 1964 [1929]: 70).
In his lectures in 1922 Hägerström distinguishes between “pure” expressions of feeling that are expressions of feelings “exclusively”, e.g., “noble” (Hägerström 1922: 33), and such expression of feeling that also have another function.

The quality of feeling may be indicated in another way, e.g., ‘What an enormous rock!’; where evidently the enormousness has a double character [in Swedish “dubbelkaraktär”]: signifies both the relative size of the rock and that peculiar feeling, that overwhelms us when contemplating an object from nature, that surpasses the ordinary proportions (Hägerström 1922: 23).

Thus, some expressions of feeling do also have a reference meaning. The sentence “What an enormous rock!” both informs about the size of the rock and expresses our feeling of fascination. Is Hägerström close to Stevenson’s later distinction between a descriptive and an emotive meaning of a word? I think he is. At least he seems to take into account a kind of meaning besides his reference meaning. A word like “good” has no meaning in reference to thoughts and ideas, he says. It has no reference meaning. There is a “Sinnlosigkeit der Worte vom Gedankengeschichtspunkte” (Hägerström 1929: 44, his own italics). About a “What a …!” in sentences expressing an exclamation Hägerström says that the word(s) lack any cognitive meaning (Hägerström 1922: 22). But is there another meaning of words? When we say that Napoleon was a “great commander”:

the greatness has a special emotional tinge, that cannot be separated from the meaning of the word: exactly as when I say: What a mighty rock, where “the might” not only involves a size surpassing the ordinary but also a strong emotive tinge (Hägerström 1922: 33, my italics).

The emotive tinge cannot be separated from the meaning of the word, Hägerström says. Taken together with what he has said about the “double character” above, his formulations here give support to an idea that Hägerström also would take into account a kind of emotive meaning, even if he does not introduce any special terminology for such a meaning. In his theory then (a) some words have emotive meaning
only, and (b) some words have a “double character”, where the emotive meaning is a part of the meaning of the word, but where there is also a descriptive part with reference meaning (and, of course, (c) some have no emotive meaning at all).  

In their famous book *The Meaning of Meaning*, 1923, C.K. Ogden and I.A. Richards make a distinction between an “emotive” and a “symbolic use” of words. There are some close points of similarities between what they say and Hägerström’s account. I quote some of their central statements.

This peculiar ethical use of “good” is, we suggest, a purely emotive use. When so used the word stands for nothing whatever, and has no symbolic function. Thus, when we so use it in the sentence, ‘This is good,’ we merely refer to *this*, and the addition of “is good” makes no difference whatever to our reference (Ogden and Richards 1923: 125).

The emotive use of words […] is the use to express and excite feelings and attitudes. […] Under the symbolic function are included both the symbolization of reference and its communication to the listener, i.e., the causing in the listener of a similar reference. Under the emotive function are included both the expression of emotions, attitudes, moods, intentions, etc., in the speaker, and their communication, *i.e.* their evocation in the listener (Ogden and Richards 1923: 149).

Ogden and Richards did also embrace the thesis of axiological nihilism, that moral sentences are not statements, and therefore are neither true nor false (Ogden and Richards 1923: 149). On all points quoted and mentioned above Hägerström would have given his strong approbation and consent.

**Communication and Emotive Meaning**

Most of Hägerström’s formulations give at hand that he reckons communication within a linguistic community to happen almost in a mechanical way. Some words and sentences are “spontaneous reflexes” and “natural” and “adequate” expressions for ideas and judgements and when pronounced they directly evoke these ideas or judgements in the
addressee. Some words and sentences are in the same way “spontaneous reflexes” of feelings, including volitions, intentions and attitudes, and evoke the corresponding feelings in the addressee. But if one looks closer at his formulations one finds a lot of nuances. In his lectures 1922 he says:

Now we are able to put forward a certain general rule concerning the way an addressee reacts on an utterance. It can be said with a high degree of probability, that any other state of mind [Swedish “själsläge”] but the one, the addressee himself should have been expressing through such an utterance, always will be pushed away by the reception of the utterance. [...] Therefore, it is only that state of mind, that for the addressee should have got a similar expression, that is evoked by the utterance, assuming of course that it may work without hindrance from other factors (Hägerström 1922: 19, my italics).

It is evident that Hägerström means that an utterance not always results in a successful communication. There are factors that hamper communication and where the “spontaneous reflex—machinery” does not work. Hägerström gives interesting examples of such obstructing factors, e.g., when a speaker tries to inform me about something and expresses his judgements, but I believe that he is a liar who wants to deceive me. Then his expressions will not result in a communication of judgements. My belief hinders the acceptance of the utterance (Hägerström 1922: 20).

Suppose anyone utters “Gösta Berling is a noble person” but I already have a feeling of repugnance towards such a character. Then the utterance will be “empty words” to me, Hägerström says. My already existing adverse feeling prevents the speaker’s feeling from being accepted (Hägerström 1922: 21).

The expressions of feeling have a suggestive power to evoke a feeling in the addressee. But sometimes that is not enough for getting a result. The speaker can also use gestures, facial expressions and intonation to strengthen the power of the simple words, Hägerström says. However, even if no feeling is aroused in the addressee in the actual case, the words: “noble”, etc. still are expressions of feeling and still have that power, according to Hägerström. Their “power” must therefore not be
associated with what actually happens in a situation, e.g., with what is evoked in the addressee, but how the words ordinarily functions, when there are no hampering factors.

The utterance must here evidently be reckoned to have special power [Swedish: “kraft”] to evoke the corresponding feelings in the addressee, and that, of course, according to the general rule that an expression of a feeling, when received, has a tendency [Swedish: “benägenhet”] towards evoking the corresponding feeling (Hägerström: 1922: 39, my italics).

When C.L. Stevenson introduced the concept of emotive meaning of words he was thinking of their tendency to evoke feelings, and not of what was actually evoked in a certain situation. In an article “The emotive meaning of ethical terms” (1937) Stevenson wrote:

The emotive meaning of a word is a tendency of a word, arising through the history of its usage, to produce (result from) affective responses in people (Stevenson 1963 [1937]: 21).

In a footnote added in 1963 Stevenson specifies his concept further:

The emotive meaning of a word or a phrase is a strong and persistent tendency, built up in the course of linguistic history, to give direct expression (quasi-interjectionally) to certain of the speaker’s feelings or emotions or attitudes; and it is also a tendency to evoke (quasi-imperatively) corresponding feelings, emotions, or attitudes in those to whom the speaker’s remarks are addressed (Stevenson 1963: note 21f).

It is unclear if Hägerström really would assume a special meaning for moral and evaluative words. Perhaps he would say that they have no meaning, i.e., reference meaning, but that they have a special function in language, attached to their power to express and evoke feelings. But if we take Hägerström’s description of that power as a tendency to express and evoke, his concept of power evidently will come very close to what Stevenson called “emotive meaning”. All assumptions needed seem to be there already in Hägerström’s texts, also the reference to the linguistic history of terms.
Already in 1910–1911 Hägerström introduced his psychological analysis of moral judgements which ended up in the conclusion that what is called “moral judgements” are not real judgements at all, but associations between feelings on the one side and ideas or judgements on the other. Thus, in a moral judgement we are not really thinking that something is so and so, as in a judgement. But in ordinary life, when not critically analysing our mental acts, we are not aware of that important difference. Instead we ask for the truth or falsehood of moral ideas, as if they were judgements. In his inaugural lecture 1911 Hägerström states that such questions are put the wrong way.

In this connection, however, we have to inquire first whether or not it is correct to ask about the truth or falsehood of moral judgements. If someone inquires whether gold is just or unjust, of course he would be immediately laughed out of court. The history of science, and particularly of philosophy, abounds with such improper questions, even if they are not so obviously improper (Hägerström 1964 [1911]: 83).

According to Hägerström moral judgements, as being simultaneous associations and not judgements, cannot be true or false. Still moral and evaluative judgements are expressed in sentences like “Gösta Berling is noble” or “It is good to possess a barrel of potatoes” or “It is my duty to tell the truth”, which all have an indicative form. But the indicative form is the form in which judgements normally are expressed. Hägerström gives different explanations why we use indicative sentences also for moral judgements. In some places he says that the idea component (or judgement component) in an association dominates over the feeling component, which would result in an indicative sentence (Hägerström 1953 [1917]: 138).

More frequently he refers to an existing habit to use indicative sentences in communication (e.g., Hägerström, 1952 [1917]: 36f). We are used to give and receive information using that kind of sentences. As we in common life do not analyse language or mind, we almost automatically use indicative sentences also where they are not adequate expressions. But our lack of reflection here contributes to a serious
misunderstanding. As indicative sentences usually are expressions of judgement we get a tendency to believe that all indicative sentences, including indicative moral and evaluative sentences, means there is a judgement behind.

> It is natural that the structure of the immediate expression will have an influence on our way of thinking. Such expressions [i.e., indicative sentences] use to evoke judgements through their very grammatical structure (Hägerström 1952 [1917]: 35).

That is why we ask for the truth or falsity of moral sentences and also why we believe that e.g., “good” must refer to a property in an object (e.g., Hägerström 1952 [1917]: 38). The grammatical form of the sentence leads us astray.

But even when we express a moral judgement or an evaluation in an indicative sentence the components of the mind, i.e., an idea (a judgement) and a feeling, are discernible by help of the words in the sentence, according to Hägerström. We have one expression of the idea (some words) and one expression of the feeling (some other words), and these two expressions are put together into a sentence by e.g., an “is”. In “It is good to possess a barrel of potatoes” the words indicate an idea of a state of affairs: one’s actually possessing a barrel of potatoes, and a feeling of approval towards it, expressed by “good”. Thus, there is a sort of correspondence between the structure of the state of mind and the structure of the expression, also in the case when the expression is an indicative sentence. Hägerström says: “For every evaluation the expression of it consists in an expression of feeling in connection with an alongside given expression of an idea of a state of affairs” (Hägerström 1952 [1917]: 35).

Expressions of feelings, as “good”, “bad”, “noble”, etc. can function as grammatical predicates, but they can never be ”logical predicates”, Hägerström argues, as pure expressions of feeling cannot be grasped as properties of objects. “Good”, “bad”, etc. are, in his terminology, “illusory predicates” [Swedish: “skenpredikat”].

> It is as incorrect to appoint nobility as a predicate in a logical aspect and not only as a grammatical predicate, i.e., an illusory predicate, as it is to say that ‘it’ in: ‘it is raining’, is a logical subject (Hägerström 1922: 33).
Those who regard “good”, “bad”, etc. as “logical predicates” have not understood what an evaluative or moral sentence really expresses.

**The Substitution-Argument**

In his earlier texts Hägerström used psychological arguments involving elements of introspection to prove his own analysis. But in his later texts, especially from 1917 and on, he uses arguments based on the function and meaning of certain sentences. In these texts a lot of analytic work is done on sentences expressing wishes as “Would that he might soon arrive!”, on exclamatory sentences as “O, Gösta Berling, most noble among men!” and on imperatives as “Thou shalt …!” and sentences expressing intentions as “I will do so and so!”.

His conclusion is that sentences of these kinds are never used to express reports on what is going to happen in the future or happen to some person. They are never reports about my own mind, never reports about what I wish or will or reports about other feelings of mine. I am not reporting that I have a wish, instead I am expressing my wish with the help of the sentence. In short: these sentences are never expressions of judgements. In Hägerström’s opinion they are instead expressions of feelings (wishes, volitions, etc.) in simultaneous association with ideas that sometimes may be judgements.

The result is used by Hägerström in an argument that appears in many of his texts. In earlier discussions I have called it the substitution-argument. It appears, more or less elaborated, in his lectures in 1917 and 1922, in his Selbstdarstellung in 1929, and in articles in 1931 and 1934, which shows that this was an argument Hägerström himself put a lot of trust in. The main premise of the argument is that an indicative sentence expressing an evaluation or a moral judgement can be replaced by an imperative or an exclamation. Here is one formulation of the argument:

The sentence: ‘Good, if it happens’ lets itself indeed be translated into a: ‘That course of events is something good’, which indicates an underlying judgement. But evidently it has the same meaning as this: ‘would that it happens!’ But if the latter expression is an expression of feeling, then must also this: ‘good, if it happens!’ be an expression of feeling.
However, it is fragmentarily described as an expression of feeling. […] What in reality is expressed is a feeling in its connection with a certain idea (Hägerström 1952 [1917]: 32).

Depending on the premises of the argument the conclusion will tell what an indicative evaluative or moral sentence is an expression of (as in the quotation above) or that such an expression cannot be true, nor false (as in Hägerström 1939 [1931]: 69f). The argument has also corollaries that support other theses of Hägerström’s: e.g., that “good”, “bad”, “noble”, etc., are “illusory predicates”, that not all sentences of grammatically indicative form are expressions of judgements, and that the grammatical form of a sentence may lead our ideas of it astray.

In different texts I have tried to clarify the structure of the substitution-argument, to discuss various interpretations of its premises and critically scrutinize and also put in question the validity of it (Petersson 1973: 168–175; 1980: 118–128; 2004: 58–61). However, an elaborate analysis and discussion would demand a lot of space. Here I will limit myself to one reflection only: Does Hägerström mean that (1) an evaluative or moral indicative sentence always, i.e., whenever it occurs, can be exchanged for an imperative, an exclamation or a wish-sentence, or does he mean that (2) such interchange can be made only in certain situations and under certain conditions?

Even if most of his formulations seem to support a choice of (1), a choice of (2) would make his argument more reasonable. It also fits in much better with other statements of his. Already in a 1910 lecture Hägerström says that a sentence “x has value”, apart from expressing a valuation, also may express a judgement that x is valued (by someone). It is evident that Hägerström here observes the distinction between genuine and non-genuine evaluative sentences, made explicit by Ingemar Hedenius in his Om rätt och moral (1941). Thus, there are situations where such a sentence does not express a valuation at all. In such a situation an exchange, as is presumed in the substitution-argument, can never be thought of. When Hägerström formulates his argument in his Selbstdarstellung he also seems to omit such situations or such occurrences of the sentence, and thereby exclude the non-genuine interpretation. He says:
If one says, ‘It is good to possess a barrel of potatoes’, this is the same, in so far as ‘good’ actually has a valuational significance, as ‘How good it is, indeed, to be in possession of a barrel of potatoes! or ‘Would one had something like that!’ Thus it is manifestly an expression of feeling (Hägerström 1964 [1929]: 70, my italics).

Even more important is the fact that Hägerström, at least in some of his works, embraces an error theory besides his axiological nihilism (Petersson 1973; 2011: 54–70). (See also Mautner’s contribution to this volume, editorial remark). His theory in these texts must therefore be characterized as a mixed theory: to some valuations, which he calls “primary” or “direct” valuations, axiological nihilism is applied, to “secondary” or “indirect” valuations error theory is applied. These secondary valuations are false judgements, he says. Primary valuations are acts occurring in situations where we are standing before an object in order to assess it, or when we are about to act and have to make a decision about how to act, or when we in a committed way give moral advice to someone. Secondary valuations are acts occurring in other situations, e.g., as when we in a calm and reflective way just think of something as good or bad or right or wrong. In these acts we think of something as having an unspecified property to which we believe that “good”, “bad”, etc., refer, according to Hägerström. But “good”, “bad”, etc. are still expressions of feeling. They do not refer to anything. Therefore, secondary judgements are false.

Hence, if a secondary valuation is a real value judgement, in which I reflect over the object’s value, it also claims theoretical truth. Thus, [it is] a subsumption under the concept of reality. This is so, notwithstanding that in all value determinations [i.e., primary valuations] we are not thinking of what is, but of what ought to be. Therefore all secondary valuations are false, even if they result from a certain psychological necessity (Hägerström 1913: 8, my italics).

An evaluative or moral sentence expressing such a secondary valuation can of course not be a candidate for substitution in accordance with the argument. The argument must be intended to be applicable
only to certain occurrences of sentences, i.e., those expressing primary valuations.

It is worth noticing that Hägerström’s substitution-argument also was used by Gunnar Oxenstierna in his *Vad är Uppsalafilosofien?* (1938: 59f) and by Ingemar Hedenius in his *Om rätt och moral* (Hedenius 1941: 16f). It is reasonable to believe that the validity of the argument was generally accepted within the Uppsala school. But an argument with exactly the same structure is also used e.g., by Rudolf Carnap in his *Philosophy and Logical Syntax* (1935). He actually concludes his argument by formulations that could be taken out of Hägerström’s own work. Carnap finishes:

> Most philosophers have been deceived by this form [i.e., the indicative form] into thinking that a value statement is really an assertive proposition, and must be either true or false. [...] But actually a value is nothing else than a command in misleading grammatical form (Carnap 1935: 23f).

**Conclusion**

In this text I have tried to introduce some of Hägerström’s ideas about moral words and sentences. My ambition has been explication above criticism, as I believe his ideas on moral language to be rather unknown, even to Scandinavian readers and philosophers. My text draws attention to Hägerström’s, in fact, great interest in language. A main topic was the connection and relation between acts of the mind and language. He had ideas about the child’s learning language and the establishing of “spontaneous reflexes”, about how communication of ideas with help of language is possible and how it is carried through within a social, linguistic community. He observed and explained the emotive meaning of moral and evaluative words, and he also discovered that some words have a double function: a descriptive and an emotive function at the same time. He argued that occurrences of moral sentences in significant situations are equivalents to commands, exclamations or sentences expressing wishes. Many a time he came back to his thesis that the indicative grammatical form of moral sentences is misleading and deceiving. There is a power of language over thought, he stated, and that power explains lots of mistakes we make within ethics and meta-ethics.
Hägerström’s interest in language, and especially in moral language, as it is manifested in his texts of the 1910s and the 1920s, exposes a philosopher much in concord with views in early analytic philosophy. Even if he did not maintain any international contacts of importance and perhaps also was unaware of what was really going on in philosophy in e.g., Cambridge, he still made reflections and conclusions and created theories that on many points are similar to those of his contemporary philosophers in England and Austria. What he says about moral language is one example of this concordance.

Notes

1. Editorial note: the title of Hägerström’s inaugural lecture is translated in more than one way; presumably Mautner’s translation (published in this volume) will become the most quoted.

2. When we search for the truth of our ideas, Hägerström says, we shall put their contents together and ask “how can they [be ordered or structured to] constitute a logically coherent whole?” [”sammanställa våra medvetenhetsinnehåll: huru bli ett logiskt sammanhängande helt?”] (Hägerström, 1913: 4). Coherence, therefore, is a necessary condition for truth, but not a sufficient one. “The more extensive the material is, on which the empirical causal rules are founded, the closer is the correspondence between the obtained conception of the world and the real world. But a limit for the correspondence cannot be drawn. […] In this way […] we now can talk about a bigger or lesser probability of empirical causal rules. They are more or less alike the truth, so far as they are founded on a wider or smaller material” (Jü vidare det material är, på vars grundval de empiriska kausalreglerna uppställas, desto mera står den erhållna världsbilden i överensstämmelse med den verkliga världen. Men någon gräns för överensstämmelsen kan icke dragas. […] På detta sätt […] kan man nu tala om de empiriska kausalreglernas större eller mindre sannolikhet. De är mer eller mindre lika det sanna, såvitt de beteckna begrundande genom ett större eller mindre material”) (Hägerström, 1914: 101f, my italics). “Of course I cannot think of having knowledge about something without thinking that thing being constituted in a special way and my idea of it being corresponding to that. Thus, believing oneself having knowledge of something, is to think of one’s idea of that something as being true” [”Jag kan naturligtvis icke föreställa mig ha kunskap om något, utan att föreställa mig saken vara på visst sätt beskaffad om min egen föreställning om densamma överensstämma därmed. Ty att föreställa sig åga kunskap om något, det är att åga en sådan föreställning om saken, som är sann”] (Hägerström, 1922: 49). Thus, in Hägerström’s opinion, when we say we have knowledge of something and that our ideas are true, we do not only claim that there is coherence between our ideas, we also claim a correspondence with the world as it is.

3. In Swedish “ovillkorliga reflexer”. Broad also translates “involuntary reflexes”.

4. Hägerström’s conceptions of judgement and reality are not easily and briefly introduced. His formulations are open to more than one interpretation, and there has also been a lot of discussion on this subject. For attempts to clarify Hägerström’s theory on these points, see Marc-Wogau 1968 and Petersson 1973.


6. Hägerström states that an expression of feeling, like “what a” (“vilken”) in a sentence expressing an exclamation “saknar varje som helst föreställnings betydelse”.

8. Maybe one can say that Hägerström here notices the existence of so called “thick concepts”. When Bernard Williams introduces that terminology in *Ethics and the Limits of Philosophy* (1985: 129f), he characterizes thick concepts as expressing “a union of fact and value”. Hägerström would agree to such a description. But he would strongly argue that we in an analysis can separate these components, even if in daily practice we are not aware of the structure. Of course, he would not at all accept the idea that thick concept are examples which prove that the distinction between facts and values cannot be upheld.

9. In Hägerström’s own words: “Vid all värdering är uttrycket ett känslouttryck förbundet med ett jämsides givet uttryck för en föreställning om ett verkligt skeende.”

References


-------- (1914) "Inledning till den praktiska filosofien". Typed transcription of manuscript, 106: 5.


-------- (1922) "Analys av fråge-, utrops och önskesatser". Typed transcription of manuscript, 106: 1A.


Moral ideas are neither true nor false—this was Hägerström’s bold thesis. He was the first to formulate it, in his inaugural lecture in 1911. This non-cognitivist thesis is in conflict with the thesis, known as “error theory”, that moral ideas are false. Later statements of his about the concepts of moral duty and moral value have been interpreted as proposing an error theory. This is debatable, but there can be no doubt that he proposed such a theory for rights and retributive justice. A few observations will be made about the reasons for the difference in treatment.

Naturalism

Let us begin with religion. David Hume, the author of a renowned history of England, wrote that in the early years of the reign of James I:

It had frequently been the practice of the puritans to form certain assemblies, which they called prophesyings, where alternately, as moved by the spirit, they displayed their zeal in prayers and exhortations, and raised their own enthusiasm, as well as that of their audience, to the highest pitch, from that social contagion, which has so mighty an influence on
holy fervours, and from the mutual emulation, which arose in those trials of religious eloquence (1778: 12).

A similar gently facetious description of a reviverist gathering in “darkest Småland”, inspired by holy fervour, formed the beginning of a talk, “Philosophy as a science”, which Hägerström gave in the radical student society Verdandi. Like Hume, he assumed that his educated readership would be intrigued by the contagious enthusiasm of the participants. But Hägerström wanted to make a point: those tempted to scoff ought to realise that when the excited congregation believes that what they experience is an emanation of a higher realm of being, their belief is on a par with that of many eminent philosophers, including the celebrated Rudolf Eucken. Eucken’s philosophical outlook, “an inspirational form of Personal Idealism”, was conceived in opposition to the naturalism and secularism that was becoming increasingly influential in his time (Grave 1981). His philosophical works were international best-sellers. In December 1908 he received the Nobel Prize for literature. Early in the new year he gave the Olaus Petri lectures in Uppsala—the last of them on 23 March 1909. So he was a centre of attention, which explains why Hägerström chose him as an example in his talk a few weeks later.

Religious doctrines, and Welt- und Lebensanschauungen like Eucken’s, had as their opposite the outlook that Hägerström called naturalism, “the only scientific (vetenskaplig) outlook in the sense that there can be no separate reality which is not entirely a part of the natural order […]”. This natural order, the real world, cannot, he argued, be other than the all-encompassing empirical world of space and time. “No knowledge of reality is possible except through relating its object to a systematically interconnected whole” (1953: 267 [1928HK]). He at one time called his outlook “critical philosophy”, and on another occasion “materialism”. “Anthropocentrism”, “superstition”, “supernaturalism” and “metaphysics” were words he used for ways of thinking incompatible with his naturalism. The motto he assigned to his philosophical self-portrait (1929:AH) was Praeterea censeo metaphysicam esse delendam.

Other philosophers have defined naturalism similarly. For David Armstrong it is “the hypothesis that nothing but Nature, the single, all-embracing spatio-temporal system, exists” (Armstrong 1978: 138; quoted
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in Nola 2010). Jaegwon Kim explains, following Roy Wood Sellars, that
metaphysical naturalism is the view that natural world is the whole
world, and “by nature is meant the space–time causal system which is
studied by science and in which our lives are passed” (Kim 2011: 217,
quoting Sellars 1927). These authors share the outlook they describe, and
it has become increasingly predominant among philosophers. Sellars
wrote “we are all naturalists now” (1922: vii–ix). According to Simon
Blackburn “We nearly all want to be naturalists […]
the problem is one
of finding room for ethics” (1998: 49). In 2005, Frank Jackson stated
“Some form of materialism is now almost orthodoxy in the philoso-
phy of mind”? The introduction to a recent collection of papers states
“Naturalism probably constitutes mainstream opinion in contemporary
analytic philosophy” (Corradini et al 2006: 1). Naturalism is frequently
identified with physicalism. Crispin Wright characterises naturalism as
the view that “the natural coincides with the physical as (best) physics
understands it” (2002: 407). According to Peter Schulte, most contem-
porary philosophers accept that all facts are physical or supervene on
physical facts (2010: 102; see also 2012).

So, with his turn to naturalism, about 1905, Hägerström placed
himself firmly within what was later to become the mainstream of
twentieth-century analytical philosophy. But one difference is notable.
Present-day naturalist philosophers try to explain what naturalism (or
physicalism or materialism) involves and in what way—if at all—spirit-
ual entities, collective entities, theoretical entities, the mind, values,
normativity and much else can find a place in nature. But attempts to
give reasons why naturalism should be accepted as the correct ontology
are rare indeed. It is in effect introduced as an article of philosophical
faith which may need explanation but can do without justification. It
is to Hägerström’s credit that he tried to argue the case for naturalism.
His leading idea was that a many-worlds ontology would undermine
the validity of basic principles of logic.8

Before proceeding to Hägerström’s anti-objectivist meta-ethics, a
few historical side-glances may be in order.

One formulation, used by Hägerström to characterise the prōton
pseudos of metaphysics, was that reality itself is treated as if it were
something real. The formulation closely resembles Heidegger’s, that
Sein (Being) itself is not a Seiendes (a being, something existing). There
is nothing to indicate influence between the two authors. The coincidence is no doubt due to the common background, i.e., Kant’s thesis that existence is not a real predicate. As for the formulation itself, Heidegger took it to express the insight that Being (Sein) is both ineffable and the proper object of deep thought, while beings (Seiendes) are the proper objects of scientific inquiry, which is in its nature superficial and plodding. “Science does not think.” Hägerström’s outlook had nothing in common with this.

Another contemporary coincidence is the rejection of metaphysics in Carnap and other logical positivists. Again, there is nothing to indicate an influence either way. Each would have received impulses from Hume, Comte and nineteenth-century positivism. But the reasons for Carnap’s anti-metaphysical view, linguistic and verificationist, are different from those proposed by Hägerström. Also, reasons aside, there is a difference in tone. As the title of a famous article by Carnap indicates, he wanted to overcome (or refute or eliminate) metaphysics (Carnap [1932] 1959). His rejection was firm: Hägerström’s was more than that. Metaphysics had to be destroyed (delendam). The implacable enmity stems from his view that metaphysical beliefs are more than mere sophistry and illusion. Many of them inspire or justify great evils. In that respect, they are like superstitious beliefs, and, influenced by Auguste Comte on this matter, Hägerström was inclined to regard metaphysical beliefs as superstitions in disguise. In a lecture in the spring term of 1925, he stated that fetishism remains preserved in the transition to metaphysics.9

Hägerström turned towards radicalism as a young student in Uppsala from 1886 and onward, away from the piety of the parental home. He discovered and became much impressed by the radical writers of his time: Georg Brandes, Ibsen, Nietzsche, and many others. He even admitted, in a letter to his brother Gustaf, of being “attracted to so-called atheism”. These influences soon took hold. He also developed a strong sympathy for the working-class movement and the progressive and secularist intellectual currents of the time. In a letter to his fiancée he expressed strong indignation over an “ignorant and shamelessly dishonest attack”10 on “a great man”, “one of the greatest thinkers of this century”—John Stuart Mill. In lectures years later, he used more than once the famous words “La vérité est en marche”.11 His audience
understood the allusion. Philosophically, he was by 1905 about to complete the turn towards an uncompromising naturalism.

These preliminary remarks are only intended to supply a few pointers to situate our author historically. We now turn to his anti-objectivist metaethics. First to be considered is his non-cognitivism. Then we consider statements which may suggest an error theory. Whether they do is open to debate. But in respect of certain conceptions, especially rights and retributive justice, he undoubtedly proposed an error theory.

**Non-cognitivism**

Moral ideas are not true or false.

This is the main thesis of the inaugural lecture. It was frequently re-stated in other writings. Hägerström concluded that applying “true” and “false” to moral ideas does not make sense, any more than attributing “just” and “unjust” to a merely material substance like gold. What, then, were his notions of a moral idea and of truth?

**What is a moral idea?**

In the inaugural lecture, Hägerström indicated that in a society dominated by customs, these acquire a moral character when it is felt that they are to be observed for their own sake and that they take precedence. He took it for granted that the distinctively moral notions are those of absolute value and a categorical ought. This coincides with what Kant took to be the common concept of morality.

In other lectures and writings, Hägerström frequently emphasised the remarkable heterogeneity of concepts that we think of as moral. They fall into various categories. We have concepts of duty, of rights and the associated notion of personal dignity, of happiness (for the individual or society), of ideals: values worth realising for their own sake, such as, for instance, the glory of one’s nation and its culture.

In all these, it is the existence of something that is valued. Hägerström, influenced on this point by Meinong, drew attention to the fact that valuing the existence of an object is different from valuing an object simply. In lectures in the 1910s and later, he discussed an important category of valuations which are not of the existence of a person with a certain character, but of the character itself, independently
of existence or non-existence. Hägerström called these moral valuations aesthetic. We take some people to be admirable, or contemptible, courageous, cowardly, generous, mean-spirited. These value-predicates are attributed to the person, not to the existence of the person. We say that a person is noble, but we do not say that the fact that such a person exists is noble. At least one anti-objectivist argument which he proposed later in the 1910s would apply only to existence-valuations but not to the aesthetic moral valuations.

Hägerström could see no valid reason for assigning primacy to one of the several heterogeneous moral categories, and make other ones derivable from or reducible to it. Nor was there any guarantee that our moral thinking, as a whole, is consistent.

**What is truth?**
Hägerström linked the concepts of truth and falsity with the concept of reality. A true judgement represents reality as it is, a false one fails to do so. It is implicit in the concept of reality that whatever is real is so independently of interests a subject may or may not have. Every judgement is about reality, and only judgements about reality can be true or false.

This terminology was by no means idiosyncratic and gives expression to a dualism widely accepted at the time. Heinrich Maier is a case in point (Maier 1908). He made the same connections between the concepts of reality, judgement and truth, but noted that not everything in the mind is a judgement. There are also volitional mental acts and affective mental acts. These mental acts or their contents are not true or false. Maier, differently from Hägerström, felt a need for a term that would cover the vast variety of non-judgemental or non-cognitive emotive and volitive mental states and acts. He explained that, unable to find any really suitable word, he had reluctantly settled for *emotionales Denken*, which he used in the title of his major work.

In an early work, Hägerström insisted that, differently both from sociology and from jurisprudence, legal philosophy is not theoretical knowledge. His reason is that

The legal norms are considered [in legal philosophy] to indicate, with objective validity, what ought to be done, and thus to determine that a certain action has value relative to what is really the highest human good.
But values presuppose a subjective element: feeling, and can therefore not be part of a reality which presents itself as something that exists independently of our cognitive faculty. If values are supposed to have objective reality, then that reality is of another kind than that given for theoretical knowledge.¹⁹ (Emphasis added).

This was published in 1904, before Hägerström had fully embraced naturalism. The “if” is important. Some years later he was forever to reject the idea of a “reality of another kind”, that is, of atheoretical “reality” and atheoretical “truth”. There can be no practical or atheoretical validity analogous to theoretical truth.²⁰ Maier held the opposite view. He distinguished cognitions and judgements from other kinds of thought, maintained that logic had a place even on the non-cognitive side, and that mental acts which belong to that side, although not true or false, can in other ways be valid or invalid. Hägerström firmly rejected similar attempts made by neo-Kantians and pragmatists to find a compromise by acknowledging a concept of validity, distinct from plain truth, for religion, morality, cultural values, and more,. Such a concept of validity would be quasi-truth, or rather pseudo-truth. The only objective reality is that which pertains to the realm of theoretical knowledge.

**The Main Argument for Non-Cognitivism**

Hägerström’s main argument for his thesis that moral ideas cannot be true or false is that, as Kant put it, “the ought, if one has merely the course of nature before one’s eyes, has no significance whatever”.²¹

Insofar as we mean that something is actually the case, that something is true, we mean that this is so, independently of our subjective attitudes towards it, our feelings or interests in regard to it. (The inaugural lecture §42, see p. 421 below).

The main argument is developed in §§38–42 of the inaugural lecture. Its aim is to show that moral ideas are neither true nor false, or, in other words, that of the concept of a “normative reality” is impossible.²² Those words combine to produce an absurdity in the same way as, say, “square circle”. The argument relies on the radical difference between
the standpoint of an agent and the standpoint of an indifferent observer. “When I contemplate something purely theoretically, I do not find any ought.” Reality as such, open to the gaze of an indifferent observer, will provide no “ought” that would have any bearing on the conduct of an agent, and an “ought” makes no sense when the stance of indifferent observation is maintained. The indifferent observer, interested in knowledge about reality but in nothing else, is in that capacity without volitions and emotions.

A hundred years later, the validity of the concept of a “normative reality” continues to be keenly debated in analytical moral philosophy.

**A Challenge for Non-Cognitivism**

Although the present chapter is expository rather than critical, it may be of interest to consider an objection frequently raised against the view that moral ideas are not true or false. The objection is that it makes perfectly good sense to say of at least some moral ideas that they are true. So we should reject any view according to which none of them can be. At the very least, an explanation should be given why “true” should not apply to moral ideas. Here is one statement to this effect:

Non-cognitivists […] often seem curiously immune to the thought there must be some foundation for the fact that ordinary usage applies “true” and “false” to the sentences for which they advocate a non-cognitivist interpretation. […] it is implausible to tell us that truth does something different in say ethical discourse, without telling us just what it does there, and what it does elsewhere, in supposedly cognitive discourse (O’Leary-Hawthorne and Price 1996: 289).

In reply to this, a non-cognitivist could point to ways in which “true” and “false” are ordinarily used. In one way, a speaker uses “true” to express the opinion that the statement fits the facts, and “false” to express the opinion that it fails to do so. In another way, a speaker uses “true” to express the opinion that the statement—e.g., in ethical discourse—is in accord with a set of presupposed principles and standards to which he is committed. The word for rejection is then rarely “false”, but rather “bad” or “wrong”. It is important to note that the presupposed
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system is not necessarily consistent. The principles and standards may have a fallible origin, and allow for perplexity and contradiction. But no truth properly so called contradicts any other truth.²⁵

So in theoretical contexts, including meta-ethics, a distinction between truth (conformity with reality) and correctness (conformity with a set of standards) is appropriate.

A Moral Argument for Non-Cognitivism?

Proponents of non-cognitivism have often held that adopting their outlook would have a benign influence. People would become less dogmatic and more tolerant.²⁶ This can hardly serve as an argument: beliefs can be wholesome without being true.

At another level, there is an argument that can reasonably be described as a moral argument in favour of the theory. It plays an important part in Hägerström’s writings, but seems not to have been much noticed. The argument is to the effect that an objective value cannot be genuinely moral. Moral objectivism falls short not only intellectually, but also morally, in the sense that it cannot accommodate moral worth.

How could this be? In the inaugural lecture, the account beginning at §22 (pp. 416ff below) shows how throughout history, moral ideas have been combined and indeed identified with other conceptions: divine powers, the cosmic order, custom. They have been closely linked to the view that deviations are dangerous for the offender or for his society. Traces of this have remained even in the development of conscience–morality. An agent exposes himself to unpleasant consequences by failing to conform to the demands of morality. The idea of an external order which determines how one ought to act can affect the individual in two different ways. In one way, we have it, for instance, in the adage: “if you do not want to be good, be careful”. Counsels of prudence point to possible benefit for the agent, and are in that sense mercenary. In the other way, the individual, for the sake of his own peace of mind, strives to be “good” by internalising a way of being that is not his but imposed on him: a servile attitude.

And yet, a there is another notion of morality, with ancient roots. Cicero’s De officiis is all about the difference between what is expedient and what is morally right. That good people will pursue virtue for its
own sake was obvious to ancient thinkers and poets, and in mediaeval times a couplet of Horace was paraphrased as follows:

\[ \text{Oderunt peccare boni virtuti amore;} \]
\[ \text{Oderunt peccare mali formidine poenae.} \]

Good people hate wrongdoing because they love virtue; bad people hate wrongdoing because they fear punishment.

The lines were well-known—so well-known indeed that Hobbes in 1640 saw no need to spell out his allusion to them (Hobbes 1969: 16.1.§4). Bayle illustrated the point in a striking way:

There is this tale about a woman on the highway to Damascus: she carried a torch in one hand, and a pail of water in the other. Her purpose was to set fire to Paradise in order to destroy it, and the extinguish the flames of Hell in order to destroy it: so that people would no longer worship and obey God for mercenary reasons, but solely because of God’s perfect nature (Bayle 1683, ch.187: 553; cf. Smith 1928: 98).28

In the same spirit, Lessing saw the education of the human race as a progress to higher levels. In the last and highest stage good would be done not from hope of future reward but for its own sake (Lessing 1780, §85).

What is rejected here is a mercenary or servile conception of morality. It illustrates what Hägerström had in mind. He held that whatever is experienced as external compulsion, however etiolated, will, as it affects the person’s motivation, rule out genuine morality. There can be no morality in the proper sense without autonomy. Kant was on the right track, but did not quite make it. Hägerström would have agreed with Nietzsche: “Alle feinere Servilität hält am kategorischen Imperativ fest …”,30 but he wanted also to condemn other moral theories which make us means for the realisation of a higher good, for an end that need not be ours. This was a theme to which he often returned. In a lecture in the spring term 1911 he said:

In modern philosophy of value it is often said that life is not worth living unless the world has an intrinsic purpose. This presupposes a cosmic
will which determines a purpose for the world. Unless a will outside me creates a world with a purpose which becomes my objective purpose, I have nothing to live for. This is akin to a servile mentality. It is natural for a slave that others give him his purposes, and in order that he has something to live for, others have to set him a task.32

In many other lectures he returned to this theme,33 arguing that any objectively highest good would be an external imposition on the person, who would be bound to an ideal to which he might not have given his free commitment. If an unconditional ultimate ground of reality outside ourselves, as proposed in many metaphysical systems, is to determine question about what ought to be the case, we are, in relation to it, means only. This is servility.

Against this, Hägerström insisted on autonomy as a necessary condition for morality. Broad’s presentation of Hägerström’s analysis of duty and related notions explains:

[…] action from a sense of duty […] involves an impulse towards a certain action which is felt to be compulsive, because it is determined, not by the agent’s likes, dislikes, and valuations, but by something which is so far as concerns them, external to him. If so, the analogy with acting on a command is obvious (Broad 1951: 106).34

Even the morality of duty contains an element of heteronomy. This applies even to Kant’s moral philosophy. Hägerström wrote:

Kant elevates our moral interest to an absolute will in ourselves, which then becomes something external to our actual, finite will and makes demands on it. But this means that our moral interest cannot come to expression without sentiments of pressure and apprehension.35

This is from a passage which concludes as follows:

We really have a purely moral will only if we place one thing above all else and commit ourselves to the cause, without any additional fear of bringing disaster upon ourselves should we fail to pursue it. Especially the notions of guilt and responsibility for moral wrongdoing grossly stains the purity
of the moral will. Be it as it may with the value of the whip as a means of education. But it does not belong to pure morality.\footnote{36}

This passage, like the previous one, was in the manuscript for the inaugural lecture in 1911, but it was not read out, and it was omitted from the printed version, probably because its main point is made later, especially in §55. The deletions in the manuscript (the \textit{a free, autonomous pure free pure morality}) show how Hägerström struggled to find the best expression. The pivotal notion of autonomous willing being necessary for a “pure” morality kept re-emerging in many later talks, essays and lectures.\footnote{37} The right kind of morality would be, in the words used by Guyau in the title of his famous book, \textit{une morale sans obligation ni sanction} (Guyau 1885).\footnote{38}

Elaborating on this topic, Hägerström argued that the positive evaluation of a person who is entirely determined by a sense of duty disappears on closer reflection. We are misguided (\textit{felsyn}) if we admire a person who, independently of his own inclinations, does the right thing only from a kind of inner compulsion.

The state of mind when acting under the influence of [what is experienced as an] objective duty is necessarily impure […] a will primarily determined by duty is mentally a thrall.\footnote{39}

The right kind of morality is different. It is a virtue-morality, in which our moral judgements express our sense of moral beauty or ugliness, our approval of character traits like nobility, generosity, courage and kindness, and our admiration of people who possess them; on the opposite side, disapproval and contempt. Our sense of moral beauty and ugliness is in turn caused by an interest in and commitment to the well-being of others and the welfare of society, as observed by Adam Smith. This way of valuing has no place for any divine wrath or its analogues.\footnote{40}

His view can be summed up briefly. Genuine morality is autonomous. Objectivity means heteronomy. Therefore, genuine morality cannot be objective.

To accept meta-ethical anti-objectivism on this basis involves taking a \textit{moral} stance: morality as conceived by objectivists is \textit{morally}}
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defective. This can explain why the Is–Ought debate in the years around 1970, for instance, could become so passionate. It was a moral issue, rather than a merely logical or conceptual. The frequent use at the time of the curious phrase “the autonomy of ethics” gives a hint of this.

It is not clear, however, that this moral argument, in which autonomy is pivotal, can tell against all varieties of objectivism. One variety, not discussed by Hägerström, takes moral value or moral ought to be properties sui generis inherent in whatever they are truly predicated of and discovered by intuition sui generis (Moore [1903] 1993). It is not clear that a morality conceived on that basis would involve heteronomy, because the properties sui generis are not identified or associated with the “alien” conceptions (divine will, world-order, etc.) mentioned in §§ 31–34 in the inaugural lecture and the sanctions associated with them. One could imagine that this is why members of the Bloomsbury group and the Cambridge Apostles could find Moore’s *Principia Ethica*, inspiring, though their enthusiasm might have been very differently inspired (cf. Levy 1980: 234ff.). But even if this intuitionist variety of objectivism is immune to the moral criticism outlined here, it remains of course vulnerable to other objections.41

**An Anti-Metaphysical Argument for Anti-Objectivism**

Hägerström’s overview of his philosophical outlook, published in 1929, states that it was only some years after the inaugural lecture that he came to realise that the idea of value belonging to the reality of what is valued, was impossible. He argued an attribution of value to the existence of something, e.g., of the form “it is good that such-and-such be the case”, if taken to be true, leads to metaphysics.

Exempted from this objection, he wrote, were of course the “aesthetic” moral judgements, which evaluate an object rather than the existence of an object, but which “with regard to their objectivity, are subject to the general criticism which is based on the dependence of value upon feeling or desire.”42

With respect to “ought” (it ought to be the case that such-and-such), he used an argument sometimes known as “the ought-to-be argument”. It is to the effect that if ought-statements are taken to be true, metaphysical and therefore unacceptable consequences follow.
The new argument, stated here in truncated form, aims to show “that the ‘ought’ of duty cannot function as a cognized term in the context of reality”. It has been much debated and criticised (Broad 1951). Perhaps it can be paraphrased as follows.

A = the debtor pays the sum owed to his creditor.
O = ought to be the case;
(i) O(A) is a judgement attributing the property O to A.
   [Assumption for a reductio]
(ii) O(A) implies that A occurs.
   [Principle: every judgement asserts the reality of its content.]
(iii) O(A) does not imply that A occurs.
   [True: some debtors do not pay.]
(iv) (ii) and (iii) are incompatible.
(v) O(A) is not a judgement attributing the property O to A.
   [inference from (iv).]

The usual way to reject this conclusion and save the objectivity of “ought”, Hägerström argues, is by a metaphysical theory. The idea that something ought to be the case (statement (ii)) is taken to be a judgement which represents, truly or falsely, what is the case in another realm of being, an ideal world. On the other hand, statement (iii) is clearly about the natural world. But postulating two worlds in this way runs against the anti-metaphysical naturalism. To be noted is the fact that the conclusion, that O(A) is not a judgement, means that O(A) is neither true nor false. So, interpreted in this way, the argument does not lead to an error theory. It is only the objectivist interpretation of duty-statements, i.e., the belief that they report, truly or falsely, a matter of fact, that can be an error theory.

What has been said about “ought” should, in Hägerström’s view, also apply to “duty”:

‘This action is my duty’ […] is exactly equivalent to […] ‘This action ought to be undertaken by me’ or ‘ought to be realised by me’. So ‘duty’ is equivalent to ‘ought-to-be’. (1953IN: 135).
Here, “equivalent” is obviously too strong. “Ought”, like the original “bör”, applies more widely than “duty”. So, “duty” is not equivalent to, but can be said to imply, “ought-to-be”.

As mentioned, the interpretation and evaluation of the argument just sketched is controversial. But if the interpretation proposed above is correct, the argument shows at least that “ought” and “duty” are not predicates which designate a property of that which is denoted by the subject-term. They are rather akin to modal concepts. What Hägerström rejected is the idea that a state of affairs, a fact, can itself be regarded like a thing-with-properties or as a logical subject to which a predicate is attributed. On this point, his view resembles Russell’s view at that time “You can never put the thing that makes a proposition to be true or false in the position of a logical subject”. Russell knew, of course, that ordinary language permits this, since a predicate can be attributed to “the fact that …” but this was, for him, nothing but one of its many imperfections.

As a curiosity may be mentioned the only other argument with similar premises, though with quite a different conclusion, which has so far come within sight. In 1937 Pritchard wanted to show that the obligation to do x and the goodness of x do not imply each other (1949: 163). He assumed, similarly to line (ii), that \( x \) is good presupposes that there is an \( x \) which has the quality denoted by “good”, and, like G.E. Moore, he regarded \( x \) is good as equivalent to \( x \) ought to exist. So, \( x \) ought to exist implies that there is an \( x \). He further assumed, similarly to line (iii), that an obligation to do \( x \) does not imply that \( x \) exists. His reason for this was that an obligation to do \( x \) implies that \( x \) does not exist: once \( x \) enters into existence, the obligation is discharged and goes out of existence. The merits or otherwise of this particular argument will not be discussed here.

Hägerström took all judgements to have a non-temporal “is”, which connotes reality, as the essential element. A fundamental part of Hägerström’s anti-metaphysical ontology was his “reality thesis”:

The content of every judgement is that something is such-and-such with an emphatic is.
Another formulation, in his view equivalent, was this:

Every judgement is a judgement about reality.

This had been a basic principle in his philosophical outlook at least since 1908 and it is re-stated in 1929. An explanation is then needed about judgements about possibility, in contrast to reality. In the event, the “thesis of reality”, which he had firmly maintained and presented as a cornerstone in his naturalistic and anti-metaphysical enterprise, turned out not to be immune to revision. Writings from the 1930s contain a major surprise. In them, Hägerström modified his crucial “thesis of reality”:

It has been said, incorrectly, that every judgement is a judgement about reality.48

He gave as his reason for the change that the earlier thesis, now rejected, would rule out the propositions of pure mathematics and logic, said to be about the possible rather than the real. The new thesis allowed that what is connoted by the is of a proper judgement need not be reality (which includes possibility, since everything real is also possible), but can be possibility only. This change is highly relevant for a closer study of his ontological naturalism, but has so far not been noticed in the literature. Still, it may not have a direct bearing on the arguments discussed here.

So far, we have considered Hägerström’s non-cognitivism and some of his arguments for it. We now turn to error theories. Some are problematically alleged to be his. They will be discussed first. Other ones were explicitly proposed by him.

**Error Theory**

Atheism is the paradigmatic error theory: every statement which implies theism (the thesis that God exists) is false.

The paradigmatic atheism is Jean Meslier’s (1661–1729). This parish priest, working in a small village in northern France, did not mince his words. His condemnation was vehement: the religions are “illusions, erreurs, mensonges, fictions, impostures” (1972: 20, and passim).
Passion aside, moral error theory is, in accordance with the paradigm, the view that all moral statements are false. A recent definition by a leading proponent is this:

The moral error theorist […] takes an attitude towards morality like sensible people take towards astrology, like reasonable people take towards talk of witches, and like atheists take towards religion (Joyce 2011: 519).

The term “error theory” is of recent origin. The target of an error theory is a set of beliefs that must satisfy two conditions. The beliefs must imply falsehood, and must be widely held within a society or a culture. Eliminativism in the philosophy of mind—the rejection of the common belief that mental phenomena are non-physical—can be called an error theory, and so can Berkeleian idealism—the rejection of the common belief that physical phenomena are non-mental (since only minds and mental contents exist). Another instance would be the kind of determinism that rejects the common belief that we are capable of acting freely.

Who were the proponents of moral error theory? Einar Tegen presented a paper defending the thesis that all affirmative moral value-judgements are false in G.E. Moore’s seminar at Smith College in 1940 (Tegen 1944).49 Others made similar error-theoretical suggestions in the 1940s. The best-known of them, also first drafted about 1940, was John Mackie’s: “the great mass of what is called moral thought is, not nonsense, but error, the imagining of objective facts and qualities […] where there exists nothing but our feelings of desire and approval” (Mackie 1946: 90; Mackie 1977; cf. Robinson 1948). Both authors opposed their theory to non-cognitivism, the view that moral statements are not true or false.

Was Hägerström a moral error theorist? The philosophers who were familiar with his thought certainly did not think so. In the reception of Hägerström’s thought and the debate surrounding it he was perceived as the originator of non-cognitivism. This was the centrepoint in the presentations of his meta-ethics by Tegen (1944), Oxenstierna (1938), Hedenius (1941) and many others. In the public debate in the 1920s and 1930s, hostile opponents called it “value-nihilism” (värdenihilism). Its defenders accepted the label, thereby deflecting the abusive connotation.
Later, “nihilism” has been used equivalently to “non-cognitivism” e.g. by Gilbert Harman (1977: 11). When Einar Tegen, on whose philosophical formation Hägerström was the main influence and who was more familiar with his work than any of his contemporaries, proposed his error theory (in Tegen 1944), he presented it as an alternative to Hägerström’s theory. Hägerström can certainly be regarded as the originator and prototypical representative of non-cognitivism.

“Psychology” without ontological commitment

The terminology that gained currency in the early 1900s gave expression to a mentalistic approach. “Psychology” signified the inquiry into the mind, its workings and its contents, and that included contents of thought. In this sense, it was, inter alia, an “investigation aimed at determining the nature of a certain idea, but not the reality of its object”. Hägerström defined value psychology as “an investigation into the nature of value-judgements”. He wrote that it is an investigation into what value is, not into what has value, and that this distinction was insufficiently observed by many eminent authors, while other ones (Comte, Spencer and Mill) neglected the former, formal, question altogether. Today, other words are preferred, such as “conceptual analysis” or “meta-ethics”.

This conception of the nature of philosophical analysis fits in with Hägerström’s insistence the reality of the content of moral beliefs should no more be taken for granted than the reality of the content of religious belief. In a remark critical of Westermarck, he wrote (emphasis added):

we do not mean by “moral value” a tendency to produce pleasure: we mean something else, even if what we mean should be something fictitious. The possibility that morality rests on fictions should not be ruled out a priori.

He made the same point in a lecture series given in 1908: at the outset of the inquiry it is an open question whether morality is fictitious, and this is re-stated in the inaugural lecture three years later (at §61): “a science of morals can no more be based on moral beliefs than a science of religion can be based on religious beliefs”. At the outset of the inquiry, the question of validity is open, and error theory is not ruled out.
A paradox

Non-cognitivism and error theory are incompatible: the former one has it that moral ideas are neither true nor false, the latter that they are all false. But complications arose. Bertrand Russell had at one stage tried a variety of anti-objectivist positions and had flirted in passing with the error theory in a talk to the Cambridge Apostles in 1922: ethical judgments all claim objectivity and “this claim, to my mind, makes them all false” (see Pigden 2007). How could this be?

Here is a possible reconstruction. Assume, plausibly, that \( \text{It is true that } p \) is equivalent to \( p \). Now, let \( p \) be a moral judgement, e.g., \( \text{Eating people is wrong} \).\(^{56}\) To maintain that it “makes a claim to objectivity” presumably means that when spelt out, it would be formulated as a conjunction:

\[
\text{Eating people is wrong and it is objectively true that eating people is wrong.}
\]

It could then be argued that if the second conjunct is false, then the conjunction is false. And if the conjunction spells out our common view that eating people is wrong, then that common view is also false.

But to argue in that way seems fallacious. A conjunction is false if and only if one conjunct is false and the other conjunct has a truth-value. In the conjunction above, let the second conjunct be false. It remains an open question whether the first conjunct has a truth-value. So we are not entitled to infer that the conjunction is false.

Again, take the moral judgement: \( \text{Eating people is wrong} \). If asked, “Is that really so?” or “Is it true?” most people will answer yes, and they will answer yes precisely because they believe that eating people is wrong. According to non-cognitivism, \( \text{Eating people is wrong} \) is not true or false, and therefore \( \text{It is true that eating people is wrong} \) is false. On the other hand, \( \text{It is true that } p \) has the same truth-value as the simple \( p \), and accordingly, \( \text{It is true that eating people is wrong} \) has the same truth-value as the simple \( \text{Eating people is wrong} \). Since the first is false, they are both false. Therefore, when people answer “yes, it is true” they say something that is false and equivalent with the moral judgement itself, which therefore is also false. So non-cognitivism collapses into error theory.

This piece of reasoning is also specious. It disregards that “true” can be used in different ways. In one way, it is used to assert that something
is objectively the case. Used in another way, it indicates assent more broadly, without ontological commitment.

By distinguishing two levels, one for moral judgements and another for beliefs about the nature of moral judgements, the paradox now discussed is easily disentangled.

Two levels
The following example may show that belief in the objectivity of certain ideas can be false, even if the ideas themselves are not. A young child knows words in the language and believes that they are natural names. That is, the child believes that the name he has been taught for objects of a certain kind belongs to them by nature, as if it were tagged on to them in a quasi-physical way, or by a divine fiat. This belief in the objectivity of names is false. When the child teaches his younger sibling the name that he has himself learnt, what he is saying is not false. But if he tells his sibling that the name belongs to the object by nature or by divine intervention, what he is saying is false. A belief need not be false because a belief about it is.

This was certainly Hägerström’s view. These are the words that concluded his lectures in May 1911:

It is the religious element in morality that is false, by no means the moral element.57

He would say the same of factual elements other than religious ones, such as, for instance, social custom, or a supposed world-order (as conceived by the Stoics or as conceived in modern biological or historicist theories of evolution).

Hägerström’s Error Theories

A fictionalist episode
Curiously, in one series of lectures in 1913, Hägerström did try a curious variant of anti-objectivism. It sounds very much like an error theory of moral judgements, combined with an explanation why their falsity should not prevent us from accepting them.58 He distinguished direct valuations, that is likings and dislikings, being pleased or displeased,
which occur in particular situations. We bring to expression our spontaneous admiration for a courageous act. Such expressions lack truth-value. The case is different with general moral valuations, e.g. that courage is admirable. In respect of them, it turns out that he does not argue that we should accept such an idea although it is false. His argument is that we should, indeed that we have to, accept the falsehood that these non-judgements are judgements. These general valuations seem to be judgements, but they are not. The reason is that all judgements refer to reality and are to the effect that something is the case, but the indirect valuations refer not to what is, but to what ought to be, and are therefore not judgements. They cannot stand in logical relations: only genuine judgements can. Still, it is indispensably necessary for us regard these non-judgements, these indirect valuations, as if they were genuine judgements which can stand in logical relations. Our social interaction would be in total chaos, and our individual lives would collapse if we could not carry out reasoning in terms of 1. ends/means; 2. general/particular; 3. value-comparisons. All such reasoning obviously involves logical relations. But these non-judgements are not capable of being in logical relations. All this applies to value-judgements in general. As for the moral ones, Hägerström insists that we also need to treat the highest good, an absolute value, as if they were real. We have to objectify our moral values, and go beyond merely individual desires. Again, this objectification is false, but necessary for the survival of our species.

This is what life demands of us. But scientific truth is independent of our interests, and the contradictory character of objective values remains a fact.

The idea that it is necessary for human and social life to think along objectivist lines despite the absence of a factual basis appears also in other anti-objectivist writers. Alan Gibbard, for instance, argues that the way moral judgements mimic factual ones and create appearances of objectivity promotes social co-ordination. That explains in evolutionary terms our tendency to objectify moral discourse, and provides a reason for judging this tendency useful (Darwall et al 1992: 146n.). A similar view is part of the fictionalism proposed by Richard Joyce (2001).
In this one lecture series Hägerström had daringly proposed that we have to accept falsehood. He soon abandoned this view. He was, after all, a passionate truth-seeker.

But his argument was not in support of the error theory that all moral judgements are false, and yet have to be accepted. What he suggested, in this one lecture series, was that we have to accept the common belief in their objectivity in spite of its falsehood.

So we have here two different error theories. One is analogous to atheism, and is the thesis that (qualifications aside) all moral judgements (or all moral judgements of a certain kind) imply falsehood. The other is the thesis that all claims to objectivity of moral judgements imply falsehood. Of course, each of these two theses is properly called error theory only if the alleged error is supposed to be widely made within a society or a culture. If “objectivity” is understood in a certain sense, the second thesis may be cherished by some philosophers, but not by people at large. In such a case, it would be improper to call it an error theory. It would simply be one thesis among many that fail to find favour with philosophers.

**An Error Theory about Duty and Rightness?**

Hägerström’s theory of the nature of duty, rightness and related notions is set out must fully in 1953in: 56–256 (1917fo). He noted the similarity—and the difference—between being commanded and having a duty. A point of difference is that a command is not a judgement, but the thought that an action is one’s duty certainly seems to be. A point of similarity is that a conative impulse results from a successful command, and the same is the case when we think that a particular action of ours is our duty, or, with an equivalent expression, that it is the (morally) right thing to do. Such thoughts, about duty and the right thing to do in a particular situation, relate to a system of norms which in general indicate the difference between right and wrong. So, in the particular situation, my thought that I ought to help someone in trouble, that this is the right thing to do, that this is my duty, involves a conative impulse. Here, an internalist account applies. But it does not apply to our contemplation of the general rule that it is right to help people in trouble.
The rules are inculcated by parents, teachers, the social environment, religious authorities and the legal system. What began as mere commands becomes internalised and transmuted in one’s mind into the idea of the rightness of certain modes of conduct. Words like “must”, “shall”, “ought”, “right” become detached from the sources of influence and become attached to the conduct itself. The words seem to designate a property in the abstract, although we cannot form any idea what that property is (141). So logical reasoning involving rightness is not different in principle from “scholastic” way of thinking which operates with a pseudo-concept like “causa sui”. Hägerström belonged to a generation for which “scholastic” had derogatory connotations (like “metaphysics” as used by positivists, or “positivism” as used by sociologists). Now, there is nothing that the expression “causa sui” designates, and Hägerström would certainly claim that assertions which imply that something is causa sui are not true. He took the same view of rightness. One assumes, incorrectly, that there is something that the word denotes. The belief arises that “must be done” belongs objectively to certain actions (or omissions) (154). “The rightness, according to the presupposed system of norms, becomes ascribed to a certain action as a property, the apprehension of which carries with it an immediately evoked feeling of conative impulse” (154). The right action involved in the consciousness of duty is the one that follows from the system of conduct which has the objective property that it “ought” to be carried out (157). Conscience attributes to an action this “must” or “ought” as an objective property (158). We conceive of the system of conduct as objectively bound up with an expression of command. “Such a notion is completely devoid of truth” (159). Still, the norm expressed (e.g., that it is right to help those in need, that it is wrong to break a promise) must be a judgement, and yet, the predicate does not designate (162). At this point the argument takes a curious turn. Hägerström introduces the idea that since the norm must be a judgement, the only thing that can be thought of as belonging as a property to the prescribed conduct is the linguistic expression itself (“ought”, “must”, “right” etc.), as if it were a label. But he stresses that nobody can believe that a system of norms of conduct “has the perceptible expression of command (i.e. words like “ought”, “right”, etc.) as a real property” (170); also, “the expression of command transmuted in the consciousness of the members of a society
into a real property of the system of norms” (194) The system of conduct has the expression of command connected with it as an objective property (195).

Do the statements assembled above amount to an error theory? In other words, do they imply that statements of the form “x is my duty” “x is the right thing to do”, “breaking a promise is wrong”, “we ought to help those in need” are false or imply a falsehood? Again, it is not these that are said to be “completely devoid of truth”. It is the belief in their objectivity.

If Hägerström had wanted to argue that such statements are all false, he would either have felt obliged to offer an explanation why we must nevertheless use them and accept them, or, more likely, he would, with his ardent commitment to the search for truth, have made it clear that we should stop engaging in falsehood and desist from asserting such statements altogether.61

Some years later, Hägerström wrote 62 that if understood as objective realities, common ethical notions like personal worth, the ultimately good or desirable, right and wrong, are chimaeras, because they are actually expressions of emotion or volition which are attributed as if they were objective properties, to a person, an act, or to the realisation of cultural values or general happiness. If we think of them as objective, we feel as compelled by such ideas as by truth itself. We have here a residuum from inherited commands and prohibitions which remain before our minds without any thought of a person commanding. Thus “you shall!” is tied directly to a kind of actions, which are then regarded as right/wrong.

The question is whether we can or would feel compelled, perhaps “as compelled as by truth itself” if we do not think of them as objective. Hägerström’s answer would be in the affirmative. Our free commitment to certain values and ideals would inspire us, rather than the mistaken belief in their objectivity.

It seems, then, that there is an error theory in Hägerström, but one that is compatible with non-cognitivism. Moral ideas are not true or false, but belief in their objectivity—which he took to be a commonly held belief—is false.
Hägerström did not extend his non-cognitivism to all moral categories. He opted for an error theory for the idea of rights, and for the idea of retributive justice. They have a common feature: an act contrary to justice or in violation of a right immediately implies the permissibility of coercion and the use of force. This would provide a moral reason against the use of these concepts.

Hägerström was not only an analytical philosopher; he was also a radical philosopher. He was not a detached indifferent observer of human affairs. He retained from his strongly religious upbringing a belief in the theological virtues of faith, hope and charity, albeit in a modified form: a faith in the ideals of the Enlightenment, a hope for the continual progress of the human race, and a wish to work for the benefit of mankind. He felt with uncommon intensity that this was his vocation.63

Coercion and the use of force cause much misery, and if justified in terms of rights and retributive justice, those notions would be undesirable from a moral point of view, and detrimental to the common good. On these grounds, a strong moral argument could be advanced against them. But a rejection on moral grounds can only convince those with whom there is some shared moral ground. Others would remain unperturbed, but they could be moved, if the ideas were shown to be contrary to reason, shown to be theoretically unacceptable—if, for instance, an error theory were to apply to them. The ideas of rights and retributive justice, which justify violence, could then be shown to be suspect not only morally but also theoretically. The case against these concepts would be strengthened if their use was shown to be not only harmful but also false. The knave would be shown also to be a fool.

Additional support for the view that these notions were theoretically suspect could be found in the new social sciences which were making rapid progress: sociology, social anthropology and ethnography. Hägerström was well acquainted with current work in these fields. Much of it seemed to confirm Comte’s theory of historical evolution of human thought and culture through three stages. The first stage is theological: animism/fetishism, polytheism, monotheism. The second stage is metaphysical. It can be regarded as a “rationalised” version of the previous stage: The third stage, which mankind is just entering,
is that of science. Hägerström found the pattern broadly appealing, and Comte-inspired passages abound. He once said that it certainly applied to the development of ideas of law and justice in European history, but he took the three-stage pattern to have wider application. In the spring semester 1907 he suggested that the nature-philosophies of Schelling, Hegel and Schopenhauer were a refined form of the superstitious anthropomorphism of the savages, and in 1925 he mentioned “the usual path from superstition to metaphysics” with reference to legal concepts and theories.

Rights

Superstition was the topic of a talk by Hägerström in the Verdandi society in 1911 about six weeks after the inaugural lecture. He wanted to discuss not the explicit superstitions which openly let supernatural powers act in the natural world—e.g., the immaculate conception, or the power of prayer to bring divine power into action—but rather social superstitions, such as the belief in the binding force of the properly created constitution of a state, ideas of sovereignty, the sacrosanct character of personhood—and the belief in rights. He argued that abandoning such beliefs was highly desirable for the sake of people’s genuine interests and welfare. This is so, because a rights-violation is seen as an attack on the personality of the right-holder and justifies coercion and the use of force against the transgressor.

Beliefs in rights may protect society, but they may destroy it because they leave too much scope for violence. Hägerström had in mind the conflicts between sovereign states. He also had in mind the struggle between parties who, rightly or wrongly, were seen as oppressors and oppressed (workers, ethnic groups, nations). In these conflicts, violence, justified in various ways as a response to rights-violations, real or alleged, was a constant threat. The basic principle of respect of rights, in their nature non-negotiable, conflict-provoking and leaving no room for compromise, would be replaced by a principle of equitable respect for the welfare of all, which allows for negotiation and adjustments of conflicting interests based on a shared concern for the common good. Within a society, the reduction of class difference would make this possible. Ideas of rights had been of great historical significance and,
like religious doctrines, they had in the past had a civilising influence and contributed to the general progress of mankind. Although mistaken, their social function had at one stage been beneficial. But, he thought, they were now doing great harm and little good in the modern world and should be abandoned in favour of more enlightened ways of thinking. The time had come for a different organising principle for our social and political life, one that directly and explicitly promoted peaceful resolution of conflicts of interest for the sake of the common good.

This amounts to a moral argument against appeals to rights in moral and political theory. But the case against such appeals would be even more compelling by showing they rest on a mistake. Rights cannot have a place in nature, and so we get an error theory: belief in rights is fictitious and akin to religious notions (1963rs: 53, 58f [H 116: 3 HT 1917]). Our ideas of rights originate in superstitious beliefs in invisible powers, now disguised in theories of a more metaphysical kind.

Could the same be said of ideas of duties? Hägerström explicitly distinguished purely moral duties from those which have their basis in another person’s right. Non-fulfillment of the latter makes coercion against the offending part morally permissible (1963rs: 19). (In the terminology introduced by Samuel Pufendorf, duties of the latter kind are perfect, the former imperfect.) The discussion of the concept of a right would have no direct bearing on the so-called imperfect ones.

An important set of arguments designed to show that rights and obligations (and such duties as arise as correlates to rights) are non-factual are presented in 1953in: chapter 1.68 Discussing these arguments, Benn and Peters made a rather surprising statement (emphasis added):

Hägerström is practically admitting that the attempt to elucidate ‘X has a right to R’ as if it described a set of facts, fails to explain its meaning at least in some of the contexts in which it is ordinarily used.

Here, “admitting” is preposterous. The word should rather be “insisting”.

Next, the two authors raise an objection:

But he is surely wrong to conclude on that account that it describes something magical, which enters the world of reality only when it induces
people to act in particular ways because they subscribe to the illusion. Hägerström’s search for alternative forms of expression that will describe the same set of facts as ‘X has a right to R’ is mistaken precisely because it does not describe facts at all; and the problem arises only because of a failure to distinguish normative and descriptive discourse.

At first blush, this is sensational. Hägerström, of all people, failing to distinguish normative from descriptive discourse! The authors misunderstand his “search for alternative forms of expression” when they say that the search is mistaken. In fact, the search aims to establish that the belief in the factual nature of rights is mistaken.

And yet, the quoted statement makes a valid point: Hägerström could have taken the non-cognitivist path, rather than opting for an error theory. In other words, the failed search for facts described by statements of the form “X has a right to R” could have led him on to non-cognitivism and to the conclusion that they do not describe facts. But instead, he took the error-theoretical path, inferring that the expression is descriptive—and false.

In a later essay Hägerström remarked that when we buy fish in the market, we practise magic, insofar as we follow the popular way of thinking about the right of ownership. As mentioned above, for a theory to be an an error theory properly so called, it must have as its target a belief that is not only false but also widely held. In Hägerström’s account that condition is satisfied: the belief in rights is an error and it is part of the “popular way of thinking”. The popular way of thinking of rights is, according to him, to think of them as powers, but not of a kind have a place in nature, in the real world.

Duties which are correlates to a right are likewise theoretically suspect. Many moral duties do not arise from rights, so the error theory of rights does not imply an error theory of duties generally. But especially in the early 1920s, Hägerström may seem to incline towards adopting an error-theory for duties generally. Still, when he wrote that “present-day duty-morality is superstitious—not only a remnant of past superstition” what he had in mind was primarily the ideas of desert and just retribution which, he claimed, present-day duty-morality associates with failure to do one’s duty.
Two Kinds of Anti-Objectivism

Retributive Justice

As already mentioned, belief in rights was for Hägerström morally suspect and all the more to be rejected for being false. Rights-violations make the use of force morally permissible. The offender is obliged to compensate for damage caused and to be punished for his violation. This is based on the belief in the sacredness of the human person, which makes any rights-violation a quasi-sacrilege. Another belief with roots in superstition is the belief in the right of retribution. Hägerström seems to suggest that our concept of retribution has its source in divine vengefulness, and would be another piece of superstition, which has survived in the categorical demand that the offender must suffer. When internalised, the fear of an angry God turns into pangs of conscience. When the god is de-anthropomorphised, the demand is thought to arise from the moral order itself, but the demand remains the same: it is a demand to increase evil by adding on more evil to no purpose and merely because the act took place. These ways of thinking have during millennia been imprinted in the way people think, and there is in this respect no essential difference between religious and non-religious conceptions of retributive justice. He took strong exception to them.

Hägerström also had an error theory about guilt in the sense of deservingness of punishment. This presupposes that agents have free will. But there is none unless contracausal freedom can find a place in nature. And that is not possible. We do not possess a faculty capable of breaking causal chains. The belief in free will is a survival of primitive animism. It is a superstition. In the past, it served important social functions. In our time, it does not.

Concluding Remark

From 1911, Hägerström’s meta-ethics was non-cognitivist: moral ideas are not true or false. Some of his later proposals can invite an error-theoretical interpretation, but arguably that which he declares false is not the moral norms and values, but the belief in their objectivity, a belief which he took to be commonly held. For some moral categories, especially rights and retributive justice, he did propose an error theory
which served to give added strength to his moral condemnation of the use of these concepts.

Where does this leave Hägerström’s concluding declaration in his inaugural lecture that that moral philosophy as a science must be value-free? His lectures and published writings, are on the whole analytical and historical. But many of them reveal nevertheless an intense preoccupation with right and wrong, good and evil, and benefit and harm for the individual, for society, for culture or civilisation, for the human race. He would, I think rightly, claim that there is no inconsistency in this. “It is not scientifically incorrect to make moral evaluations”.72 One thing that the principle of scientific value-freedom rules out is a view to which he had himself once subscribed, i.e. that the task of philosophical ethics is to establish philosophically and rationally an ultimate highest good. The appeal to this principle is a declaration that our basic moral commitments cannot be theoretically justified.

Notes

1. A rural province in southern Sweden, sometimes humorously supposed to be somewhat behind the times.

2. H 4: 5 Filosofien som vetenskap (Philosophy as a science). First published as 1980FV.

3. Eucken, who was professor in Jena from 1874 to 1920, explicitly attacked naturalism in his Nobel Prize speech. For a brief overview, see e.g. Pietri Liukkonen, "Rudolf Eucken", at http://www.kirjasto.sci.fi. Grave’s article is about W.R. Boyce Gibson (1869–1935) who was a translator, exponent and great admirer of Eucken.

4. The award, and the invitation to deliver the Olaus Petri lectures, no doubt owed something to the influence of Nathan Söderblom.

5. He contrasted his naturalism with the kind of empiricism that find no place for natural necessity. H 109: 1: 156 Boströms och Euckens etik (The ethics of Boström and Eucken) VT 1910.


7. In Canberra, 26 July 2005, when introducing the Jack Smart Lecturer that year, Timothy Williamson.

8. A discussion falls outside the scope of this paper. The three main sources are: (i) 1908PW; (ii) 1929AH; (iii) Manuscripts on logic and epistemology (H 1: 1, H 1: 2; H 2: 1–H 2: 8).—One part of H 2: 7 was published as 1946EV.


10. He did not name the author of the doctoral dissertation in which Mill was attacked. It was Karl Pira, who, decades later, came to be described as "the last Boströmian".

11. La vérité est en marche, et rien ne l’arrêtera. (Emile Zola, "J’accuse", L’Aurore, 13/1/1898). The Dreyfus affair was a moral earthquake, with strong aftershocks through the whole of the twentieth century. Hägerström was convinced (letters in H 38) that Dreyfus was innocent and that the conduct of the French authorities was inexcusable.

12. On a terminological point: “kognitiv” and “cognitive” had long been current, but the earliest occurrence of “non-cognitive” I have found is in a paper by Herbert Feigl read in Chicago in 1933: 421. Feigl distinguished cognitive from “non-cognitive or emotive” mean-
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ing. The earliest occurrences of “noncognitivism” I have found are also from Chicago: William K. Frankena, 1951: 44–55. e.g., at 47, 49, 51, and S. Cavell and A. Sesonske, 1952, e.g., at 546. Non-cognitivism is usually explained as the view that there are no moral facts and hence no moral knowledge. Knowledge, and truth and falsity, are taken to imply independence of subjective states, such as beliefs and attitudes. Simon Blackburn, whose outlook is anti-objectivist, uses “knowledge” less restrictively and for that reason he prefers “expres-
13. Since the inaugural lecture is reprinted in this volume (pp. 409–428), there is no need for a full presentation here.
15. This chapter retains the somewhat old-fashioned “idea”: other possible words are “belief”, “concept”, “conception”, “opinion”, “proposition”, “representation”, “sentence”, “state-
ment”. In context, misunderstandings are unlikely.
17. ”Endast våra omdömen om verklighet kunna vara sanna eller falska.” 1935pr; 1939su at 115.
18. The work covers much more than the title might suggest. The author was a professor in Tübingen, and later in Berlin.
19. Rättsnormen betraktas då såsom med objektiv giltighet angivande, huru bör handlas, och sålunda äfven såsom bestämmande ett visst handlande såsom värdefullt i förhållande till hvad som är att anse som människans verkliga högsta goda. Värdebestämningar kunna icke hänföras på den verklighet som af förståndet sättes såsom något oberoende af kun-
skapsförmågan föreförligt, därför att de alltid för att äga bestämd betydelse förutsätta ett subjektivt element, känsla. Antagas de därför äga objektiv realitet, så är denna af annan art än den för den teoretiska kunskapen gifna. 1904sr: 3f.
20. Arguments for this in 1987mg: 185–194 (vt 1911); 109: 10b: 4 Den moraliska värderingen (Moral valuation) ht 1913, and in many other writings.
22. Similarly, there can be no “normative science” (inaugural lecture §61). Cf L. Lévy–Brühl, 1906. This book was one which Hägerström recommended for “further reading” at the end of 1934mp, together with Westermarck’s major work and Bergson’s Les deux sources de la morale et de la religion. (For reasons unknown, the advice was omitted in 1939su and subse-
quent reprints.) Lévy–Brühl held the same view, but a direct influence is unlikely, since Hägerström seems to have become aware of his work only later. Poincaré had insisted that there can be no moral science.. arguing that scientific statements are in the indicative but moral ones in the imperative (1912: 225). Again, there is similarity but no direct influence.
23. Såsom rent betraktande finner jag ej något böra. H 109: 1: 2. Boströms och Eucken etik (The ethics of Boström and Eucken) ht 1909 ”For a person in a state of indifference or indeed apathy, ‘ought’ as well as ‘good’ and ‘bad’ would make no sense.” H 106: 1A: 40 Fråge-
uterops- och önskesatser (Interrogative, exclamatory and optative sentences) vt 1922.
24. See e.g., the list of references in Bedke 2012. The author argues that "natural ontology does not suffice for normative truth".
25. Let those who doubt this be brought to respectful silence by an appeal to authority: Averroes (Ibn Rushd) asserted that truth cannot contradict truth, Abelard agreed, and so did the Lateran Council in 1513, Galileo in 1615, Spinoza somewhat later (Cogitata metaphysica 2,8,5), Pope Leo XIII in 1893, Pope John Paul II in 1996.
26. §§5ff. of the inaugural lecture are very similar to Westermarck 1906: 17–20. According to Bertrand Russell, "recognition of the subjectivity of ethics” would lead to "less cruelty,
persecution, punishment and moral reprobation than exists at present” (Charles Pigden 2003: 499ff.). Richard Robinson wrote (1964: 28): “As Professor Nowell Smith [sic] has written, it is no accident that all the great persecutors have been objectivists”. Sed contra: Renford Bambrough (1979: 40ff.) argued strongly against the view that moral objectivism leads to intolerant dogmatism.

27. Here is a small sample: Jean Gerson, theologian, (about 1400), Henri IV, King of France (about 1600), Gregory Sayre, Benedictine moral theologian, (1601), Michel de la Roche, journalist (1725), Heinrich Köhler, professor of philosophy (1738).

28. Bayle 1683, ch. 187: 553—Mr Robert Barnes of the Australian National University, kindly informed me that this is a variant of a story told of Rabi’a al-‘Adawiyya (d. 801 A.D.), cf. Margaret Smith 1928: 98.

29. 1952MF: 151–204 (H 111: 1b Verkligt autonom moral (Truly autonomous morality) v.t 1930).

30. F. Nietzsche, Die fröhliche Wissenschaft, I, end of §5.

32. 1987MG: 95f. (Lecture held 6 April 1911). The characterisation of the slave as a tool used to serve others’ ends comes from Aristotle, Politics, 1254. “Aristotle defines a slave as one who does not pursue his own ends, but whose activity is subordinated to the ends of another.” (David Hawkes review of Chomsky in TLS (web version) read 6-9-2012.)

33. For example: H 109: 10b: 11 Den moraliska värderingen (Moral valuation) v.t 1913; H 107: 3: 31: Värdepsykologi (Value psychology) v.t 1915; H 109: 5: 28 Historiska huvudformer av etik och rättsfilosofi (The main historical forms of ethics and legal philosophy) v.t 1916. Also in a seminar 1 November 1911 which discussed the inaugural lecture. UUB Okat Einar Tegen 453 d: 1, notebook 210.

34. Broad’s presentation is based on 1917FO (1953IN: 56–256).

35. This is a somewhat free rendition of a passage in the manuscript for the inaugural lecture, H 11: 2: “I det att det moraliska intresset af honom upphöjes till en absolut vilja i oss, blir det något för vårt verkliga ändliga vilja yttre, som ställer sina krav på den samma. Men under sådana förhållanden kan det moraliska intresset ej göra sig gällande utan känslan av tryck och därmed af fruktan.” 1987MG: 39.


37. Ethiska problem (Ethical problems) ht 1923; 1934PM.

38. Hägerström mentioned Guyau in H 109: 10b: 6 Den moraliska värderingen (Moral valuation) HT 1913. The insistence on autonomy was widespread: Brentano, for instance, was praised for giving a foundation for morality independent of a higher authority (Kraus 1919: 6).


41. For instance: it remains unexplained and apparently inexplicable why that which is intrinsically good, i.e., has this intuitable sui generis property, ought to be protected or promoted or honoured. The objection was raised by Alf Ross, who was at the time strongly influenced by Hägerström, in Ross 1933: 78, by A.J. Ayer 1949: 240, Richard Robinson 1964: 23, and many others.
42. die aber natürlich hinsichtlich der Frage ihrer Objektivität der allgemeinen, auf die Abhängigkeit des Wertes vom Gefühl und Verlangen fussenden Kritik unterworfen sind. 1929AH: 45; 1964PR: 71.

43. The new argument had been sketched in H 107: 3 Värdepsykologi (Value psychology) VT 1915 and in 1917FO (1953IN: 135).

44. Petersson 1973: 175–186 provides a useful discussion.

45. Matthew Chriissman (2012: 450) suggests that the meta-ethical debate about moral properties would benefit by thinking of "ought" and related notions as expressing modal claims; this would, according to him, be a novel way to pursue the metaethical debates.

46. Lectures held in 1918. See Bostock 2012: 72. Of course, Russell’s views about logic and ethics underwent many changes.

47. This was discussed in lectures: H 106:1 A Fråge-, utrops- och önskesatser (Interrogative, exclamatory and optative sentences) VT 1922; H 106: 3 Frågans psykologi (The psychology of questions) HT 1927–VT 1928.


49. Tegen (1884–1965) was professor of practical philosophy in Lund 1931–1937, and then in Stockholm until 1951. A more refined formulation "All non-negative atomic moral judgments are false" was advanced by Charles Pigden, "Nihilism, Nietzsche and the Doppelganger Problem", 2007: 451. The search for an adequate formulation of moral error theory is complicated by the fact that error theorists do not want to assert that a moral judgement and its negation are both false.

50. Tegen’s letters and notebooks supply strong evidence for this. UUB Okat Einar Tegen 453.

51. “[E]n rent psykologisk undersökning som man endast har till syfte att bestämma en gifven föreställnings karaktär, ej realiteten af dess objekt.”1907MF: 277. Similarly in 1904SR: 49, which emphasises that "psychology" in the context refers to an inquiry into the content of an idea, not its causes.

52. H 107:1: 5 Värdelära och värdepsykologi (Value theory and psychology of value) HT 1917–VT 1918.


54. 1907MF: 275. The comment relates to Westermarck (1906), or the German translation by L. Katscher.


56. This proposition is debated in “The reluctant cannibal” (1960), written and recorded by the English comedians Flanders and Swann.


59. He took these notions to relate to volitions and conative impulses, and distinct from value-concepts which relate to the emotions.

60. In this paragraph, the parentheses enclose page-numbers in 1953IN.


63. See the biography by Margit Waller, Axel Hägerström, människan som få kände, Stockholm: Natur och Kultur 1961, and UUB H 38 (letters to family members).
64. Note dated 1925, at 128ff. of the “blue book” (UUB T 3 k: 106), which consists of 174 typed sheets bound with blue covers with notes from Hägerström’s seminars and conversations with him. The notes were no doubt taken by Karl Olivecrona and typed by his wife.
65. The words are in a proof copy of the 1929AH (ht 4: 1A), dated 1926. The text of the proof copy was to be published in vol. 6 of the series Die Philosophie der Gegenwart in Selbstdarstellungen. Due to changed scheduling by the publisher, it was held over for vol. 7, 1929. In the meantime, Hägerström revised the text radically. But on this point there was no change of opinion.
66. A version of the talk was published as 1913sv.
67. In the manuscript h 14: 5 he had originally written “elimination of class differences” but he then replaced “elimination” with “reduction”.
68. 1953N ch. 1 is a translation of the introduction to 1927R0. See also the translation of the introduction to 1929M1 at 429ff.
69. 1933vk. Hägerström had in 1930 promised to write a paper with this title for Forum Philosophicum, but this excellent scholarly journal, edited by Raymund Schmidt, folded too soon.
70. “Den nutida pliktmoralen vidskeplig—ej blott av gammal vidskepelse.” h 119: 5: 2 Om vidskepelse och förnuftets seger (On superstition and the victory of reason) ht 1923.
71. Hägerström alluded very frequently to Marx’s “Die Tradition aller toten Geschlechter lastet wie ein Alp auf die Gehirne der Lebenden”. The 18th Brumaire des Louis Napoleon, 1852.
72. 1987mg:195 (h 105: 6 kunskapsteoretisk grundläggning av den praktiska filosofien (Epistemological foundations for practical philosophy, vt 1911). He would have agreed with P.F. Strawson (Strawson 1974: 25): “we are not to suppose that we are required, or permitted, as philosophers, to regard ourselves, as human beings, as detached from the attitudes which, as scientists, we study with detachment.”

References

The following lists of manuscripts and publications cover works by Hägerström cited in this chapter with the exception of his published works that are listed at pp. 435–443 under the heading “Axel Hägerström’s Published Works: Select Bibliography”.

Manuscripts

This list incluences call-numbers and short-titles of lectures or talks by Hägerström mentioned in this chapter. (Call-numbers which include a three-digit number indicate a typed transcript of a manuscript.) HT = autumn semester; VT = spring semester.

H 102: 1 Epistemology and theory of relativity (1930s).
H 105: 5B Rättsideers sanningsvärde (The truth-value of ideas of rights) HT 1908.
H 106: 3 Frågans psykologi (The psychology of questions) HT 1927–VT 1928.
H 106: 1A Fråge-, utrops- och önskesatser, (Interrogative, exclamatory and optative sentences) VT 1922.
H 106: 1B Historiska huvudformer av etik och rättsfilosofi (The main historical forms of moral and legal philosophy) VT 1922.
Two Kinds of Anti-Objectivism

H 107: 1 Värdelära och värdepsykologi (Value theory and psychology of value) HT 1917–VT 1918.
H 107: 3 Värdepsykologi (Value psychology) VT 1915.
H 108: 4 Värde- och viljepsykologi (The psychology of valuing and willing) VT 1932.
H 109: 10b Den moraliska värderingen (Moral valuation) VT 1913.
H 109: 5 Historiska huvudformer av etik och rättsfilosofi (The main historical forms of ethics and legal philosophy) VT 1916.
H 111: 5B Den moraliska värderingens grundformer (Basic forms of moral valuation) VT 1929.
H 112: 3 Kritik av skuldöverläggningar (A critique of conceptions of guilt) probably HT 1923.
H 119: 3 A lecture on Rousseau VT 1925.
H 119: 4 Etiska problem (Ethical problems) HT 1923.
H 119: 5 Om vidskepelse och förnuftets seger (On superstition and the victory of reason) HT 1923.

Publications

Knowledge, Language and Morals

Maier, Heinrich (1908) Psychologie des emotionalen Denkens. Tübingen: Mohr (Siebeck).
Sellars, Roy Wood (1922) *Evolutionary Naturalism*. Chicago: Open Court.
Smith, Margaret (1928) *Rabi’a the Mystic and Her Fellow-Saints in Islam*. Cambridge: The University Press.
Fact vs Value is a perennial issue in social science: The normative and its universal or local character became a central problem in nineteenth-century philosophy. This sets the background of Axel Hägerström’s theory of value. His intellectual autobiography records his early interest in neo-Kantian epistemology, and his later emancipation from it. In many respects, this development paralleled that of Weber, Simmel, and Kelsen. A central problem for them was that of finding a place for values in a world of facts. The anti-metaphysical stance that Hägerström came to adopt radically rejected the assumption that there is such a place: there is no necessary contradiction between faith and science, only between science and metaphysics. Topics dealt with include the relation to the emerging logical positivism and its subsequent aftermath. Also to be explored are the sources of inspiration for his theories, where thinkers as disparate as Meinong and Nietzsche have to be considered.
Neo-Kantianism produced two separate movements or schools, and two distinct problems, with a strong element of dependence, and ultimately intermingling, between them. The first problem is associated with the notion of values, the second, in current terminology, with normativity. We can see the genesis of each problem in the writings of the founders of the two schools of neo-Kantianism. The slow demise of neo-Kantianism was a product of the interaction between the two problems. It led, in the end, to an intractable kind of relativism, a relativism about the basic objects about which thought was supposed to be “objective”. This intractable problem was the motive for the attempts to purify various forms of thought of the elements which generated the problem. In a word, the word of Hans Kelsen, these were ideological elements.

Hägerström’s thought was a product of this moment, at which it had become evident that neo-Kantianism not only would not solve the problem of objectivity but that its attempts to do so characteristically ended in ideology, and some of its features become clear when they are contrasted with the thinking of his contemporaries who faced the same situation. In the case of law, these included Weber and Kelsen. Hägerström commented at length on Kelsen. Kelsen commented at
length on Weber, was aware of and influenced by Weber’s “Objectivity in Social Science and Social Policy” ([1904] 1949), and published in Weber’s journal, the *Archiv für Sozialwissenschaft und Sozialpolitik*, from 1914 on. Kelsen was intensely interested in the problem of the relation of philosophy of law or legal science to the sociology of law, and the problem plays a fundamental role in his thought. Weber in turn seems to have taken on some of Kelsen’s key ideas about the intellectual properties of legal systems. These ideas are one of the subjects of Hägerström’s critique of Kelsen, and they have a long and checkered subsequent history.

In this chapter we will explain the background to the problem of objectivity and ideology, explain how each attempt at purification was an attempt to deal with it, and indicate how Hägerström deviated from these two famous contemporaries. Each of them was extricating himself, with only partial success, from the problematics of late neo-Kantianism and the particular issues produced by its language of concept and reality. Each of them had a distinctive view of the problem of values. What I will suggest, however, is that the differences between them was not the product of value theory, but of their account of objects, notably the law itself. The relationships between the relevant ideas, however, are complex.

This may seem like historical arcana. It is not. The issues that entangled Weber and Kelsen reappear today in only slightly different guises in such forms as the internal–external distinction in the philosophy of law and the problematic circular doctrines of present-day normativism as formulated by such philosophers as Robert Brandom and John McDowell. In the conclusion I will try to draw out some of these persisting issues and show how limited our escape is from the philosophical world of late neo-Kantianism, and why Hägerström’s response to its concerns is still relevant.

**The Two Problems of Neo-Kantianism**

The core idea of the Marburg school was that topics like ethics are an intellectual domain that can be understood to be constituted by a distinctive idea, arranged in a hierarchical order of concepts that can be reconstructed philosophically. In the case of ethics, the idea that made sense of the various judgements we make ethically was the idea of justice.
Thus, ethics is an ordered domain, about which there can be a science, or *Wissenschaft*, which specifies these relations in accordance with this idea.

Hermann Cohen was the originator of this line of reasoning, and he chose the conceptually ordered domain of ethics as his main case. This was a realm ordered not by a natural principle, such as causality, but a normative one: justice. The systematically ordered character of the domain of justice was, conveniently, already established: the law was a conceptually ordered normative domain. This reasoning led to pluralism: there were as many object domains as there were conceptually ordered fields. Thus there were normative sciences, involving those domains organized around normative constitutive concepts; and non-normative ones, involving those domains organized around natural concepts, such as causality. There was consequently a problem of dualism, a problem of the ultimate relation between these kinds of sciences. Cohen’s student and successor Ernst Cassirer resolved this in a revealing way: by arguing that causal claims presupposed a concept of causality, and that this concept was and could not be a part of nature, so the dualism had to be resolved, on the highest level, by acknowledging that the “natural” itself is constituted by the conceptual (Cassirer 1957: 101). The arguments throughout are transcendental: the solution was the discovery of our inescapable dependence on higher or more general concepts.

The Heidelberg or Southwest school of neo-Kantianism started with a different set of problems: the irreconcilable character of the conflict between different ways of approaching the domain of psychic life. If one assumes that people are natural objects governed by more or less ordinary laws, one gets a certain kind of psychology consisting of certain kinds of facts. If one assumes that people have souls, one gets another kind of psychology, with another set of facts. No evidence will decide between these approaches: each constitutes its subject matter in its own way. They are, nevertheless, in some sense about the same thing, and they compete. But there is no way of deciding between them: their constitutive premises are given neither by reason nor by empirical reality. This was something different and more problematic than mere pluralism about object domains: it implied that there were conflicts that were in some sense within the relevant object domains that could not be resolved.
The two approaches shared the following idea: the normative sciences, and perhaps all sciences, presuppose something non-empirical, and this non-empirical thing is related to values, or something value-like rather than natural, such as the symbolic order. Call this normative, for convenience, to distinguish these constitutive valuative presuppositions from values in the sense of goods or ends that one might choose, rationally or otherwise. In these accounts values are either ordered in a hierarchy of presuppositions or are matters of choice. The problem that bedevilled both forms of neo-Kantianism was this: what if the values or value-like stuff at the top of the presuppositional hierarchy, which one obtained at the end of the transcendental arguments, was itself an ungroundable choice? This would imply that other choices were equally rational and thus a kind of relativism at the most fundamental level of philosophy. This seemed, however, to be the price of the form of transcendental argument used by neo-Kantianism itself.

If values or normative value-like constitutors are presupposed by every kind of knowledge or fact, what could ground it? The neo-Kantian answer was that it was grounded by the fact of their transcendental necessity in validating the judgements within the domain. This nice bit of circular reasoning, however, worked only if there was no dispute about the contents of the domain. If everyone agreed on what justice was in the cases in the domain, it would make sense to ask what concept of justice validated these judgements—or in transcendental terms, what concept of justice was presupposed by the validity of these judgements. One would then reason, transcendently and circularly, that if the judgements were valid, this validating concept was also valid. If there were disagreements, there might also be rival validating concepts of justice, and even rival definitions of the domain itself.

In field after field, this is precisely what transpired. As Georg Simmel put it in relation to sociology, the types of questions the field asks

[…] cannot be answered by the ascertainment of facts. Rather, it must be answered by interpretations of ascertained facts and by efforts to bring the relative and problematical elements of social reality under an overall view. Such a view does not compete with empirical claims because it serves needs which are quite different from those answered by empirical propositions ([1908] 1964: 25).
Sociology, in short, was a typical neo-Kantian science, with a need for an overarching conceptual order. Similarly for the philosophy of law and jurisprudence, as distinct from some areas of law (such as, in the German-language world, international law, which was relentlessly empirical). But the result was not agreement on an order, but a collapse into ideology:

The investigation of such problems, clearly, is more strictly based on differences in world views, individual and party valuations, and ultimate, indemonstrable convictions than is the investigation within the other two, more strictly fact-determined branches of sociology ([1908] 1964: 25).

In the case of law, rival philosophies reflected rival values, and the problems extended to the metaphilosophical level. Not only did the rival conceptions have different value commitments, they had different conceptions of what values and the value situation were, and different philosophical accounts of the epistemology of law.

The sheer diversity of systems told its own story: despite the many attempts to overcome these issues from within neo-Kantianism, it was in fact the case that there were multiple alternatives on the very highest level, and that there were no facts or decisive philosophical considerations that could decide between them. And it was this diversity that produced both the demise of neo-Kantianism and the quest for some ground outside of concepts, such as life or being, which would allow for an escape from the relativism of systems. Put differently, the hope of neo-Kantianism was that the actual diversity of facts, spheres, kinds of knowledge, and so forth could be reconciled in one overarching philosophical picture; the result, though, was the creation of a plethora of conflicting pictures.

The Project of De-Ideologization

This was the situation faced by every thinker of the period, in one form or another. Some simply went on with the neo-Kantian project, usually insisting that their version avoided ideology. Others made the problem of conflicting values internal to the project, as we will see was the case with Gustav Radbruch and with Weber himself. Others found different
solutions. Carl Schmitt, for example, took over the idea, common to the existentialists, of defining undeniable limit situations that shed light on the real significance of choices that were not within the limits (Schmitt [1932] 1996: 35ff.).

Hägerström sought to escape this situation by doing what the neo-Kantians declined to do: reject the arguments that produced the situation in the first place. But he was trapped in the language of concept and reality that was the source of much of the problem, as were his contemporaries, including Kelsen and Weber. But each of them made a significant step, of a different kind, away from the neo-Kantian problematic in the course of dealing with the problem of ideology. Hägerström took the longest step, and it is only by comparing them on the crucial issue of the relation of the normative science of law to the social science of law that the argument becomes clear.

Weber’s version of this distinction appears in a number of texts, and it was always first and foremost in his methodological thinking. In his early writing on the subject, in the essay known as Critique of Stammler ([1907] 1977), his aim was to eliminate the teleological elements of the concept of law, as well as to discuss how such things as games and exchange, and even rules, could be described from an external point of view without loss of causal explanatory power. Rudolph Stammler was a kind of teleological theorist of the law, for whom the various forms of law were developmentally ordered and reflected steps in the realization of the idea of law. Law, he thought, was co-eval with and inseparable from organized society. “Idea of law” is a phrase we will hear again: it is the mark of the neo-Kantian approach to law. In Stammler’s case, the idea was that the history of law was the progressive realization of the idea of law or legality.

Weber’s discussion set the problem of the relation between sociology and legal science in a particular way: as a problem of the adequacy of descriptions. The point of Weber’s exercise was to show that one could describe a given set of facts—rule-following, law, and so forth—without reference to ends. The distant target was the teleological grounding of natural law itself: the contrast between natural law and social science was a constant seminar theme. The difficulty with this argument was with the concept of concept—a difficulty reproduced in ordinary language philosophy, which revived the issue in its own terms.
The issue can be seen in one of Weber’s own examples, the description of the playing of a game of “Skat”—a game Weber himself played as a student. The concept of Skat is constitutive, and in present language also normative: there is, intrinsic to the concept, some notion of correctly playing Skat, which as a game is itself governed by rules. Describing it without reference to rules seems impossible: one can describe what the players do, but a purely causal description of the physical acts they perform is not going to be the same as a description in terms of the rules of Skat.

The reasoning seems to transfer more or less directly to the problem of law: Kelsen’s argument about the relation of the sociology of law to the law itself is more or less the same as the argument given by Peter Winch against Weber in *The Idea of a Social Science* ([1958] 1990). Kelsen says that:

The sociology of law cannot draw a line between its subject—law—and the other social phenomena; it cannot define its special object as distinct from the object of general sociology—society—without in so doing presupposing the concept of law as defined by normative jurisprudence ([1941] 1957: 270).

And he combined this claim with the thesis that there is only “one concept of the same object”.

There is no sociological concept of the State besides the juristic concept. Such a double concept of the State is logically impossible, if for no other reason because there cannot be more than one concept of the same object. There is only a juristic concept of the State: the State as—centralized—legal order. The sociological concept of an actual pattern of behavior, oriented to the legal order, is not a concept of the State; it presupposes the concept of the State, which is a juristic concept (Kelsen [1925] 2006: 188ff.).

What makes this striking and odd, given the time and context, is its retrograde character in a Vienna in which Logical Positivism had replaced neo-Kantian philosophy of science, and in circles that overlapped with Kelsen’s own.
For the neo-Kantians, following Cohen, the idea was that there was a single, unique and uniquely valid, conceptual order of a domain. Einstein and Poincaré showed that one could make equivalent predictions using different mathematical structures. In neo-Kantian terms, which did not distinguish empirically meaningful and conventional or formal elements of the conceptual order of a field like physics, this was an abomination: there was no unique empirically correct conceptual order, and, therefore, no possible employment of the circular argument for the necessity of the validating premises. If more than one premise would do the trick, neither was necessary in the epistemic sense required by the logic of transcendental reasoning.

In the case of the argument involving Skat, there is another problem: a concealed use-mention equivocation. This turns out to be important in relation to law. The object of the explanation, for Weber, is the actions of the players. To say that Bob thinks he is playing Skat and is playing in accordance with what he thinks are the rules of Skat is sufficient to explain Bob’s actions, and that Jim is also playing in the same way explains his—one need not address the further normative or conceptual question of whether Bob or Jim correctly apprehends the rules of Skat or is in fact playing Skat. The situation is analogous to “Bob believes he is seeing Ghosts and behaves accordingly”. The statement mentions Ghosts, but does not use them as part of the explanation: the belief is part of the explanation, not the Ghosts. Stammler thought otherwise: that mentioning has amounted to accepting the normative validity of law.

This is a distinction that it is not impossible to make in the Kantian and neo-Kantian language of judgements, concepts, and reality, but it is nevertheless a more difficult one to make, and an especially difficult one to make for the kinds of objects that are at issue here, namely laws. Kantian and neo-Kantian language creates a particular form of what Donald Davidson called, generically, scheme–content distinctions (Davidson [1973] 1984). The concept–reality distinction implies a dualism of concept and reality, in which there are, in effect, two realities, the conceptual and the non-ideational or ideationally unformed.

The generic Kantian tradition takes the problem in this way: Judgements are assertions about the application of a concept to reality: this is a dog, applies the concept dog to the real beast, or better yet to the manifold of unformed experience that is constituted as a dog by the
concept. Judgement stands between concept and reality and relates them to produce true judgements. As Kant put it, “A judgement is nothing other than the way to bring given cognitions to the objective unity of apperception. That is the aim of the copula is in them: to distinguish the objective unity of given representations from the subjective” ([1781/1787] 1998, B141). The problem is to distinguish what, if anything, of the representation is objective and in this sense real, but the larger picture is that the subjective and objective contributions to given representations are both “real” in some sense. With sentences, we are in a somewhat different situation: “the dog is black” can be a sentence that is true of no dog, without conjuring into existence a realm of concepts, including the concept of a black dog, or for that matter ghosts.

This Kantian way of thinking becomes especially problematic when we are dealing with objects that are themselves concepts, such as values, or conceptual in character, such as the law and the state. For the neo-Kantian thinker, talking about the state, or values, and making judgements with these concepts, was to already be in an activity of fitting concept to reality. One could have different concepts of the state, the law, and values, but one could not readily deny that there were such things: they already existed as concepts, and, undeniably, they more or less corresponded to something real, which is as much as could be expected out of concepts. No dog fulfils the Platonic ideal of dog, but Fido can match the concept well enough to say that Fido is a dog.

Kelsen, despite and indeed because of his insistence that a fact has only one correct description, realized that he had to break out of the circularities of neo-Kantianism as it was applied in the law. When he developed the “Pure Theory” he stated it was a theory of positive law. As he put it at one point:

The Pure Theory of Law runs counter to the legal theory of our time. The latter, strictly in keeping with its shift to natural law, would dispense with the coercive element as an empirical criterion of law, holding that the law can be recognized by its intrinsic value, by its agreement with an idea of law ([1934] 2002).

The phrase “by its agreement with the idea of law” points to the circularity of the neo-Kantian “legal theory of our time.” Law was defined
in terms of a concept, such as “justice”, and the supposed conceptual order “discovered” in the domain of law so-defined was then used to validate the organizing concept as the transcendentally required presupposition of this order.

The problem for the neo-Kantians was that there was no agreement on the “intrinsic value” which was to be used as the criterion for recognition. The way to break out of this circle was to construct an independent criterion of law. When Kelsen said his theory is a theory of positive law, this is what he meant. But positive law itself requires definition. Kelsen’s reference to the “coercive element” as “an empirical criterion of law” is to his own delict-sanction account of law: positive law is law for which there are actual sanctions. This leads to the following, non neo-Kantian, conception of legal science as an inquiry into positive law:

It is the task of the science of law to represent the law of a community, i.e., the material produced by the legal authority in the law-making procedure, in the form of statements to the effect that “if such and such conditions are fulfilled, then such and such a sanction shall follow” ([1925] 2006: 45).

This is empirical, meaning that it was or could be used in a non-circular way to identify the law, the actual or positive law, as an object which could then be theorized about.¹

Although this is an empirical criterion, it is also a normative one. The key to Kelsen’s argument is that the same physical act (an act of violence or the taking of a piece of property, for example) can be either a delict, a violation of law, or a sanction, an act authorized by law. Kelsen criticized Weber’s sociology of law on the grounds that it could not make this distinction without presupposing a normative account of the law—one which makes a legal distinction between delict and sanction. Reference to the beliefs of the people subject to the law is not enough, for Kelsen, because it applies even to the acts of those who do not know the law or believe in it. This is a bogus argument, in that for both Weber and Kelsen nothing hinges on everyone believing in the law. But it does point to an important issue to which this essay will return: is there an explanatory difference between relying on “belief” in a norm and the normative fact which is believed? Kelsen’s point might be stated as: though it is possible to provide a parallel description of the acts we call
legal which makes no reference to its legal status, this parallel description cannot be the correct one.

**The State of Play in 1911–14**

At the time Hägerström wrote, both Weber and Kelsen took a more or less modified neo-Kantian view of the law as a fact, and attempted to de-ideologize it within this framework. They took different but complementary approaches to the problem. Indeed, there is some reason to believe that by 1914 they did so self-consciously. Kelsen, at least, discussed Weber at length, and Weber modified his own view of the problem about the time Kelsen began to publish in Weber’s journal. Each of them dealt with the problem of the nature of law under the heading of the fact-value distinction. Each of them embraced it. Each was a relativist about “values”. And each attempted to remove valuative elements from their conception of law, though in slightly different ways.

The original Weberian approach was to argue that the law was an object of both normative and explanatory sciences. It appeared under the presuppositions of reality sciences in one form, as a causal object. However, values were part of the constitution of the object. Like any other object of a causal science, it is constituted by the distinctive presuppositions of this science together with the constitutive presuppositions that produce objects of cultural significance or meaning to us. Ordinary language, Weber said, is a *Weltanschauung*, and therefore a valuative stance among others in history: its objects are values. Thus an object like a “law” is an ordinary part of our own historically situated and limited outlook, which in turn must be understood as a value choice out of the possible historical outlooks. We can grant no superiority or special validity to this outlook. So the fact–value distinction has a peculiar feature: the facts are constituted by values, and thus are not value free. All that we can do in the face of this is to bracket the valuative character of the facts, be reflexively aware of this valuative character and thus the value and historical relativity of our ordinary descriptions, decline to draw valuative conclusions on the basis of facts described in these value-infected terms, and, especially, decline to draw valuative philosophical conclusions on the basis of the analysis of concepts, such as legality in Stammler, which are already value-laden and historically relative.
Where does this leave us with normative legal “science”? It can have one and only one role in relation to a reality science: as a source of an ideal-type construed solely as an empirical ideal-type rather than as a normative ideal. As Weber stated,

Whatever the content of the ideal-type, be it an ethical, a legal, an aesthetic, or a religious norm, or a technical, an economic, or a cultural maxim or any other type of valuation in the most rational form possible, it has only one function in an empirical investigation. Its function is the comparison with empirical reality in order to establish its divergences or similarities, to describe them with the *most unambiguously intelligible concepts*, and to understand and explain them causally. Rational juridical concepts supply this need for the empirical history of law, and the theory of the rational calculation of costs and revenues supplies the same service for the analysis of the actual behavior of individual economic units in a profit-economy. Both of these disciplines, in addition to this heuristic function, have as “practical arts” distinctly normative-practical aims. In this respect, these disciplines are no more empirical in the sense used here than are, for instance, mathematics, logic, normative ethics, and aesthetics, from which they differ in other respects as much as the latter differ among themselves ([1917] 1949: 43).

This seems to return us to some version of the original neo-Kantian approach: that there is a domain of law with a discoverable logical order. But for Weber, unlike Kelsen, there is no question of grounding sociology on the claims of any dogmatic science as dogmatic science. The meanings used by sociology are not, as Weber stated:

[…]. some kind of objectively “correct” meaning, or one founded metaphysically upon some “real” meaning. In this there lies the difference between the empirical sciences of action—of sociology and history—and those dogmatic sciences, such as jurisprudence, logic, aesthetics, which seek “true” and “valid” meanings in their objects of study (2004: 312).

Legal science is paradigmatically about the “objectively correct” meaning of the law. But the use of the concepts clarified by legal science, “rational juridical concepts,” is a convenience for “the empirical
 sciences of action” rather than a transcendental condition: the use of the concepts is instrumental: the “one function” is a comparison to reality for the purpose of explanation and understanding, which is to say not for the purpose of judging or determining real meanings.

**The Alternatives**

With this rather complicated background in mind, we can distinguish several alternative ways of stating the epistemological problems of discussing law at this stage in the development of neo-Kantianism and the parallel development of the sociology and history of law. And we can see some of the problems with each of them. In a phrase, the alternatives come down to three: belief, value, and mystery. The list can be illustrated in various ways, but perhaps the simplest way to do so is to take an example from Weber: the ideal-type of rational legal authority. The concept is a thinly veiled sociologization of the concept of the *Rechtsstaat*, a valuative concept. So one may ask what status it had for Weber: what sort of thing is the concept of rational legal authority which is to be compared to reality?

The simple answer, for Weber, was that it was a concept with a constitutive function: it is one of those notions that organize reality into a subject matter. In constructing it as an ideal-type we clarify a concept that we are already employing. But this answer depends on a particular neo-Kantian picture of constitution, in this case one held in common with Emil Lask, Weber’s close friend and philosophical confidant. For Lask as for Weber, the legal sphere was a specific construction out of a preconceptual universe in which legal concepts order the objects in this sphere and infuse them with conceptual content by the time they become objects for us. There is no conceptually innocent object called “the law”. And for Weber this also meant that the object is valuatively constituted, because legal concepts, as with the concepts of everyday life themselves, represent value-choices.

Weber’s way of purifying this content of its valuative character was to acknowledge this constitutive role, and to adopt a methodological rule of drawing no valuative conclusions from them—about correctness and true meanings, for example—at least in doing empirical science concerned with explanation and understanding. This rule amounts to
the acceptance of a division of labour: there are, or could be, sciences concerned with such things, but they have different presuppositions and aims. Kelsen also aimed at purifying with the aim of de-ideologization. But his method was within the limits of the normative science of the law. His aim was to distinguish the purely legal facts that make a law a law. The fact that is both necessary and sufficient to make a law genuinely legal is the fact that it is created in accordance with law. The term law in this context is wholly normative, and the explanation of law as law relies on wholly legal and thus normative considerations. Kelsen was compelled to say some very original things to sustain this argument, but the point is clear.

Values and the normative play a large role in these arguments. But the role, and the nature of values and norms, is still puzzling. Seeing what Weber did with his three ideal-types of authority makes the puzzle even deeper. Start with rational-legal authority. Why do people accept rational-legal authority? One possible answer is this: rational-legal authority is a value-choice, and rational-legality is a value, among possible values. This would give us a metaphysics in which there are “values” which are on the scheme side of the scheme-content distinction and constitute the objects we actually experience, such as laws themselves. A traditional view of Weber as a follower of Rickert leads in this direction. Weber can profess no interest in deciding between values, but he must accept them as a metaphysical reality.

But Weber also had a different metaphysical point to make. To the extent that one’s metaphysics consist of that which is explanatorily necessary, Weber had no place for values: they play a constitutive role and enable description, but that is their limit. If we are to translate his point in the problematic vocabulary of neo-Kantianism, it would be something like this banality: the character of the descriptions we use to individuate actions and cultural facts are de facto value-laden, historically specific, and culturally bound. For Weber, we can understand the tacit background to these descriptions, the world-views they contain, on analogy to explicit value-choices. This is a line of argument with its own problems, as we will see, but for Weber it was something entirely on the constitutive side of the ledger. Belief does all the explanatory work. Weber made this point specifically in relation to the law, where he made the further point that the sociological sense
of legal validity also depends entirely on the beliefs of the subjects of the order.

[…] for sociological purposes, as distinguished from legal, it is only the probability of orientation to the subjective belief in the validity of an order which constitutes the valid order itself. It is undeniable that, in the ordinary sense of the word “causal” there is a causal relationship between this probability and the relevant course of economic action (Weber [1968] 1978: 33).

For Weber, speaking sociologically or causally, rational-legal authority is simply one of the kinds of beliefs in the validity of an order. The explainer in an account of why people accept the law is that they believe in the authority of rationally enacted and ordered law.

There is much in what Weber said about value-choice that fits with this model. He argued that world-views are valutative, and that one could make “free trade” into one’s world-view, though it would be ridiculous to do so. This is a value-choice, but not from any traditional notion of the universe of “values”. But there is more to it, and this “more” appears in connection with each of the forms of authority. H.L.A. Hart himself was struck by a passage in Weber which appears to acknowledge some sort of intrinsic authorizing power of rational-legal authority in addition to the power of sanctions. As Hart’s biographer describes his annotations in the text:

[Hart’s marginal] notes include “reasons for accepting […] reasons for obeying […] external […] personal, and Weber’s claim that an ‘externally’ guaranteed order may also be guaranteed ‘internally’” is heavily marked (Lacey 2004: 230ff.; emphasis in the original).

One finds a similar passage in relation to traditional authority. Weber spoke instead of the basis of tradition as the thought that “valid is that which has always been” ([1968] 1978: 36) and of validity by virtue of “the sacredness of tradition” ([1968] 1978: 37). One might think of acceptance of tradition as a matter of belief, a belief in the special validity of that which was done by one’s ancestors, for example, or as a value-choice. But this passage suggests that tradition has an intrinsic
property—sacredness or the validity of that which has always been—that makes it valid.

Notoriously, there is a similar passage about charisma, where he asked whether Joseph Smith was genuinely charismatic or merely a swindler. Charismatic leaders are believed in, and are bearers in themselves of choices that can be thought of as value choices. But neither of these ways of thinking allow for a distinction between genuine charisma and charisma that is merely claimed by the leader and attributed by the followers.

Weber’s problem here is familiar from Kelsen: it is the regress problem. If one explains by reference to beliefs, as opposed to intrinsic properties, one is compelled to explain the beliefs. And this would require an account of how people came to hold these beliefs. Weber made some gestures in this direction, to be sure. But the ambiguity remains. In the discussion of tradition, for example, he appears to distinguish between the features of tradition as such and the beliefs in the magical sanctions that accompany it.

How does Kelsen fit into this set of possible interpretations of Weber? Kelsen’s account is a version of the normative science of law, which aspires to correct interpretation. The correct interpretation supplied by this science is the de facto starting point for a sociology of law, according to Weber, but plays no explanatory role. For Kelsen, who was concerned with explaining something different, namely the fact of the validity of law, this explanation, unlike an explanation of action, requires normative explainers. Kelsen’s purely legal explanation of the validity of law is that law is valid if it is made according to law. This produces a regress. Kelsen’s theory of the Grundnorm is a theory of what comes at the end of the regress—a self-authorizing norm.

We can identify three basic metaphysical options for accounting for law out of this group of interpretations of Weber: one is that there is nothing to law and nothing to the notion of validity that is not explained naturalistically by reference to the beliefs of people; the second is that law embodies a value or something like a value, such as a value-laden world view that has genuine explanatory and therefore metaphysical status as a consequence of the fact that its existence as a value is necessary to account for the law; the third is that there is some intrinsic non-natural feature of the law, such as sacredness, which is a mystery beyond naturalistic explanation. For Kelsen, like the neo-Kantians he
rejected, it was necessary to explain the correctly described facts of law, including its genuine validity. Kelsen’s notion of legality as guaranteed by the principle of legality makes legality into something real, so it falls into the category of an objective valuative fact necessary for explanation. However, as others have insisted, it might also be construed as an appeal to a mystery.

Appeals to mystery do not qualify as explanations at all. Mystery is not a metaphysical category. But there is something to be said about appeals to mystery, and about mysteries, in terms of the other two kinds of explanations. Cassirer, for example, devised a category of the mythic which he interpreted in neo-Kantian terms as part of the conceptual apparatus shared by humans to understand the world. But the more common assimilation is to naturalistic explanation by belief. Belief in magic, superstition, sacred powers, and the like can be explanations for the belief in such things as the obligatory character of the law. Indeed, the whole early history of the law, as Weber himself pointed out, involved the “general psychological inhibitions against any sort of change” reinforced by “the fear of magical evils” ([1968] 1978: 37). The mystery category, in short, can be assimilated either to the naturalistic, belief side or to the values and conceptual conditions side.

The “Gobbledygook” of “Values”

Is there another possibility? The discussion so far has dealt with the limitations of neo-Kantianism. Hägerström expressed his views in the language of “judgement” and “belonging to reality”. As he said in his autobiographical statement:

In a later writing, On the Question of the Concept of Objective Law, however, I first drew from my earlier investigations the full conclusion: the “value-judgement” itself is only an illusion in so far as in it a judgement is made as to the value of something’s belonging to reality. Now I discerned for the first time that the whole idea of value, which is supposed to belong to the reality of the valued object, was impossible ([1929] 1964: 69ff).

But he then shifted to a comment about language and the meaning of the word “value,” which fits with emotivism in its original form, which
conjoined the analysis of value terms with a psychological account of the substance that was being expressed: “If feeling or desire is itself an experience of value, then the word ‘value’ is only an expression for a feeling or a desire and not an expression for a thought” ([1929] 1964: 69ff).

Hägerström’s problems in articulating the issues are rooted very deeply in this moment of neo-Kantianism. Kelsen and Weber handled the problem of objectivity in different ways, but with problematic results. In the case of Weber, as we have seen, the solution involves accepting the premises of neo-Kantian value theory, or at least the concept of value itself, but limiting it to the role of accounting, within a methodological theory, for the constitution of objects. The explanatory uses of these objects, and their role as objects of explanation, are self-consciously limited: no valuative consequences are to be drawn from description. For example, describing an act as illegal, from the point of view of the reality science of sociology, means only believed to be illegal, and what is explained is what follows from the fact of belief by the relevant parties. The normative science of law, in contrast, draws consequences about the correctness of the beliefs themselves: whether the act in question is “genuinely” illegal.

The problem with Weber’s solution is this: it employs the problematic metaphysical notion of values in order to limit the role of values. To avoid falling into the category of ideological thinking, of making a sociology which merely reproduces the ideological prejudices of a value-stance, for example, by the standard device characteristic of an entire German tradition of defining sociology in terms of the organizing concept of “society” and then defining society in an ideologically loaded manner, Weber appealed to a relativistic meta-theory of values. But this theory itself depends on a metaphysics in which “values” play a central role. This opens Weber to the charge of constructing merely another metaphysically grounded conception of sociology, a charge routinely made in the twenties. And of course this implies the possibility that this metaphysically grounded methodology is itself merely a concealed ideology.

Kelsen faced a related problem, and it is instructive to see what the Logical Positivists did with him with respect to these issues. Gustav Bergmann wrote a hostile review (1945) of the translations collected as General Theory of Law and the State ([1925] 2006) which dealt directly
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with the two key issues as they confronted Kelsen: description and the metaphysical status of value. He examined the key thesis that the description of the state and the law cannot be done sociologically, because any such description depends on the normative concept of the law. His verdict:

Take, for instance, the thesis that “the domination which has, sociologically, the character of ‘State’ presents itself as creation and execution of a legal order—that is, a domination which is interpreted as such by the rulers and the ruled.” This is, of course, perfectly sound, but it does not justify the conclusion that there is no such thing as a sociological concept of the state (Bergmann 1945: 214).

Kelsen’s argument for this, which, as Bergmann observed, depended on claims about *Verstehen*, Bergmann dismisses as “pettifoggery” (1945: 214). Elsewhere Bergmann referred to the pea soup of *Verstehen*. But the roots of the pettifoggery are in the normative ideas behind it:

Kelsen, unfortunately, is very explicit about these matters, mainly because he could never rid himself of the strange, tender-minded prejudice that in dealing with the positive law we are dealing with some sort of ontologically subsistent and epistemologically categorical oughtness. So we are again treated to the old “gobbledegook” about validity, efficacy, and the *Grundnorm* (“basic norm”) (Bergmann 1945: 214).

“Ontologically subsistent and epistemologically categorical oughtness”: this is the nub of the matter. And it is what Hägerström rejected, and constructed his account of the law to avoid.

The issue is whether one can have half measures of purification—either by Kelsen’s self-limited purely legal point of view or by Weber’s much more restricted use of value notions in the metaphysical framework of his methodological writings, with such notions as value-relatedness or value-laden description. And this is an issue that, in the peculiarly metaphysically entangled domain of law, requires something other than metaphysical contestation itself. The subject matter itself is so permeated with fictions, metaphysical concepts, normative terms, the residue of natural law theory, and superstition, as well as deeply
ingrained emotive reactions to transgression, that radical naturalizations seem to fail to account for something essential, even if one apparently cannot articulate this essence without relying on a problematic metaphysics.

Logical Positivism was unhelpful with this: to exclude normative language exclude legal language. The problem was to translate the normative language of the law into its non-normative equivalent without loss. But the wholesale attempts to do this, for example in the idea of American Legal Realism of treating legal facts as predictions of what judges would do, inevitably ran into lacunae, for example, in this case the problem of explaining the role of the law for judges themselves. The alternative was to devise a retail or case by case approach. And examples of this kind of analysis were to be found in Hägerström’s contemporaries, Weber and Kelsen. Then the question becomes one of metaphilosophy: why did they have a different view of more or less the same factual and historical arguments about the law? And what does this tell us about the larger metaphysical problem with normativity and “values”?

**Genealogy**

The historical argument that Hägerström presented, which emphasized the superstitious and magical elements in legal procedure that produced the feeling of normativity, which has strong parallels in both Kelsen and Weber, poses a peculiar issue for the usual neo-Kantian approach to the law. The usual approach takes the law as more or less a given object: the philosophical or “scientific” project is to reveal the conceptual organization of the field of law, as it is composed of the elements of this given object.

In the genealogical approach taken by Hägerström, and by Weber and Kelsen in their own work, legal concepts are a mishmash of superstitions with an element of magical thinking. Kelsen even traced the notion of physical causality to the superstitious primitive theory underlying revenge, and carefully explained the intellectual errors that lead to the false idea of the reality of collectives. Weber made similar points: Charisma is related to magic, and is a source of legal authority. This was Hägerström’s point as well. As Anders Vilhelm Lundstedt explains Hägerström, the point of his studies of the Roman law was that:
 [...] the whole of Roman Law is simply a system of rules for the acquisition and possession of certain metaphysical powers, so-called rights, in reference to things or persons. From this work it is evident that the conception of law among the Romans was to a large extent influenced by inherited animistic ideas of secret powers in both human beings and inanimate things (Lundstedt 1925: 8).

The difference between Kelsen, Weber and Hägerström in their approaches to these facts is metaphilosophical. But on the characterization of the historical phenomenon of the legal order and indeed of legal concepts there is no deep conflict. Kelsen’s key metaphilosophical idea in relation to this problematic, which allowed him to treat law in its historical sense one way and its normative sense another way, is that history and logic work in different ways, and that “one must not confuse historical sequence with the logical relation between norms.” This is well illustrated by one of his central claims: that state law is law created in accordance with law, and that the law it accords with is the part of customary international law that requires one state to recognize another entity that has effective control over a territory as a state. He acknowledged that this customary law arose historically long after the states themselves did. But the logic of legality as we can now reconstruct it places international law above and logically prior to state law, simply because it is the law that authorizes—legally—state law. Thus we can examine an extant body of law that is a mishmash of superstitions, and extract the legal core from it.

From one standpoint, for Kelsen, this means transforming our understanding of these mystical notions as they appear in the actual law, by purifying them of their superstitious content. This is done by understanding them exclusively in terms of the normative logic of ought—the principle of law created in accordance with law: A norm is valid qua legal norm only because it was arrived at in a certain way—created according to a certain rule, issued or set according to a certain method ([1934] 2002: 56). Legal enactment is law authorized by rules. Thus the legal meaning of “organ” as opposed to its metaphysical one consists in an authorization of an individual as holder of a legally defined office to produce legally binding oughts. If we are to make sense of notions like obligation, sanction, and so forth, we must do so in these purified terms.
Weber’s approach was historical: the magical elements do not completely vanish in the course of legal history, but thinkers motivated by ideals remake law in the image of these ideals. In modern Civil Law, this remaking has been done by legal intellectuals, according to ideals of rational order and consistency. In the common law, it has been done by lawyers, who have invented fictions and other legal devices that are so arcane that only professional lawyers understand them. The effect is the opposite of rationalization. There is no teleology in the case of the common law—no inherent drive to rationalization—but rather a process driven by interests and by an ongoing conflict between formal and substantive ideals of justice. The purely rational law is an ideal-type, not to be found in reality. But the pursuit of it does reflect the interests and mentality of the legal intellectuals for whom systematization is an ideal. The process of legal change is thus driven by value commitments, interests, and ideal interests, under the circumstances of the new demands placed on the law by economic and social innovations. The extent to which a legal order has elements of charisma, tradition, or conforms to the ideal of rational legality is a result of this process.

Where does this argument leave us with the problem posed by Kelsen? For Kelsen, the issue was this: one could describe in causal terms the operation of the acts which make the law, but to describe it in this way would fail, because it would not capture the specific distinction that makes an act legal, the distinction between sanction and delict.3 Weber conceded this point, with respect to the constitution of the object of the explanation, but not with respect to explanation itself. But, if we take seriously Hägerström’s claim that there are no ontologically real values, we are compelled to reject both Weber and Kelsen’s approaches, at least as a matter of metaphysics. There is simply no room for the notion of values as constitutive, or as Weber put it, following Rickert in this respect, value-related, if there are no values.

**Internal, External, and Circular**

Is it really the case, as both Weber and Kelsen thought, that one needs to accept, even in its constitutive role, the notion of values or objective self-subsistent normative facts, in order to properly describe the legal system as a legal system? Here we arrive at the trap that the continued
appeal to neo-Kantian ideas about the constitution of objects lays for us. The trap is relativism. As we have seen. Kelsen was motivated to escape from the neo-Kantian problem of the circular constitution of the topic of law by the idea of law. He understood that the inevitable consequence of this strategy was a multiplicity of ideas of law, and therefore a multiplicity of self-validating, circular, philosophies of law, between which there could be no decision. Each had its own ungroundable _a priori_ starting point; each arrived at its own conclusions grounded in the legal facts constituted for it by its special _a priori_ “idea”. Philosophy of law in his time was, indeed, a riot of such conceptions. Worse, each was tinged with ideological preferences, thinly concealed. Weber grasped this same point, and made it central to his methodological conception. He sought to defang relativism by accepting that the constitution of the objects even of a reality science was subject to historically and culturally relative _a priori_ value commitments, which we could at best acknowledge and bracket rather than eliminate.

Both Kelsen and Weber carved out an exception: the possibility for Weber, and the attempted realization in Kelsen, of an objective normative science of the law concerned with the internal logic of the law. For Weber, this possibility had the following significance: the sociologist was obliged, as a practical matter, to take the systematic account of the law taught to lawyers, the dogmatic or normative science of law, as the constitutive starting point of sociological analysis. But of course the sociologist had no concern with the normative question of the validity of the law, of the legal reasoning that was part of the normative science of the law, and so on. For the sociologist, this conception was merely an ideal-type, which like all ideal types was accepted only because of its utility, and its utility depended not on its correspondence with reality but on its clarity, a clarity which was associated with its one-sidedness and reduction of the complexities of empirical reality.

Where does Hägerström fit in this scheme of options? One thing is evident. Hägerström knew very well the problems of relativism in neo-Kantian legal philosophy. His commentaries, indeed, traded heavily on the conflicts between neo-Kantian legal thinkers, and the peculiarities that they were driven to in order to preserve the unity of their conceptions of the law. Consequently, he was concerned to avoid falling into the same trap: of basing his own approach to the law on a distinctive
Metaphysics, Neo-Kantianism, Religion

*a priori* conception of the law. For him, the problem was that these *a priori* premises were themselves already mystifications, which relied on other mystifications to retain any sort of plausibility. And he was highly sensitive to the way in which attempts to escape from the circularities of neo-Kantian reasoning wound up trapped within them.

The issues here are difficult to formulate, but they were highly apparent at the time. Kelsen was obsessed with the form of the internal-external distinction that was most present to him: the problem of the relation of the sociology of the law (dynamic theory) to the normative theory of law (static theory). The topic, ignored today by a philosophy of law that has embraced the internal perspective as its own, was Kelsen’s obsession. He wrote about it incessantly throughout his long career. One could write a long history of the confusing forms of this distinction, including its appearance in the disputes over the “sociological” account of law debatably attributed to H.L.A. Hart by Joseph Raz, and the unresolved issues with Hart’s account of why law is binding.

But the fundamental issue is the same regardless of its form. For jurisprudence, there must be, it appears, something like a normative conception of the law: the judge must have a standard of correctness, that is to say a normative standard, to refer to in making decisions that apply the law or find the law. No external or empirical account of the law can provide this. It can only say what has been taken to be law. So in some sense, at least for the lawyers themselves, engaged in the performance of law, the internal perspective on the law is a kind of transcendental presupposition.

This argument, convincing as it has been, runs into a serious problem. What if normative internal accounts of the law are just as prone to relativism, and just as dependent on ungroundable (and divergent) *a priori* assumptions as the neo-Kantian philosophy of law itself was? What, in short, if the internal–external distinction creates an internal domain which is not purifiable, but is rather subject to its own relativisms and dependent on mystifications? To put it somewhat differently, what if there are as many internal perspectives as there are ideologies, philosophies, and so forth? Before answering this question, it is worth reconsidering the external point of view. In some sense, the external point of view has the same problem: this is Weber’s point about the cultural and historically relative character of the constitution of problems.
But in another sense, it does not. The a priori assumptions that constitute the objects are impermanent. Claims from the external point of view are revisable in the light of facts, or vanish with the cultural and historical background that they were drawn from and which served as intelligibility makers within. The external point of view is governed by explanation and the problem of explanation, which constrains its claims and serves as its own kind of purifier by eliminating bad explanations and non-explanations. Circularity is not the norm: explanations are revisable on the basis of a variety of “external” considerations that are not part of the theory itself.

The external point of view allows for the identification of the rules found in statute books as well as the customary rules observed in a society. These facts are the same as they are for the normativist. And the judge seeking grounds for a decision has knowledge of these rules. So the difference between the normativist’s “internal” conception of these rules and the external conception does not hang on anything about the content of the rules themselves. It concerns, rather, the normative facts of their bindingness, their validity, and so forth: facts which from the external point of view are not facts at all.

This explanatory external domain was where Hägerström worked. I quote merely a small sample of his criticism of Kelsen to illustrate the kind of argument Hägerström made, in this case about the mystery of legislation.

It is therefore not at all surprising that Kelsen should describe as a great mystery the act of legislation (which belongs to the realm of natural existence, and therefore does not exist from the juridical standpoint) in its capacity of specifying the will of the state, i.e., the legal order. He says: “That which takes place in the act of legislation is the great mystery of law and of the state, and therefore it is excusable that its essence can be displayed only in inadequate messages.” One is inevitably reminded of a medieval thinker who discusses the great mystery of the God-man! ([1925] 1953: 268).

Why is legislation a mystery? Not because of any puzzle about how it actually happens, or the rules governing it, Kelsen’s concern in his dynamic theory of law. Reference to rules, merely pushes the mystery
back one step, to the transformation that makes them into rules in the first place. The mystery is the transformation of mundane natural actions into normative facts. And here of course we cannot appeal to ordinary explanations, but must “explain” by reference to superstitions, fictions, metaphysical theories, and the like.

One might say that this is irrelevant to the real object of normative legal theory, the logic of the law itself. But here we come back to the problem of circularity, and the related problem of relativism. Either the law is merely the rules as understood from an “external” point of view, or the “positive” law as Kelsen understood it already contains the normative explanation and is thus not independent of it. Hägerström pointed out that it is the latter. He noted that it is part of the content of certain constitutions that the monarch is the ultimate source of law; there is necessarily a conflict with Kelsen’s own insistence, based on his theory, that even these constitutions are examples of law made in accordance with law so that law is the ultimate source of law. Hägerström’s point was that here one must choose between the literal meaning of “positive law” as the actual law, and the Kelsenian notion of positive law, which has to be taken to mean not merely actual law. The problem cases are these:

The old Bavarian constitution of 1818 (Tit. II, Sect 1) ran as follows: “The king is the supreme ruler of the state, he unites in himself all the rights of state-authority, and exercises them under the conditions issued by him and laid down in the present constitutional charter.” Cf. with this Tit. VII, Sect. 2: “Without the advice and consent of the Orders of the kingdom no general law … may be … promulgated.” Tit. VIII, Sect. 1 ran: “Jurisdiction issues from the king …” But Sect. 3 says: “The judges are, within the limits of their official authority, independent …” There can be no doubt whatever that the meaning of these formulas is that the state-authority possesses certain supernatural powers of ruling, to which corresponds the duty of obedience on the part of the subjects of the state. These powers are possessed by the king (Hägerström [1939] 1953: 294).

The constitutions in question embrace the mystical idea of law proceeding not from law, according to the Kelsenian formula that law is law because it is created in accordance with law, but through “supernatural
powers” possessed by the monarch and recognized and appealed to in the law as it is written. Hägerström treats this as a “monstrosity”:

Since the meaning of certain constitutions is mystical in the way described above, it is mere monstrosity when Kelsen talks in such cases of a contradiction against those constitutions; for as a “positivist” he is claiming to derive the legal ought directly from the constitutions ([1925] 1953: 295).

So how did Kelsen choose in the face of this kind of positive law? Kelsen chose his own theory, rather than the positive law. He chose to reinterpret these literal laws in terms of his own analysis of law, and his own interpretation of terms like “powers.” Thus he is not a positivist, but operates with a circular theory of law which is no better than the other a priori theories of law with which it competes. Hägerström’s point is clear: Kelsen has fallen headlong into the neo-Kantian trap his claim that his is a theory of positive law was intended to avoid.

Kelsen became for Hägerström the poster child for the lesson that the problem was with the normative conception of the law itself. Because Hägerström was well aware that merely supplying an alternative theory of law, based on its own a priori premises, or alternatively on its own a priori idea of “positive law,” would place him right back in the relativistic situation of neo-Kantianism generally, he did not do it. Instead, he provided, so to speak, extensive retail criticisms of the competing theories to show the ways in which they rest on mystifications, rather than a wholesale critique which would inevitably wind up as merely another theory. In the case of Kelsen, this is not difficult. According to Hägerström, Kelsen supplied “the legal order itself, i.e., the judgments of the law […] with mysterious powers” (Hägerström [1925] 1953: 297).

**The End of the Internal Point of View**

Understanding Hägerström’s response to this warren of issues requires a larger frame. Begin with some generalities. The problem of the place of validity, normativity, and their kin in the world of facts arises from a particular kind of consideration: that some description, inference, claim, or set of these things cannot be denied, eliminated, reduced, or otherwise done away with.
In the case of law, this has been variously formulated, but the standard formulation of Hägerström’s time was the notion of the binding force of the law. The mere description of a rule (the external description of the rules of hospitality for a remote tribe, for example) was a description of a belief, of something taken as binding, “as if” it were binding (cf. Vaihinger ([1925] 2009). That, according to the normativist, is not good enough. What is needed is an account of the fact of genuine binding. This, to use a later distinction, is an internal consideration. Hägerström, in advance of his time in this respect, self-consciously distinguished “something objective, which could be established by external criteria,” from “occult powers of rulership, which are held [by certain constitutions, for example, as well as by theorists of sovereignty] to be present only in the king and not in parliament” (Hägerström [1925] 1953: 295). These powers are visible only from the internal point of view, which immediately raises the question of circularity.

Hierarchy and circularity are central to normativist reasoning: one assumes that there is such a thing as validity, then one explains the fact of validity in terms of other facts, such as absolute self-subsistent values, or norms that ground other norms but need no grounding themselves, which one claims are presupposed by the fact that one assumes. Part of the argument is, typically, that one cannot avoid assuming the fact to be explained. For Kelsen, the argument was that there could be only one correct description, namely his preferred description, which was already normative. The more general form of the argument is that all inference, description, and so on is always already normative.

The various formulations of this problematic make it impossible to mount a general argument against them. One can refute one notion, and another will crop up. Nowhere was this more apparent than in the philosophy of law of the time, which proliferated circular accounts each of which was built up around distinctive favoured notions—justice, legality, binding, sovereignty, “will”, and so forth which were taken to be indispensable, constitutive, explanatory, and presuppositional, all at the same time. This dictated Hägerström’s apparently odd strategy. On the one hand he traced back and exposed the absurdities of these doctrines. His demolition of the will theory is exemplary. But he knew that these arguments could be invented, varied, and recreated indefinitely under new guises. So he could only supply what were in effect
model refutations. On the other hand, he supplied the outlines (and to some extent filled in these outlines) of a naturalistic, non-normative description of the law. Kelsen had related motives. He explicitly separated metaphysical justice from the discussion of his Pure Theory of Law. But he retained the notion of the normative. This is what divides him from Hägerström.

The description includes the fact that legal usage and concepts were derived from sources in superstition and supernatural explanations, appealed to occult metaphysical entities, and incorporated a good deal of bad philosophy, especially drawn from natural law. Whatever else may be said about this account, it is more or less uncontroversial as a depiction of the actualities of a legal order. There are rules, motives for rules, social benefits for the following of rules which may or may not be recognized by those who follow them, and there is an intellectual edifice around these rules which is full of possibly problematic and conflicting ideas. No one contests this. Indeed, a project like Kelsen’s, of purifying the intellectual edifice of every element that is not specifically “legal”, presumes just this sort of picture of law.

What the subsequent philosophy of law did contest was the loss of these favoured normative usages. And they did so in the name of the internal perspective, or some variation on it. But the subsequent discussion of the internal perspective has simply re-enacted the confusions, relativism, and circularities of late neo-Kantianism. The external picture is revisable, and nothing hangs on preserving favoured usages. The internal picture is trapped in the same endless cycle of generating circular theories, whether the favoured usage is sovereignty or “practical reason” understood as irreducibly normative. If Hägerström was right, the favoured usages are themselves bogus, bits of superstition or bad metaphysics that have no explanatory power except within a circle of similarly bogus concepts. And this means that any sort of metaphilosophical validation of the internal point of view depends on accepting what Bergmann called the old “gobbledygook” (Bergmann 1947: 214).

The form of argument is similar, but not the same as the arguments given by Weber and Kelsen: they argued for the indispensably “normative” character of inference, rule-following and therefore meaning, and so forth, and the irreducibility of these undeniable parts of our intellectual furniture to anything natural or social. They argued, in short, for the
ineliminability of the internal point of view. What Hägerström showed, in the case of law, is that this is an illusion: that the internal point of view neither establishes nor explains anything that cannot be better explained in ways that do not rely on occult powers. The larger significance of this form of argument is for Kantianism generally, and particularly for the renovated versions of Kantianism that have emerged within Anglo-American philosophy. As with the philosophy of law, the line of philosophers influenced by Wilfrid Sellars, including McDowell, Brandom, and Haugeland, among many others, argue, as the neo-Kantians did, that empiricism, social science, and science generally is an explanatory failure, because there are genuine and undeniable aspects of reality that are inaccessible to the kinds of explanations that are offered by science.

Notes

1. Whether Kelsen succeeded in avoiding circularity is debatable. His argument, taken as a whole, tended to assimilate his definitions of law with his explanation of legality in a way that comes close to circularity; a point to which this text will return in our concluding discussion in connection with the internal point of view.

2. The sentence in question appears in the Rheinstein translation, as “An ‘externally’ guaranteed order may also be guaranteed ‘internally’” (Weber 1954: 7). The translation of the sentence is literal. “Guaranteed ‘internally’” is a direct translation of the German text’s “‘innerlich’ garantiert”. The standard translation of Economy and Society was forced to incorporate the Parsons’ translation, which used the phrase “guaranteed by disinterested subjective attitudes”, a phrase which is nowhere to be found in the original text ([1968] 1978: 35). Nevertheless, there are some grounds for the translation: “subjective” is a possible construal of “innerlich”. The difference is in whether the inner refers to the subjective fact of the agent’s beliefs and attitudes, or some feature, perhaps the compulsion of its inner logic, of the objective legal system itself. Hart clearly thought it was the latter.

3. Interestingly, Hägerström took on the challenge of giving an account of this distinction in non-legal terms, something Kelsen assumed was impossible. Hägerström’s point was that this distinction has to have a prelegal force if it is to be such an important part of law. He located this force in responses to violations of expectations about behavior that is socially beneficial. Law then codifies these responses as sanctions, and extends the core idea to other violations ([1939] 1953). The term he used is “social instinct,” by which he meant “that in a certain community the members are inclined, in general independently of all reflexion, to follow certain general rules of action, whereby co-operation at least for maintenance of life and propagation within the group becomes possible” ([1939] 1953: 350). This kind of rule fits with Kelsen’s own concept of customary law. But Hägerström’s point is that this kind of instinctual fact gets extended to, because it is in some sense retained as a motive for, enacted law. Kelsen got his claim that customary law is law by defining widespread disapprobation justifying sanctions as “law”.

4. As shown elsewhere, this kind of mystical transformation is a staple of normativist thinking generally (cf. Turner 2010: 19f, 40ff).
References


Boströmian philosophy, a home-grown brand of idealistic system philosophy, dominated the philosophical scene at Uppsala University for more than half a century, from the 1840s and onwards. The founder of the School, Christopher Jacob Boström (1797–1866), was professor in practical philosophy from 1840 until 1863. One of his most loyal pupils, Hans Edfeldt (1836–1909), once wrote that “Fichte, Schelling and Hegel relate to Boström in the same way as the Greek sophists relate to Socrates” (Edfeldt 1883: 78). However, at the beginning of the 20th century an effective opposition began to take shape. Its central figure was Axel Hägerström (1868–1939).

Hägerström arrived in Uppsala and took up studies in theology in 1886, but soon turned to philosophy. In 1893 he presented a dissertation on the ethics of Aristotle. Only two years later Hägerström, perhaps in an act of juvenile hubris, applied for the professorial chair in practical philosophy, but to his big disappointment he was declared incompetent for the position. A time of hard work in order to clarify his own standpoint now began. The young Finnish philosopher Rolf Lagerborg (1874–1959) visited Uppsala in the first months of 1899 and heard Hägerström lecture. On that occasion he noted down in his diary:
Hägerström on epistemology. In that branch at all events he is a genius. Interesting, but personally distorted. Lectures brilliantly, but with his back towards the audience. (Lagerborg 1942: 218).

Hägerström reached his mature position within philosophy in two crucial steps: firstly by adopting a Kant-inspired philosophical standpoint, and secondly through a break with transcendental philosophy and the formation of a new original standpoint. In the following this second step will be in the focus of interest.²

I. The Problem

The problem concerns Hägerström’s philosophical development, the road by which he reached what he himself considered to be his mature philosophical position in matters of epistemology. This problem can be translated into the question: What happened in the years between 1902 and 1908? That is, the years between the publication of the voluminous book *Kants Ethik im Verhältnis zu seinem erkenntnistheoretischen Grundgedanken systematisch dargestellt* and the publication of the much slimmer, but also notoriously complex book, *Das Prinzip der Wissenschaft. Eine logisch-erkenntnistheoretische Untersuchung*. These are, although Hägerström did produce several manuscripts, the dark years and at the same time the decisive years in the philosophical development of Hägerström.

The crucial move that Hägerström made during these years was to break with transcendental philosophy in favour of a new objectivistic or naturalistic position. The point of departure then is no longer the transcendental unity of apperception, but the general concept of reality as presupposed in all knowing. This shift, according to Hägerström, implies nothing less than a “Copernican upheaval in the theory of knowledge” (Hägerström 1908: 77).³

In the literature on Hägerström very different suggestions have been made about the influences that contributed to this radical change in Hägerström’s position. For example, Svante Nordin has pointed to the importance of the Neo-Boströmian philosopher Erik Olof Burman (1845–1929) and to parallels with the Marburg School of Neo-Kantianism (cf. Nordin 1984: 27–32), and Jan Bengtsson has argued for
the importance of the Phenomenological Movement and especially Husserl’s theory of intentionality (cf. Bengtsson 1991: ch. 9). I will not here go any further into this literature, but merely establish that no consensus has been reached about which were the most important influences, positively and negatively.

To illustrate the problem, let me present a quote from a recent substantial publication on Hägerström. In her study from 2009 Patricia Mindus stretches the dark years in Hägerström’s philosophical development as far back as 1897 and writes:

After the embarrassing parenthesis of the ‘declaration of incompetence’, on the verge of his 30s, Hägerström enters a period as intense and productive as it is dark and mysterious for the scholar who wants to reconstruct it. (Mindus 2009: 24).4

The intellectual historian here confronts a difficult and challenging task: trying to shed light on these dark years.

II. Hägerström on Hägerström: No Solution to the Problem

How did Hägerström himself present his philosophical development? If we take a look at his Selbstdarstellung from 1929 we get the following picture: a) A dissatisfaction with orthodox Boströmian philosophy. b) A renewed interest in the German philosophy from Kant to Hegel, under the influence of his teacher, the afore-mentioned Burman. c) A radical break with transcendental philosophy. Hägerström writes that he reached an independent position by breaking with “the basic condition of the transcendental philosophical way of thinking” (Hägerström 1957: 117).5 Thus, first a step back, then a huge step forward. Not a word about any contemporary philosopher (except Burman) or philosophical current being a source of inspiration, positively or negatively, for this double shift of standpoint. In fact Hägerström explicitly underlines that he was not “particularly influenced by contemporary philosophy”, because of its “uncritical point of departure” (ibid.: 120).

In his philosophical self-portrait in Filosofiskt lexikon [Philosophical Dictionary] from 1925 Hägerström writes that his point of departure, in
a positive as well as negative sense, in *Das Prinzip der Wissenschaft* was Kant. Furthermore, he states that the general presupposition of modern philosophy, including that of Kant, namely that the only thing that is immediately given to us is our own representations, in his opinion is false (cf. *Filosofiskt lexikon*: 89). Not a word about how he arrived at this standpoint. However, there can be no doubt that Hägerström’s road to his mature position was very far from a straight course. His book *Kants Ethik* was the result of several years of intensive studies and effort; it must have been something of an intellectual upheaval for Hägerström to, within a relatively short span of time, come to the insight that his position in that book was in essential respects mistaken.

### III. Towards a Solution to the Problem: Some Suggestions

Which were the most important influences on Hägerström during these decisive years in his philosophical career? By *influence* I do not mean simply taking over the argument or standpoint of someone else, but having carefully considered and thought through a certain philosophical argument or standpoint, and reacting to it in a determinate way: by adopting it, transforming it, or criticizing it and eventually developing an alternative position or point of view, i.e. the influence can be of a positive as well as negative kind, and it can be positive in one respect and negative in another. In the case of Hägerström the influences seem to have been of a very complex kind, a mixture of positive and negative influences which are very difficult to sort out.

Before presenting my suggestions, I would like to briefly point out the way I use certain key concepts:

*Transcendentalism* = the standpoint that the highest point of philosophy, the ultimate foundation of all knowing, is the transcendental unity of apperception: the “I think” that must accompany all my representations.

*Psychologism* = the standpoint that epistemology has to be founded on psychology, and which conceives of the knowing subject as the psychologically given consciousness and of knowledge as an essentially psychic phenomenon or activity.

*Subjectivism* = the standpoint that the only thing we can know for certain is our own representations, with the connecting problem: How
do we get from our subjective representations to objective reality, or from a subjective certainty to the things themselves?

In the following I will highlight three specific influences on Hägerström during the years in question: a) Leonard Nelson and the Neo-Friesian School in Göttingen, b) his encounter with Hegel’s logic when lecturing in the spring of 1905, and c) the dispute with Burman about the status of philosophical propaedeutic, also in the spring of 1905. Together these influences, this is my overall thesis, brought about his “Copernican upheaval in the theory of knowledge”. Please note, talking about influences by no means is intended to depreciate Hägerström as an original philosophical mind. Only the philosopher who reflects in complete isolation is uninfluenced.

a) Leonard Nelson and the Neo-Friesian School in Göttingen
The crucial turning point which put Hägerström on the trail from Kants Ethik to Das Prinzip der Wissenschaft was most probably coming to the insight that also Kant is a psychologist and subjectivist. How did Hägerström arrive at the conclusion that Kant too is guilty of subjectivism and psychologism? The radically new perspective in my article from 2002 (cp. footnote 2), which I have not found anywhere else in the literature on Hägerström, is a track leading to Göttingen in Germany. Burman writes in a letter to Efraim Liljeqvist (1865–1941), professor in practical philosophy at Lund University, from January 28, 1912, that “the younger philosophers in Uppsala have been keenly occupied” with a philosophical school that is attached to Fries, with the addition that they have “corresponded with someone of its representatives” and qualified by “if I remember correctly” (LUB). Why did the younger philosophers in Uppsala so eagerly study the Neo-Friesian School? An interpretation of Hägerström’s philosophical development cannot simply pass over this question.

Jakob Friedrich Fries (1773–1834) was a philosopher in Jena and Heidelberg in the early 19th century, who represented a psychological interpretation of Kant’s critique of reason. He was at the time a rival of Hegel; in fact the two had a very tense relation. A Neo-Friesian School was formed in Göttingen in the early 20th century with Leonard Nelson (1882–1927) as central figure. It is presumably this School of thought that Burman is alluding to in his letter to Liljeqvist. In the year 1904
Nelson together with two colleagues started to publish *Abhandlungen der Fries’schen Schule, neue Folge*. The first treatise to be published in the new series was a programmatic booklet by Nelson himself, *Die kritische Methode und das Verhältnis der Psychologie zur Philosophie*. Four years later Nelson published the more voluminous book *Über das sogenannte Erkenntnisproblem* (1908) in the same series. Finally, in 1913 a Jakob Friedrich Fries-Gesellschaft was founded. Nelson is reported to have been a hardworking man who died of exhaustion at the age of 45 (or to be more precise: of pneumonia).

Through Nelson, this is my first thesis, Hägerström became convinced that Kant too is a psychologist and a subjectivist. The critique of reason, correctly understood, is according to Nelson a psychological undertaking. “The deduction of the metaphysical principles”, he writes in *Die kritische Methode*, “is a concern for psychology” (Nelson 1970: 28, italics in original). All knowing is an inner activity, and can as such become the object of inner experience. The investigation of knowledge is, according to Nelson (and Fries), an empirical science, which must be based on inner experience or self-observation, thus on psychology. Furthermore, there exists no specific transcendental knowledge in the form of synthetic propositions a priori. The object of knowledge might very well have the form of synthetic knowledge a priori, but the same is not true of the knowledge of this object (cp. ibid.: 41f). There is in Kant, according to Nelson, a tendency to mix up psychology and philosophy. With reference to Fries, he speaks of “the prejudice of the transcendental” (ibid.: 38ff). *Transcendentalism* is in fact a form of psychologism claiming to be an anti-psychologism. According to Nelson is:

\[
\text{every attempt at a foundation of a non-psychological critique, which characterizes the so called transcendentalism, on closer inspection possible only by way of the hidden introduction of psychological means of knowledge, due to which the alleged anti-psychologism of the transcendentalists is nothing but a veiled psychologism (Nelson 1973a: 179).}
\]

My suggestion is that Hägerström, through the reading of Nelson’s *Die kritische Methode*, came to accept the following conclusion: transcendental philosophy cannot deliver what it promises, an objective foundation of knowledge, but represents only another version
of psychologism and subjectivism. In *Das Prinzip der Wissenschaft* we read:

One can by the subject itself assume determinations which have a validity that extends beyond it [the subject], so called a prioristic determinations. [...] Objective validity has every representation which involves a connection of thought determined by the unity of knowing (Hägerström 1908: 9f).

This seems to be a characterization of Hägerström's standpoint in his book on Kant's ethic. However, now he argues, this standpoint runs into two dilemmas: the objective principle must be conceived of as *immanent* in the finite subject, and is thus itself finite, and the finite subject must be able to *assure* itself of this principle, which is impossible because no objective yardstick is available. In his next move Hägerström raises the question “if it is at all possible to pose an epistemological problem” (ibid.: 11), because every formulation of the problem seems to presuppose something. This I interpret as an allusion to Nelson’s denial of the possibility of formulating a problem of knowledge. Hägerström, however, insists on the necessity of posing the problem in a correct way, one that does not tie it to the knowing empirical subject and its subjective certainties. This means to pose the question of “the ultimate logical condition for the knowledge of the empirical subject” (ibid.: 12).

Furthermore, through Nelson, and this is my second thesis, Hägerström became convinced that the highest principle of philosophy must be an immediate rational knowledge, and which thus cannot be demonstrated, i.e. be the object of a mediated knowledge in the form of a proof (cp. Nelson 1970: 23f, 62f). The basic question of philosophy is according to Nelson: What is the immediate knowledge of pure reason? This immediate knowledge is the yardstick for the truth of every judgement. The question of truth is not whether our knowledge corresponds to the object, but whether it corresponds to the immediate knowledge of reason. The latter is the criterion of truth for every claim to knowing. Nelson writes:

The correspondence with the object can for us never be a criterion for the truth of our knowledge, because we would have to step out of our
knowledge in order to be able to compare it with the object, which is impossible because we arrive at the object in the first instance only through knowledge. Thus we can never compare knowledge and object, but only one knowledge with another. (Nelson 1970: 24).\textsuperscript{16}

For Hägerström the immediate rational knowledge, the principle of science, is the general self-identical (= determinate) concept of reality as presupposed in all knowing, and accordingly this is also the yardstick by which to measure the truth of every subjective certainty. How is true knowledge possible?

Through a comparison between the picture inside me and the object? But how is such a comparison possible, when the only thing I have access to is the picture? (Hägerström 1908: 8).

However, in the case of the general self-identical concept of reality the question never arises: How do we get from our subjective certainty, from our representations, to the things themselves, to objective reality? The yardstick is not only independent of every subjective certainty, but is in fact presupposed every time we form a judgement: stating this is so and so.

This yardstick must be valid independently of every subjective certainty. And the question about the possibility for an individual to have knowledge concerns only the possibility that a subjective certainty corresponds to this yardstick. Does a correspondence exist, then there exists also objectively valid knowing, because the yardstick has validity (Hägerström 1908: 75f).\textsuperscript{17}

How do we know that Hägerström was familiar with Nelson’s Die kritische Methode? The answer, as things now stand, is: We cannot know that for sure. However, there is an appendix in Nelson’s book from 1904 (entitled “On the relation between the so called Neo-Kantianism and Fries new critique of reason”) where he criticizes Hermann Cohen for being unfair in his critique of Fries, and in a footnote lists a few other philosophers committing the same mistake, and among them: “A. HÄGERSTRÖM. Kants Ethik. Uppsala 1902. S. 191f.” (Nelson 1970: 75). Maybe, this is only a guess, it was this reference, although polemical,
that induced Hägerström to write in a letter to his parents that he is now known in Göttingen, “one of Germany’s most distinguished university towns” (quoted in Waller 1961: 176). This is the only direct indication I have found this far that Hägerström might have been aware of Nelson around the time of 1904–05. Besides that we have to rely on textual interpretations.19

Thus, my first suggestion is that probably sometime during the autumn of 1904 Hägerström became acquainted with the argument in Nelson’s Die kritische Methode and as a consequence revised his interpretation of Kant. From now on he was convinced that Kant too is guilty of psychologism and subjectivism. My conclusion is that Hägerström’s break with transcendental philosophy was decisively influenced by his encounter with Nelson and the Neo-Friesian School in Göttingen.20 Furthermore, Nelson helped him see that the principle of philosophy (or science) has to be an immediate rational knowledge, and that this principle is the yardstick for the truth of every judgement. In a letter to his parents from November 1904 Hägerström writes that he is right now working hard in order to “carve out the stones that will make up the edifice of the new house” (quoted in Waller 1961: 178), i.e. of his own philosophy.21

Digression 1: Hilding Barkman (1877–??), who belonged to Hägerström’s circle in Uppsala in the early 20th century, is most probably not up to date, when he, in an open letter published in Svenska Dagbladet on December 4, 1905, characterizes Hägerström’s philosophical standpoint as a ”modern rationalism” inspired by Kantian philosophy (cf. Barkman 1905).22 In a letter from the same day as Barkman’s article was published, Karl Hedvall (1873–1918), who only six weeks before had called Hägerström his “best philosophical friend”, wrote to Liljeqvist in Lund that he “hasn’t heard from him”, i.e., Barkman, “since a couple of years”.23 In fact, by December 1905 Hägerström had already left transcendental philosophy behind.

Digression 2: In the autumn of 1907 Hägerström started a longer series of lectures on “The history of ethics since Christianity”. In the first part of it he discussed the figure of Jesus. The manuscript for this part of the lectures was published by Martin Fries in 1968. There we read:
The new rationalism has in fact nothing to do with the old idealism, to which rationalism previously has been allied. Instead it is fundamentally naturalistic, in that everything which belong to the given reality is altogether relative. It accepts only one thing as truly independent, and that is the concept of reality as identical with itself (Hägerström 1968: 113).

This is how Hägerström a year before the publication of *Das Prinzip der Wissenschaft* formulated his break with transcendentalism and his new standpoint.

*b) The Hegel-lecture from 1905*

Did Hägerström’s turning away from transcendental philosophy imply that he also turned away from Hegel? Did he consider Hegel to be guilty of the same kind of subjectivism and psychologism as Kant? A statement by Karl Hedvall from the autumn of 1905 seems to indicate that the answer is no. Hedvall writes:

Hegel is in a certain sense, to be more exact through his pronounced anti-subjectivistic (or anti-psychologistic) principle, clearly stated in the introduction to the Logic, the one in the history of philosophy that ass. prof. Hägerström in my view is closest to. (Hedvall 1905: 22).

However, Hägerström’s lectures on “Hegel’s logic”, or to be more precise, parts of the first part of Hegel’s *Science of Logic*, “The Doctrine of Being”, in the Spring semester 1905, seem to contradict this view. For the topics and general line of argument in this lecture series (fifteen lectures were held) we can lean mainly on Hägerström’s official diary notes. There also exists a handwritten notebook for the same lecture series, which however is not transcribed and unfortunately very difficult to read.

In a section preceding “The Doctrine of Being” in the *Science of Logic* Hegel poses the question: “With what must Science begin?”. Hegel’s answer is, as we know, that it must begin with pure Being. For Hägerström this is the question leading to *Das Prinzip der Wissenschaft*. But Hegel’s answer is not Hägerström’s. The latter writes in his diary notes:
The transition from being to nothingness and the reverse. Sheer sophistry. The thought of nothingness is mixed up with nothing being thought. Besides psychologism as well. (February 18).

This polemic, and especially the accusation of psychologism, does indeed not seem to fit very well with Hedvall’s statement about Hägerström quoted above. In a number of lectures from February and March Hägerström delivered what he calls “an outline of the standpoint through an objective reflection on the matter itself” (February 25). Furthermore, we read: “The general reality as primary in relation to the particular reality” (Ibid.). In the following lectures Hägerström criticized the attempts by which empiricism and dogmatism try to “derive the general reality” from “the particular reality as immediately given” (March 4) or from “the subjective certainty in the ontological proof” (March 11) of God. In this criticism, however, Hägerström seems to consider himself in good agreement with Hegel, as he writes in his diary: “Hegel faces up against empiricism as well as dogmatism” (March 18). What distinguishes Hägerström from Hegel is that whereas the latter establishes the principle of science by way of a dialectical movement from pure Being to the Idea, i.e., through a mediating movement, the former finds this principle in the general concept of reality which must be presupposed in all knowing. In all knowing something is said to be the case: this is so and so, i.e., the general concept of reality as determinate and non-contradictory is presupposed in every particular knowledge. Hägerström writes in his notebook for the Hegel-lectures: “In all knowing […] reality is expressed. Thus, this concept is the logical condition of all knowing” (6: 6, 14). The very problem of how I, as an empirical subject, can be assured of such a concept never arise, while the concept of reality is in fact already presupposed in all knowing. This is Hägerström’s break with transcendentalism. Later, in Das Prinzip der Wissenschaft, he writes:

One thing alone is, considered objectively, impossible to think of as non-existent, and that is the reality as according to its concept immediately identical with itself, i.e. the absolute knowing. This is the Copernican upheaval in the theory of knowledge. That the world only exist inside
the thinking human being is a thought just as impossible as the one that
the earth is situated on the back of an elephant (Hägerström 1908: 77).

My conclusion is that Hägerström in Hegel’s philosophy saw an
interesting, although in the end unsuccessful, attempt to establish an
objectivistic position that avoids the pitfalls of transcendentalism, i.e.,
subjectivism and psychologism. He was especially very critical of Hegel’s
concept of pure Being as a starting point for a mediating movement.
Furthermore, it seems to be the case that Hägerström found, discovered,
or how to put it, the general concept of reality as presupposed in all
knowing while lecturing on Hegel’s *Science of Logic*. It is in connection
with these lectures that we find the first more or less clear statement
about this concept being the logical condition of all knowing. When
Hägerström in the following year, in the Spring semester 1906, lectured
on “The principle of science” the argument of the book that he was to
publish two years later is already clearly visible. However, already some
of the argumentative moves in his Hegel lectures a year before clearly
foreshadows the line of argument to be found in parts of *Das Prinzip
der Wissenschaft.*

c) The dispute with Burman
Let me just touch upon another presumably important source for
Hägerström’s break with Kant and transcendental philosophy: the dis-
pute with Burman. The latter writes in a letter to Vitalis Norström
(1856–1916), professor in philosophy at Göteborg University, from
October 13, 1910, of a dispute between him and Hägerström a few years
earlier about the importance of a philosophical propaedeutic for sys-
tematic philosophy (GUB). Through Margit Waller we know that “a
series of discussions” between Burman and Hägerström took place in
the Spring of 1905 at restaurant Phoenix in Uppsala, where an inner
circle of philosophers (“the philosophical club”) met (cf. Waller 1961:
182). These discussions thus took place at the time when Hägerström
was struggling to work out and reach clarity about his new standpoint
in his lectures on Hegel’s *Science of Logic*. Whereas Burman conceived
of the propaedeutic as a proof of the principle of philosophy in regres-
sive form, as an argumentative movement back to an ultimate principle,
Hägerström is reported (by Burman in the above-mentioned letter) to
have accepted a propaedeutic only as a way to rid oneself from subjective prejudices. There can be no proof of the general concept of reality, and furthermore no proof, i.e., a mediated knowledge, is needed, just because it is an immediate knowledge or self-evident principle. Some of Hägerström’s reflections in *Das Prinzip der Wissenschaft* seem to relate to this dispute with Burman a few years before. A distinction must, according to Hägerström, be made between “what is thought in the analysis” and “what belongs to the concept of analysis as analysis” (Hägerström 1908: 15; cp. 56f.). In the analysis it is thought that the principle arrived at is the absolutely valid point of departure, which as such cannot be a problem, whereas the analysis as such can only be the way that an empirical subject, in a time sequence, traverses from obscurity to clarity of thought, in the form of a psychic progression. The traversed road cannot make up a mediated way of reaching the highest principle of knowledge. According to Hägerström, in the words of Burman (again from the above-mentioned letter), philosophy starts with “the absolute (= reality = identity)” (GUB).

d) A look back

Hägerström took a look back at his own philosophical development in the popularly written book *Botanisten och filosofen. Om kunskapsfilosofiens nödvändighet* [The botanist and the philosopher. On the necessity of philosophy of knowledge] from 1910. The book is an attempt in dialogue form to clarify the relation between philosophy and the empirical sciences. The discussion between the philosopher and the botanist is divided into two parts. In the first round the philosopher adopts a standpoint that seems to come close to Hägerström’s in the year 1902, i.e., a transcendental position. However, this round of the discussion unexpectedly ends with the botanist delivering an argument to which the philosopher finds no answer. The latter is accused of having presented only a subjective criterion of truth: his own certainty of the validity of the principle. In his eager to attack, Hägerström writes alluding to the game of chess, the philosopher had left his own king unprotected.

The second round of the discussion starts with the remark: “A decade had gone” (Hägerström 1910: 42). What was missing in the philosopher’s argument was an objective criterion of truth. How do we
get from our subjective certainty to the thing itself? In the meantime he is convinced that he has found the answer. What the philosopher gives expression to in the following pages is basically Hägerström’s standpoint from 1908. The mistake was to think that primarily only the content of our own consciousness is available to us, and that the reality of the thing apprehended must be supported by consciousness. As a matter of fact, the general concept of reality is presupposed in all knowing. The necessity of a philosophy of knowledge is grounded in the need to clarify, by way of conceptual analysis, what is presupposed in the empirical sciences, and which cannot be clarified by the empirical sciences themselves.

A lot would be gained, if the point of view came to be accepted, that empirical questions should be treated empirically, but that the presuppositions of what is empirical and in general the concepts which have a non-empirical meaning, and which we make use of all the time, should be examined in a pure conceptual investigation. (Ibid.: 64f).

Thus, in the dialogue between the philosopher and the botanist we get a picture of how Hägerström himself looked upon his philosophical development. However, as usual we get no clues about any philosophers or philosophical currents which may have played a role, positively or negatively, in this shift of standpoint. Instead Hägerström fosters the image of the lonely philosopher and his isolated quest for truth.

IV. What Is Still Missing?

In order to get an as clear as possible picture of Hägerström’s philosophical development in the years between 1902 and 1908 an intensified textual analysis of his publications from these years is of course essential, and the same goes for the unpublished lecture manuscripts. But in addition to this there exist certain lacunas in the available material that would be of great help if they could be filled out.

1. First of all, in the above-mentioned letter from Burman to Liljenvist (see note 10) the former writes that the younger philosophers in Uppsala have corresponded with someone of the representatives of the Neo-Friesian School, with the qualifying addition “if I remember
correctly”. If there exists such a correspondence it would of course be
of huge interest.32

2. The letters that Hägerström wrote during the years under dis-
cussion to his parents and to his wife are unpublished and, as far as I
know, not available to research, except for the reports and quotations
that are found in Margit Waller’s book Axell Hägerström. Människan som
få känd [Axel Hägerström. The man who few knew] from 1961.33 These
private letters are most probably also of philosophical interest.

3. Hägerström’s handwritten notebook from his Hegel lectures in
the Spring semester 1905 is not transcribed. Here some further insights
into the genesis of Hägerström’s new standpoint might very well be
obtained.

4. No material relating to the dispute between Hägerström and
Burman in “the philosophical club”, also in the Spring of 1905, is
known. However, it cannot be excluded that some such material exists
somewhere.

5. Adolf Phalén (1884–1931), who was to become the second central
figure of the new Uppsala philosophy, conducted a three months study
philosophy tour to Germany, probably sometime in the years 1908–1910. Almost
nothing seems to be known about this journey. When exactly did it take
place? Whom did he meet? Further knowledge about Phalén’s study
tour would probably cast some light on the international contacts of
the early Hägerström circle.34

V. Summary

This is in brief the picture of Hägerström’s philosophical development,
from the turn of the century to the publication of Das Prinzip der
Wissenschaft (1908), that I have tried to sketch:

1. At the latest around the turn to the twentieth century Hägerström
definitely breaks with Boströmian philosophy in favour of transcenden-
tal philosophy. Hägerström never was an orthodox Boströmian, but he
was in his early career deeply influenced by the Neo-Boströmian phi-
losophy of Burman.

2. A few years into the new century a circle of young philosophers
in Uppsala gathers around Hägerström as the central figure; they advo-
cate a modern rationalism inspired by Kantian philosophy.35
3. Sometime in the autumn of 1904 Hägerström breaks with transcendentalism, and during the winter of 1904/05 and spring of 1905 he lays the foundation for his new objectivistic/naturalistic standpoint, which finally finds expression in *Das Prinzip der Wissenschaft* from 1908.

4. The most important sources of inspiration, positively and negatively, for the break with transcendentalism were Leonard Nelson’s *Die kritische Methode* (1904), the lecture series on Hegel’s *Science of Logic* in the Spring semester 1905, and the dispute with Burman about the status of a philosophical propaedeutic also in the spring of 1905.\(^{36}\)

5. When Barkman in his open letter from December 1905 characterized Hägerström’s standpoint as a modern rationalism inspired by Kantian philosophy, he was not correctly representing his philosophical position at that time.

6. During the years 1905–06 there seems to have existed a disagreement within the Hägerström circle relating to the issue whether Hegel is guilty or not of subjectivism and psychologism. At least Hedvall at this time were of the strong conviction that this was not the case, and he paralleled Hägerström’s position with Hegel’s. However, during the following years a distinction came to be made between two major forms of subjectivism: empiricist and a rationalist or speculative version (of which Hegel is now said to be guilty).\(^{37}\)

**VI. Epilogue**

Hägerström wrote in his *Selbstdarstellung* from 1929 that he considered *Das Prinzip der Wissenschaft* as his “most important publication” (Hägerström 1957: 119). Only a few years later it had become a highly controversial issue among philosophical circles in Uppsala if this publication really were to be considered as representative of what was by now called Uppsala philosophy, not to speak of it being the foundational text for this movement of thought. In his popular presentation *Vad är Uppsala-filosofien?* [What is Uppsala philosophy?] from 1938, Gunnar Oxenstierna (1897–1939) laid down that *Das Prinzip der Wissenschaft* has “absolutely nothing to do with what is called ‘Uppsala philosophy’” (Oxenstierna 1938: 4). Three years later Ingemar Hedenius (1908–1982), in his famous book *Om rätt och moral* [On law and morals], highlighted
what he saw as the obvious parallels between the Vienna Circle (= Logical Empiricism), the Cambridge School (= Moore, Russell), and the Uppsala philosophy (cf. Hedenius 1941: 11). At the same time, being sceptical about the status of Das Prinzip der Wissenschaft, he heralded Karl Hedvall’s doctoral dissertation from 1906—Humes Erkenntnistheorie kritisch dargestellt. Eine Untersuchung über empiristische Prinzipien—as “the first investigation representative of Uppsala philosophy” (ibid.: 12). This is, to say the least, a rather surprising statement, considering that Hedvall’s dissertation is a furious attack on philosophical empiricism: “To reject Hume is to reject also the most modern [philosophers]” (Hedvall 1906: 74).38 A generation after that Hägerström, Hedvall, and Phalén had laid the foundation of the new Uppsala philosophy, the intellectual milieu, the philosophical context and the influences, in which this took place was, so it seems, largely forgotten. Instead the time had come for various founding stories that in many ways neglected the historical record or did not care very much about getting things right.39

Notes

1. On the Boströmian School in Swedish philosophy, see Nordin 1981. All translations from German and Swedish in the following text are my own (C.-G.H.).

2. The text is mainly based on an article that I wrote some years ago and which has been published in the yearbook Lychnos (Heidegren 2002), and on a chapter in my book Det moderna genombrottet i nordisk universitetsfilosofi 1860–1915 (The modern breakthrough in nordic university philosophy 1860–1915) (Heidegren 2004: 317–377). But the text also contains some revisions, some new material, and further reflections. I have especially tried to strengthen the case for Leonard Nelson as an important influence on Hägerström.

3. Hägerström’s most well-known contribution in the realm of practical philosophy is the doctrine that was later (first by his opponents) given the name value nihilism. It states that value judgements are not and cannot be true or false; they are nothing but expressions of our preferences, of what we like and what we dislike. Thus, a moral theory can only be about the moral valuations actually held by some people at a certain time and place, but never about what is in itself good or bad, right or wrong, just or unjust.

4. This recent monograph by Patricia Mindus is the first comprehensive presentation and analysis of the life and work of Axel Hägerström.

5. I quote from the Swedish translation, made by Martin Fries, of Hägerström’s self-presentation (originally published in German). Basically the same picture is to be found in the Selbstdarstellung of the second central figure of the new Uppsala philosophy, Adolf Phalén (cf. Phalén 1979b: 31ff).

6. The book that Hägerström published in 1904—Stat och rätt. En rättsfilosofisk undersökning (State and law. An inquiry in philosophy of law)—still adheres to the tradition of transcendental philosophy. It was probably written in a certain haste in order to strengthen Hägerström’s qualification for the professorial chair in practical philosophy at Lund University, to which he applied. The preface of Stat och rätt is dated January 1904.
7. Cp. Kant, *Critique of Pure Reason*: “It must be possible that the *I think* should accompany all my representations” (Kant 1966: 77 [B132]). And: “The synthetical unity of apperception is the highest point with which all employment of the understanding, and even the whole of logic, and afterwards the whole of transcendental philosophy, must be connected; ay, that faculty is the understanding itself.” (Ibid.: 78 [B 134]).

8. Cp. Hägerström 1902: 1. On the controversy over psychologism in the late 19th and early 20th century philosophy, see Kusch 1995. The very term *Psychologismus* was first used by the Hegelian Johann Eduard Erdmann in 1866. Frans von Scheele (1853–1931) was probably the first to use the term in a Swedish philosophical context in 1896 (cf. Scheele 1896: 1); Hägerström used it, eventually for the first time, in his book on Kant (cf. Hägerström 1902: 100, 192, 201, 204). Definitions and criteria for psychologism were put forward in abundance during the first decades of the 20th century within German philosophy. See the long list of criteria in circulation presented in Kusch 1995: 118ff. Furthermore, cross-accusations of psychologism was common at the time: Husserl, the great critic of psychologism, was for example often labelled a psychologist by his opponents in the heated debate around the turn of the century (cf. ibid.: 96ff).

9. Ernst Cassirer found it paradoxical that Hägerström as interpreter of Kant did not think of him as guilty of psychologism and subjectivism, whereas he as systematic philosopher was of the opinion that Kant was deeply entangled in subjectivism. “I have to admit that I find it difficult to bring together the two outlooks, both of which find clear and unequivocal support in Hägerström’s publications.” (Cassirer 1939: 32). The solution to this paradox is, in my view, that Hägerström changed his mind about Kant sometime in the years between 1902 and 1908.

10. Burman writes: “I am not familiar with Fries, but the younger philosophers in Uppsala have been keenly occupied with the School, and, if I remember correctly, have also corresponded with someone of its representatives.” (LUB) Thus, if there actually exist a correspondence is uncertain, but not that the younger philosophers have been *keenly occupied* with the School in question. In my interpretation, I try to make the most out of this statement by Burman (and I am well aware of the risk that I make too much out of it). Unfortunately, the letter from Liljeqvist to Burman that must have preceded Burmans letter from January 28, 1912, seems to be missing.


12. In my article from 2002 I incorrectly write that the Jakob Friedrich Fries-Gesellschaft was founded in 1904 (cf. Heidegren 2002: 85).

13. Cp. Nelson: “The critique proves the *psychological* proposition, that the knowledge which a certain metaphysical proposition expresses is a rational immediate knowledge” (Nelson 1970: 32). Thus it is not the metaphysical principles as such which are proven, because that is impossible.

14. In *Kants Ethik* Hägerström writes that “Kant is not completely free from psychologism, although there is a marked tendency by him to stay away from it” (Hägerström 1902: 100; cp.: 184–207). In the same book Hägerström strongly criticizes Cohen, Riehl and several others for making a psychological reading of Kant. According to Nelson is not Kant himself a psychologist, but he is guilty of a tendency to confuse psychological and philosophical principles. By psychologism Nelson seems to mean the following standpoint: philosophy is not a rational science, but an empirical psychology (cf. Nelson 1970: 40). His own position
is: philosophy is a rational science, but the critique of reason is an empirical psychology.

NB. Although Nelson himself did not consider Kant to be a psychologist, he might very well have given Hägerström a push in the direction of interpreting Kant as a psychologist. Thus Hägerström did not accept Nelson’s conclusion, but after having considered the latter’s argumentation he revised his interpretation of Kant.

15. “There is no theory of the possibility of knowledge” (Nelson 1970: 25, italics in original). Later Nelson’s argument for the impossibility of a theory of knowledge, as the presumed science of the objective validity of knowledge, goes something like this: To decide if a certain claim to knowledge is true knowledge, we need a criterion of truth. The criterion is itself either a knowledge or not: if it is it belongs to what is problematical, if it is not it must itself become an object of knowledge, for which we need a criterion of truth (cf. Nelson 1973a: 92ff.). The question of a Kriterium veri is at the centre of Hägerström’s Das Prinzip der Wissenschaft.


17. Hägerström writes right to begin in Das Prinzip der Wissenschaft: “The search for the principle of science is a search for a concept whose validity lies immediately in the concept itself or in the thing itself that is thought. Is there no such concept, then there is no science at all. In order for the validity of a thought to have a support, there must by necessity be an ultimate point of support” (Hägerström 1908: 3). If no such ultimate support exist, this is Hägerström’s conviction, thought gets entangled in circular modes of argumentation. The concept of reality, just as the concept of self-identity, is for Hägerström “an intuition that cannot be further resolved” (Hägerström 1908: 87) through analysis.

18. The letter is unfortunately not dated in Waller’s book. Margit Waller was the daughter of Hägerström.

19. Marcel Quarfood informed me in an email from December 5, 2011, that in the copy of Das Prinzip der Wissenschaft to be found at Stockholm University Library, a copy with a handwritten dedication from Hägerström to Efraim Liljeqvist, there are pencilled notes in the margin. The name of Fries occurs several times and on p. 61 are written the names “Fries, Nelson”. Most probably these notes are from the first owner of the book, and also most probably forms the background for the question that Burman tried to answer in his letter to Liljeqvist from January 28, 1912, i.e., the letter that opened my eyes for an eventual influence from Nelson and the Neo-Friesian School (cf. note 10). Liljeqvist, when reading Das Prinzip der Wissenschaft, obviously saw some kind of similarities or parallels between Hägerström on the one hand, and Fries and Nelson on the other.

20. Nelson was only 22 years old in 1904, but very far from a shy newcomer on the philosophical scene. The following year he published (cf. Nelson 1973) a very polemical review of Hermann Cohen’s Logik der reinen Erkenntnis (1902), to which Ernst Cassirer responded with a critical dissection of Nelson’s standpoint over 35 pages (cf. Cassirer 1906). The latter article was followed by several polemical articles (cf. Heidegren 2002: 87 for further references).

21. There are also other parallels between Hägerström and Nelson: when the latter for example writes about “empiricism as being destructive of all philosophy” (Nelson 1970: 62) he is just as critical as Hägerström of philosophical empiricism (cp. Hägerström 1908: 28–37). Compare also their respective views on the syllogism (Nelson 1970: 20ff., and Hägerström 1908: 57ff).

22. In his open letter Barkman several times expresses himself in terms of a “we”, i.e., he obviously saw himself as speaking on behalf of a philosophical circle with a specific set of views in common. Barkman had defended his doctoral thesis in philosophy at Uppsala University in December 1901: Bidrag till den transcendentala kategoriläran (Contribution to
the transcendental doctrine of categories). Later he studied jurisprudence and still later he worked as a journalist in Gothenburg (cf. Heidegren 2004: 350f.). Barkman’s open letter in Svenska Dagbladet was caused by his dissatisfaction with the way Hägerström was assessed by the expert committee when he applied for the professorial chair in practical philosophy at Lund University.

23. Letters from Hedvall to Liljeqvist from October 25, 1905, and December 4, 1905 (LUB).
24. According to Boströmian philosophy reality is ordered in a hierarchy, with higher and lower levels: the highest level being God, the lowest sensuous reality. Hägerström’s naturalism is a violent reaction to this whole way of thinking: there exists nothing which as such is higher or lower. This position had implications for his practical philosophy: no moral standpoint is as such higher or lower than another.
25. Cp. Hegel in Wissenschaft der Logik: “The pure Science thus presupposes the liberation from the opposition of consciousness. It consists in Thought in so far it is just as much the Thing itself, or the Thing itself in so far it is just as much pure Thought. […] This objective Thinking is then the content of pure Science.” (Hegel 1979: 43). To bring together or reconcile subjective certainty and objective truth is the task of Hegel’s Phenomenology of Spirit (1807). This reconciliation is what is termed absolute knowing, being the element of science.
26. Hägerström’s official diary notes are available at UUB as well as LUB. His handwritten notebook is catalogued as “Hägerström 6:6” at UUB; the first thirty pages seem to relate to the lectures on Hegel’s logic. Martin Fries pointed a long time ago to the importance of these Hegel-lectures (for example in Fries 1944: xxxii), but made, as far as I know, no attempt to work out in any detail in what way they were important. Furthermore, in the same book Fries writes that Hägerström “broke with subjectivism” already in 1904, as well as that he “broke free from Kant already around 1905” (ibid.: 251 and 219). These dates no doubt fit quite nicely into the story I am telling here.
27. In a letter to Vitalis Norström from December 6, 1910, Burman writes about Hägerström: “He wants to know nothing of Hegel, nothing at all of a doctrine of evolution or speculative movement.” (GUB)
28. Cp. Das Prinzip der Wissenschaft: “In all knowing is expressed: this is so, this has validity, this is really the case. […] Thence the concept of reality is the logical condition of every particular knowledge” (Hägerström 1908: 27).
29. I am thinking primarily of the negative parts of the book (cf. Hägerström 1908: 28–53). But compare also the following: “Being thought of as lacking self-identity or being not thought of as a determinate This, is due to this lack of determinateness also lacking the determination of Being, is nothing” (Ibid.: 88). Dasein is Hegel’s term for determinate Being. For him the proposition of Spinoza: omnis determinatio est negatio (all determination is negation) is of “immense importance” (Hegel 1979: 121). Hägerström dismisses this proposition as a “misunderstanding”, as expressing only a “subjective necessity” (Hägerström 1908: 92f).
31. Nelson conceived of the critique of reason as a paideutic to metaphysics (or philosophy proper), which however does not deliver a “proof” but a “deduction” of the immediate knowledge of pure reason, i.e., brings to light what is necessarily presupposed in every proof (cf. Nelson 1970: 16, 26f, 42).
32. In an email from August 8, 2011, Dr. Kay Herrmann (Chemnitz) informs me that no letters to any Uppsala philosophers exist in “Bestand Leonard Nelson” at the Archiv der sozialen Demokratie, Bonn. Maybe some letters are lost, or maybe Burman did not remember correctly.
33. Hans Ruin had access to some letters from the 1890s when he investigated the influence of Nietzsche on the early Hägerström (see Ruin 2000).
34. Phalén was professor in theoretical philosophy from 1916 until his death. What we know
is that Phalén during his study tour visited at least Heidelberg and Freiburg im Breisgau, i.e., the two strongholds of the South-Western Neo-Kantianism. Did he also go to Göttingen? Did he eventually meet any of the representatives of the Neo-Friesian School or perhaps Husserl? Unfortunately, no account of Phalén’s journey exist at UUB among the travel accounts sent in to the University. It was Thorild Dahlquist (1920–2009) who first directed my attention to Phalén’s study tour (letter from January 16, 2002); his source was Efraim Liljeqvist’s assessment from 1916 concerning the professorial chair in theoretical philosophy in Uppsala: “A three months study tour to Heidelberg and Freiburg in Br. can be noted down” (Handlingar 1916: 103). A letter from Jonas Cohn (1869–1947), Neo-Kantian philosopher in Freiburg im Breisgau, to Phalén from June 1, 1912, shows that the two were personally acquainted (UUB).

35. For more about this circle see Heidegren 2004: 348ff. Among the plans were to start a philosophical journal in German language. These plans were discussed from the autumn of 1904 into the spring of 1905 (cf. Waller 1961: 181f.). The choice of German as publication language indicates international ambitions. The plan was an economically risky undertaking, and probably for this reason Hägerström seems to have been a rather reluctant participant.

36. The case for the importance of Nelson and the Neo-Friesian School is mainly based on indirect textual evidence. To my knowledge, Nelson is nowhere mentioned or referred to in Hägerström’s writings. Some hard evidence to support my interpretation is of course a desiderate. Liljeqvist’s notes in the margin of his copy of Das Prinzip der Wissenschaft shows no more than that he by the reading came to think of Fries and Nelson (cp. note 19).

37. See Hedvall 1910: 251ff, and Phalén 1979a: 57. To the empiristic version Phalén counts among others “the psychologistic Kantians”, whose point of departure is “Fries and Beneke” (ibid.), and by which most probably is meant the Neo-Friesian School.

38. Hedvall here quotes the German Hegelian Adolf Lasson (1832–1917). To the modern empiricists Hedvall count among others Avenarius, Høffding, Mach, Spencer, and Wundt. In his dissertation Hedvall again and again refer to Fichte and Hegel in positive words, whereas he in full earnest raises the question if Hume really is to be considered an important philosopher. Had Hedenius read Hedvall’s dissertation? I doubt it! On Hedvall, see Nordin 1981: 59–63, and Heidegren 2004: 363–368.

39. The most ambitious attempt by the next generation of Uppsala philosophers, who were moving on to analytical philosophy, to get things right is the collection of articles in Marc-Wogau 1968. According to Anders Wedberg (1913–1978) Hägerström was a “visionary thinker”, who constructed “complicated networks of abstruse reasoning” (Wedberg 1966: 368) around his visions. On the retrospective construction of Uppsala-philosophy as a modern school of thought and a parallel movement to the Vienna Circle and Cambridge Philosophy, see Strang 2010. On parallels and differences between the early Uppsala philosophy and the somewhat later Vienna Circle, see Mindus 2009: 72ff, and Heidegren 2010: 101ff.

**Archive Material**

Axel Hägerström’s official lecture diary notes, Uppsala och Lunds universitetsbibliotek (UUB and LUB).

Axel Hägerström’s notebook (6: 6), Uppsala universitetsbibliotek (UUB).

Letter from Jonas Cohn to Adolf Phalén, Uppsala universitetsbibliotek (UUB).

Letter from Erik Olof Burman to Efraim Liljeqvist, Lunds universitetsbibliotek (LUB).

Letters from Karl Hedvall to Efraim Liljeqvist, Lunds universitetsbibliotek (LUB).

Letters from Erik Olof Burman to Vitalis Norström, Göteborgs universitetsbibliotek (GUB).
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Handlingar rörande återbesättandet af professuren i teoretisk filosofi vid Uppsala universitet. (Documents About the Appointment of the Chair in Theoretical Philosophy at Uppsala University). Uppsala, 1916.


Axel Hägerström: Illuminating the Dark Years (1902–1908)


Phalén, A. (1979a) "Kritik av subjektivismen i olika former med särskild hänsyn till transcendentalfilosofien" (Critique of subjectivism in its various modalities with special regard to the philosophy of transcendentalism) [1910]. In: *Mindre skrifter* (Minor writings), utgivna av C.E. Sjöstedt: 9–58. Lund: Doxa.


Axel Hägerström’s place in the history of twentieth century philosophy is intimately connected with analytic philosophy. Internationally, Hägerström is known as one of the very first philosophers to formulate the emotive or non-cognitive theory in meta-ethics, which he programmatically launched in his inaugural speech as Professor of Practical Philosophy in Uppsala 1911 (Blackburn 2005: 158; Satris 1987: 9ff). In modified forms, the theory later became popular among logical empiricists such as Alfred Ayer (1936) and Rudolf Carnap (1935), and served as one of the cornerstone positions in the meta-ethical debates of the analytic tradition throughout the twentieth century. In Sweden, Hägerström is known as the great moderniser of the philosophical discipline. It was with him that the definite break with the idealistic tradition of Christopher Jacob Boström (1797–1866) occurred, in favour of a modern philosophical approach of conceptual or logical analysis. Accordingly Hägerström’s Uppsala School was often during the latter half of the twentieth century presented as a parallel movement to logical empiricism and to the Cambridge philosophers Bertrand Russell (1872–1970) and George Edward Moore (1873–1958), and even as the founders of the Swedish analytic tradition. In fact, according to Swedish
Metaphysics, Neo-Kantianism, Religion

reference works, analytic philosophy was said to have been born simul-
taneously, but independently, in three different places: in Cambridge, Vienna and Uppsala.¹

For long, there was little doubt regarding the historical place and significance of Hägerström and the Uppsala School, but during the past twenty or thirty years many Swedish philosophers, historians of philosophy, and intellectual historians have challenged this account of Hägerström as the originator of the analytic tradition. It has become evident that the philosophy of Hägerström was rather different from not only post-war analytic philosophy, but also from the ideas and theories of the Vienna Circle and the Cambridge philosophers. Hägerström was, for example, never interested in formal logic, which in the view of many Uppsala philosophers reduced language into a mere mathematical calculus (Tegen 1936). Nor did Hägerström engage in an analysis of ordinary language in the vein of the Oxford philosopher John Langshaw Austin or the later Wittgenstein. For Hägerström conceptual (or logical) analysis was a tool by which the nature and paradoxes of the world itself could be revealed, studied and overcome. Philosophical empiricism, in turn, was one of Hägerström’s main enemies, representing a form of subjectivism no less metaphysical than that of idealism (Hägerström 1929). According to Hägerström the empiricists were confused as they proceeded from the idea of the pri-
macy of consciousness, and thus always forced to separate the content of sensation from the sensation itself. In contrast, Hägerström’s epist-
temology included elements from Neo-Kantianism (for example the idea of reality as a consistent system of space-time) and phenomenol-
yogy (for example the idea of intentionality), and from this perspective he does actually seem more closely associated with philosophers from the continental rather than the analytic side of the great philosophical divide (Nordin 1984; Bengtsson 1992).

Similarly, recent historical research also testifies that Hägerström’s value theory owed much to Austrian Werttheorie and act-psychology (Franz Brentano, Alexius Meinong, and Christian von Ehrenfels), and that it, as such, was not at all very similar to the semantic-linguistic versions of emotivism that we associate with logical empiricists such as Ayer or Carnap (Danielsson 1993; Petersson 1973; 2009a). Where the logical empiricists argued that moral statements are meaningless as
they cannot be verified, Hägerström’s line of reasoning was rather that value judgements are no real judgements (Urteil) as they are not representations (Vorstellung) of something as existent. A value judgement, Hägerström argued, is instead characterised by always involving a feeling or an attitude (Gemütsbewegung) towards that which is represented (Hägerström 1911). Moreover, contrary to the autonomous and apolitical credo of post-war analytic philosophy, Hägerström’s philosophy was, especially by virtue of his value theory, loaded with significant cultural and political weight. His philosophy was well in line with the radical, anticlerical, liberal-socialist heritage of the 1880s (kulturradikalismen), and as such it would undoubtedly make more sense, from a historical point of view, to read Hägerström together with authors like as Henrik Ibsen, Georg Brandes or even Friedrich Nietzsche, rather than Ayer, Carnap, or Richard Mervin Hare (Mindus 2009: 13–21; Ruin 2000; Runeby 1995; Wiklund 2000: 149–157).

The purpose of this article is not to provide yet another blow to the myth of Hägerström as the founder of the analytic school, but to provide an account of how and why he was placed in this tradition in the first place. The starting point for my investigation is the view that philosophical schools or movements do not constitute static theoretical positions or doctrines, but should instead be examined as intellectual legacies that are constantly redescribed, reinterpreted and renamed. Philosophical schools, movements or traditions are the objects of rhetorical-political struggles in which they can be claimed, abandoned or lost. The idea of Hägerström as an analytic philosopher emerged only after Hägerström had passed away in 1939, and it was actively produced by a group of younger philosophers, Konrad Marc-Wogau (1902–91), Ingemar Hedenius (1908–82) and Anders Wedberg (1913–78), who used the Hägerströmian legacy for their own purposes. On these pages I will focus on the struggles for Hägerström’s legacy and account for the “rhetorical redescriptions” by which his philosophy was reinterpreted and used to establish the analytic dominance in Swedish post-war philosophy. These events occurred in close interplay with the development on the international philosophical scene, particularly with the forced exit of logical empiricism into the Anglo-American world, and the cultural shift from Germany to the United States in Swedish intellectual life. The making of Hägerström into an analytic philosopher was part of the
consolidation and mobilisation of analytic philosophy in the Anglo-American world after the Second World War.

**The Origins of Analytic Philosophy**

The distinction between analytic and continental philosophy played a fundamental role as a means of distinguishing friends from enemies in the academic and meritocratic struggles at the universities as well as in the popular discussions during the latter half of the twentieth century. Depending on your own position in the debate it was a way of separating serious philosophers from dilettantes, or interesting intellectuals from irrelevant positivists. While the analytic philosophers claimed that continental philosophy was unscientific, metaphysical and obscure, the continental philosophers retorted that the analytic philosophers were too formalistic and scientistic to grasp the more fundamental issues of life. But despite the obvious and fundamental nature of the division, it was all but easy to give an account of what it really concerned. Especially within the analytic tradition there was a continuous debate regarding the nature of the distinction and of analytic philosophy itself. It was generally agreed that the rift was not merely geographical or linguistic, as many prominent analytic philosophers originated in the European continent (and vice versa), but was equally difficult to point at any particular doctrine, method or theme of interest that separated analytic from continental philosophy. Any single characteristic inevitably seemed to involve some important exceptions that did not fit into the general conception of the division.

The debate regarding the nature of “analytic philosophy” is still continuing, but the focus has arguably shifted from attempts to find the necessary and sufficient theoretical or methodological characteristics of analytic philosophy, to more sophisticated ways of approaching the problem. Paradoxically perhaps, these efforts often draw upon themes and ideas from the continental philosophers. For example, Hans Sluga has suggested that “analytic philosophy” should be interpreted as a “discourse” in the terminology of Foucault (Sluga 1998). What the analytic philosophers have in common, Sluga argues, is not some single dogmatic formula, but rather a combination of a certain set of linguistic expressions and social relations. Similarly, and building much on Sluga,
Hans-Johann Glock has argued that analytic philosophy can be depicted by using the Wittgensteinian idea of family resemblance (Glock 2004 and 2008). Whereas there inevitably will be exceptions to every particular theoretical, doctrinal or methodological characterisation of “analytic philosophy”, these features can together provide a complex network of overlapping similarities that enable us to differentiate the analytic philosophy from other movements.

However, Sluga and Glock emphasise that analytic philosophy should not merely be defined by means of theoretical and methodological characteristics, but also as a historical tradition that has been passed over from generation to generation. And indeed, during the past years there has been something of a historical turn within analytic philosophy, with many scholars looking for the origins and historical foundations of the analytic school. In these discussions analytic philosophy has been said to originate for example in the linguistic turn of Gottlob Frege’s *Die Grundlagen der Arithmetik* in 1884 (e.g., Dummett 1994), in the Cambridge philosophers Bertrand Russell’s and George Edward Moore’s revolt against British idealism at the dawn of the twentieth century (e.g., Hacker 1996), in the programmatic launch of the Vienna Circle in 1929, in the foundation of the British philosophical journal *Analysis* in 1933, or even as late as in the 1950s and the emergence of “ordinary language philosophy” with Austin and Wittgenstein (von Wright 1955: 160). Inevitably, your take on the question of the origins of analytic philosophy depends on your understanding of its central message.

To my mind, a useful starting point for a study of the history of analytic philosophy is the distinction between those who produced and conceptualised the tradition on the one hand, and the philosophers who thereby became canonised as its historical founders and foremost representatives on the other. From this perspective it is notable that the term “analytic philosophy” was launched as late as in 1936 by Ernest Nagel, and that it was not until Arthur Pap’s *Elements of Analytic Philosophy* in 1949 that the term established itself in the philosophical vocabulary (e.g., Hacker 1996: 274; Raatikainen 2001: 206; von Wright 1992: 200). Neither Frege, Russell, Moore, Ludwig Wittgenstein, nor the members of the Vienna Circle used “analytic philosophy” as a name or description of their own philosophy, even if they later were included among the
foremost representatives of the movement. The term “analytic philosophy” was created in hindsight, and applied on philosophers to whom the label had been entirely foreign.

For sure, it is not unthinkable that there was a definite and well-demarcated analytic philosophical movement before the label itself was established, but it is important to remember that the philosophical landscape before the Second World War was much more complex than the post-war division between analytic and continental suggests. Many of the philosophers that today are conceived of as the founders of the analytic tradition shared ideas, themes and interests with philosophers that we today associate primarily with continental philosophy. It is no secret, for example, that Frege and the founder of the phenomenological movement, Edmund Husserl, shared many ideas and that there were many similar features in their philosophical projects, not least in the criticism of psychologism. Similarly, in Cambridge, particularly Russell often referred to and discussed philosophers like Franz Brentano and Alexius Meinong (Hacker 1996: 7). Even when it comes to the Vienna Circle historians have recently rediscovered influences from and similarities to, for example, the neo-Kantian and phenomenologist movements (Friedman 1999; Friedman 2000; Stadler 2001, Uebel 2003). All these different philosophers and movements were part of the same philosophical landscape; they shared the same philosophical language and engaged each other in discussions of common philosophical problems. They may not have constituted a single “discourse” in Sluga’s Foucauldian terms, but they were definitely not split into opposed and polarised analytic and continental halves (Friedman 1999: xii; 2000: xi).

So, when and why did western philosophy fall into two fundamentally different philosophical traditions? There were certainly many ways in which the philosophers of the early twentieth century differed from each other both as to their starting points and to their conclusions. Whereas Frege was framed as a mathematician and inspired philosophers with a special liking for logic and philosophy of language, Husserl won appreciation as a philosopher with a distinct phenomenological programme (Kusch 1995: 203ff; Simons 2001). While Heidegger took metaphysics seriously, the Vienna Circle deemed it meaningless. In a similar way, Michael Friedman has found an embryo to the philosophical divorce in the differences between two neo-Kantian schools.
Whereas the philosophers in Marburg were interested in the development of natural science, the neo-Kantians of South-western Germany were engaged with the problems of the humanities (Friedman 1999; 2000).

But the theoretical differences were hardly by themselves enough to generate a clear-cut division between analytic and continental philosophy. Many scholars have convincingly argued that the polarisation of western philosophy was triggered by the political development in Europe during the 1930s (Simons 2001; Sluga 1993: 11f). The hostile attitude of the Vienna Circle towards metaphysics, Lebensphilosophie and particularly Heidegger, was founded in a political conviction that these philosophies were paving the way for, or directly contributing to, the nationalistic and conservative forces in Europe. The Vienna Circle became increasingly politicised during the early 1930s, until eventually its official organisation, Verein Ernst Mach, was closed down as a Social Democratic organisation by Dollfuss in 1934, and its leader Moritz Schlick was murdered by a mentally deranged right-wing nationalist in 1936 (Stadler 2001: 64, 582f). The spiteful rhetoric against metaphysics and Lebensphilosophie continued among many analytic philosophers after the war, and because the idea of some kind of a connection between totalitarianism and “the other philosophers” it took quite some time before it became appropriate to be interested in continental philosophy in the Anglo-American cultural sphere.9

Of course, political inclination itself was not a feature that distinguished analytic from continental philosophers.10 But the cultural exodus from Hitler’s Europe clearly contributed to the geographical division of the philosophical landscape in an Anglo-American and a continental European faction. It was not only the logical empiricists that were forced to escape from Nazism—the same faith was bestowed upon also many, if not most, philosophers from what would become the continental tradition—but it is surely fair to say that the logical empiricists succeeded better than most other European philosophers in settling themselves in the new world. Whereas many representatives of other philosophical movements returned to Germany after the war, nearly all of the logical empiricists stayed in the Anglo-American world.11 There were both push and pull factors (Dahms 2003). The logical empiricists had already in the 1930s experienced great difficulties in finding suitable positions at
the European universities and many of them feared that the situation had not changed despite the fall of Nazism (Galison 1996). There were also many theoretical similarities between logical empiricism and both the Cambridge philosophers, as well as the pragmatist and neo-realist American movements in the United States, and thus the logical empiricists were able to merge with the Anglo-American philosophical community. Moreover, it is important to remember that these similarities had been explored already before the “cultural exodus”. During the 1930s the logical empiricists had tried to compensate their vulnerable position in Europe by adopting a programmatically internationalist attitude. They founded international journals and book-series and the arranged annual “international congresses for the Unity of Science”. In this way, the logical empiricists established valuable contacts, and American philosophers like Charles Morris and Willard van Orman Quine proved very helpful when it came to arranging for the move over to the United States, and particularly in finding positions at the American universities (Carnap 1963: 34; Galison 1996: 35–40).

It was in connection with these processes of internationalisation, re-localisation, and re-organisation that the term “analytic philosophy” emerged, and that analytic philosophy was consolidated as a distinct movement. Nagel’s two-part article “Impressions and appraisals of analytic philosophy in Europe”, published in *The Journal of Philosophy* in 1936 stands out as an early attempt to launch analytic philosophy as a collective name of a number of different philosophers and philosophical movements (Nagel 1936a; 1936b). It was written as an introduction for Americans to the recent developments in European philosophy. Reporting from his travels in Europe Nagel concluded that there was a strong tendency among philosophers in Cambridge (Moore and Wittgenstein), Vienna (the Vienna Circle), and Poland (Łukasiewicz and Tarski) to argue that the task of philosophy was to clarify the meaning and implications scientific language, rather than to add to the knowledge of the special sciences (Nagel 1936a: 6).

It is a matter of discussion whether the philosophers and philosophical communities mentioned by Nagel actually constituted a movement or discourse of their own at this particular point. There were undoubtedly many theoretical similarities, and even some actual networks. Particularly the Vienna Circle had, under the energetic
leadership of Otto Neurath, worked effortlessly in order to gather the anti-metaphysical forces of Europe at what they considered to be a crucial political and cultural juncture. But it is clear, however, that “analytic philosophy” was not part of their vocabulary. Instead they used terms like “philosophy of science” (Wissenschaftsphilosophie or wissenschaftliche Philosophie), “unity of science” (Einheitswissenschaft), or “logic of science” (Wissenschaftslogik) in order to mobilise the movement. It was only from a Nagel’s American perspective that these intellectuals and scientists were gathered as “analytic philosophers”. For him it was a European movement with great potential in the United States. Although Nagel found it unfortunate that there were so little contacts between European “analytic philosophers” and similarly-minded Americans, he was convinced that “much in the following account will be familiar to American readers, and any one brought up in the atmosphere of analytic naturalism will find himself very much at home intellectually at the places on which I am reporting” (Nagel 1936a: 10).

However, Nagel’s conceptual innovation did not get an immediate breakthrough. Actually, it was not until Arthur Pap’s book Elements of Analytic Philosophy (1949) that “analytic philosophy” became a key concept. For Pap, “analytic philosophy” was not merely a collective name for a number of different philosophers or philosophical communities across the western world, but rather a philosophical movement with a programme of its own. It was distinguished from “traditional”, “literary” or “speculative” philosophy by virtue of its focus on semantics and logical analysis. Pap did, however, recognise that the analytic movement had become divided in different factions, with quite different views on the nature of the philosophical analysis. There were the Carnapians who were occupied by developing a formal language, the followers of G.E. Moore who insisted on the primacy of ordinary language, and the Wittgensteinian “therapeutic positivists” who focused on unravelling the linguistic confusions that give rise to philosophical problems (Pap 1949: ixf). Nonetheless, for Pap it seemed natural to gather these factions under the same generic heading “analytic philosophy”, and there were no complaints about this among the reviewers of the book.

It is significant, however, that Pap’s book, like Nagel’s articles, was published in the United States. But by 1949 the distance to the practitioners of analytic philosophy was temporal rather than geographical.
For Pap, “analytic philosophy” was a tradition that continued the legacy from Cambridge and Vienna, but which was now residing primarily in the Anglo-American world. Analytic philosophy was mobilised as a philosophical movement during the immediate post-war period, but it was given historical foundations in the first half of the twentieth century.

The Philosophical Scene in Sweden During the 1930s

The distinction between those who conceptualised analytic philosophy and those philosophers who thereby became canonised as the founders and foremost representatives of the movement is central also when it comes to understanding Hägerström’s relation to analytic philosophy. Even if Hägerström and the Uppsala philosophers often described their method as “conceptual analysis” or “logical analysis”, it is clear that they did not use “analytic philosophy” as a name of their philosophy before the Second World War. What’s more, there were no relations between Uppsala and the circles in Vienna or Cambridge until the mid–1930s. In order to understand when, and why, Hägerström was framed as an analytic philosopher one needs to turn the attention to a group of younger Uppsala philosophers who during the late 1930s and early 1940s were in a process of abandoning Uppsala philosophy in favour of logical empiricism and the ideas of the Cambridge philosophers Russell and Moore, that is, to Marc-Wogau, Hedenius and Wedberg.

Whereas logical empiricism had found a fruitful soil in Denmark (Jørgen Jørgensen), Finland (Eino Kaila) and Norway (Arne Næss), the Swedish philosophical scene was during the 1930s still very much dominated by Hägerström’s Uppsala philosophy. This is not to say that the Swedish philosophers were unaware of the existence of the Vienna Circle. Contrary, the Lundensian/Gothenburgian philosopher Åke Petzäll (1901–57) had published two monographs on logical empiricism during the early 1930s (Petzäll 1931; 1935), and the ideas of the Vienna Circle were intensely debated at the philosophical department in Lund (Nyström 1974: 362–367). Petzäll was perhaps not a partisan logical empiricist, but he was clearly annoyed by the Uppsala dominance in the Swedish philosophical discussion and he did his best to provide space for alternative ideas in the journal Theoria that had been founded in 1936 on Petzäll’s initiative and with Petzäll as editor-in-chief (Strang 2010b).
Logical empiricism and Uppsala philosophy were during the 1930s conceived of, if not as opposed, then at least as very different philosophical movements. There were many theoretical differences (Nordin 1983: 51, 107). While the logical empiricists and the Uppsala philosophers agreed that much of contemporary philosophy should be rejected as pointless metaphysics and that logical analysis was the supreme method of proper scientific philosophy, they disagreed particularly on the nature of the analytical method and on the relation of philosophy and the special sciences. For the Uppsala philosophers the analytic method was a way of analysing the world itself, and as such they believed that philosophy could and should be of guiding significance to the special sciences. The logical empiricists saw it as the task for philosophy to assist the special sciences by providing them with logical frameworks, and by translating their findings to a universal (phenomenalist or physicalist) scientific language. Whereas the logical empiricists tried to adjust their philosophy to the special sciences, the Uppsala philosophers were more concerned with the autonomy of the philosophical discipline. These disagreements surfaced especially in connection with a debate that Petzäll arranged in *Theoria* in 1937. The debate concerned Einstein’s theory of relativity, which was taken for granted and seen as a natural starting point for any philosophical discussion by the logical empiricist Philipp Frank, but which was rejected as self-defeating by the Uppsala philosopher Gunnar Oxenstierna (Strang 2010b; Silverbark 1999: 286–292). Oxenstierna argued that it is impossible to define a concept like “space” without referring to related terms like “length”, “distance”, or “extension”, and that a definition therefore ultimately had to presuppose that there was something real and definite that corresponded to our notion “space” (Oxenstierna 1937). Frank conceded that it would be possible to give meaning to the idea of “real space” if one construed a co-ordinate system with, for example, the sun or a fixed star as the centre point. However, such a terminology would hardly be useful, and Einstein’s ideas were already successfully applied by the contemporary physicists (Frank 1937). At this point, the confrontation between Uppsala philosophy and logical empiricism seemed to have stalled and there was no indication that the gulf could be overcome.

The Uppsala school did not merely dominate the academic philosophical discussions in Sweden, it was also very much a central part of
the cultural and intellectual debates during the 1930s. This was largely due to Hägerström’s value theory which was a focal point in many discussions. By the progressively minded proponents Hägerström was used to break the conservative political dominance and to argue in favour of political and legal reforms. With reference to Hägerström’s value theory it was possible to claim that conservative legal or moral norms were not merely old fashioned or wrong, but in fact meaningless. By the critics Hägerström’s value theory was rejected as a dangerous nihilistic philosophy and, especially approaching the Second World War, as a symptom of the very same cultural disease that was spreading over Europe in the form of fascism and Nazism (Källström 1986; Strang 2010c). Although Hägerström himself rarely took part in these debates, he was clearly regarded as a leading progressive intellectual/philosopher in Sweden. He was an authority who it was important to criticise or to be associated with if you considered yourself to be “one of those who wanted to change things”.

In addition to these political connotations, there were also a couple of animated struggles for academic positions that were extensively covered in the press, and which further increased media attention to Hägerström and his school (Nordin 1983: 64–91). Simultaneously but not unrelated, Uppsala philosophy was the subject of fierce internal struggles with the disciples of Adolf Phalén (1884–1931) challenging the position of Hägerström as the sole front man of Uppsala philosophy. The debates concerned the precedence and ownership of different theories and aspects of Uppsala philosophy, such as the method of conceptual analysis and the criticism of subjectivism. Hedenius, Marc-Wogau, and Wedberg belonged to the Phalénian wing, and for them the Hägerströmian dominance was a source of distress, not only because they were overshadowed in the public debates, but also as they were in a rather weak position with regard to professional advancement (Nordin 1983: 93–114). Throughout the 1930s they tried in different ways, and with very little success, to break the Hägerströmian dominance. Eventually, however, they succeeded to claim the Uppsala legacy and to become the leading philosophers of the country. Paradoxically, they did it in the name of Hägerström and by associating him with logical empiricism and analytic philosophy.
The Making of Hägerström as the Father of Analytic Philosophy

From this perspective, Hedenius is certainly the most interesting of the three. Only eleven days after Hägerström’s death in the summer of 1939, Hedenius contacted Petzäll and volunteered to take Hägerström’s place in a projected debate with the German philosopher Ernst Cassirer in the journal Theoria on the occasion of Cassirer’s book Axel Hägerström—Eine Studie zur Schwedischen Philosophie der Gegenwart (1939). Petzäll accepted and Hedenius took his task very seriously producing two texts. The first one, “Begriffsanalyse und kritischer Idealismus I”, was a rather extensive exposition of the Uppsala philosophical method of logical analysis which would provide the foundation for a confrontation with the critical realism of Cassirer that Hedenius would embark on in a forthcoming second part his article. Although Hedenius still followed the Hägerström-Phalénian doctrine, there were some important signs of change, especially as Hedenius referred to the “rising awareness of the importance of logical analysis among philosophers in Sweden and abroad”. Hedenius also broke with the psychologism of Uppsala philosophy, claiming that the logical analysis should concern not the ideas (Vorstellungen), but the class of facts (Tatsachenklasse) that the concepts denote (Hedenius 1939a: 287–292).

Due to Hedenius’ military service, and probably also due to the enormity of the task, the latter half of the epistemological article was never published. Instead, Hedenius made a name for himself as a moral philosopher. In the very same issue of Theoria where the article “Begriffsanalyse und kritischer Idealismus” had been published, Hedenius also featured with what he considered to be “a small comment upon an important detail in Cassirer’s exposition of Hägerström’s moral theory”.16 In “Über den alogischen Charakter der sog. Werturteile” Hedenius argued that Cassirer had misinterpreted Hägerström’s value theory as a reformulation of the homo mensura thesis of the Ancient Sophists (Hedenius 1939b). Translated into modern philosophical terminology the homo mensura thesis implies that the statement “A is good” is equivalent with the statement “A is good for me”, which is true if the person who utters it actually is of the opinion that A is good and false if he/she is lying. This moral relativism, Hedenius argued, is different from Hägerström’s theory which not only
denies the existence of objective values, but also the possibility of (true and false) value judgements.

Whether Hedenius was correct in his criticism of Cassirer is a matter of discussion (Hansson and Nordin 2006: 162f; Thomasson 2004: 106–110). But from a historical perspective the comment is very significant as it was the first of a series of moves by which Hedenius claimed Hägerström’s role as the main advocate of the value nihilistic theory in Sweden. In the years that followed Hedenius published a sequence of popular articles on Hägerström and value nihilism in the Social Democratic journal Tiden, and these were later gathered as the successful book Om rätt och moral (1941). Here Hedenius did not merely adopt the value theory of Hägerström. On the contrary, he explicitly set out to improve it by “formulating it in a different manner from what is common amongst Hägerströmians”, and by proposing “an important modification” of it (Hedenius 1941: 13, 51). Hedenius formulated Hägerström’s theory differently by abandoning the psychological terminology of judgements, feelings and attitudes (Urteil, Vorstellung, Gemütsbewegung), in favour of a distinction between a sentence and a statement (sats och påstående). According to Hedenius, the value-nihilistic theory claimed there are certain sentences that seem to express statements, but which on closer examination do not express any statement about anything—that is, sentences such as “this is good”, “this is evil”, “this is right”, and “this ought to be done” (Hedenius 1941: 16f).

Hedenius modified Hägerström’s theory by proposing the distinction between what he called “genuine (äkta) and non-genuine (oäkta) value statements” (Hedenius 1941: 58). According to Hedenius, Hägerström had failed to acknowledge that the value nihilistic theory only applied to genuine value statements, i.e., in cases when “stealing is wrong” is used in order to express one’s opinion or in order to pressure someone. But the very same sentence can also, Hedenius argued, be used as a non-genuine statement, that is, in order to refer to the presence of a genuine norm, to the fact that some (legal or moral) authority, people in general or people in this particular culture, actually condemn stealing. As a non-genuine value statement, Hedenius claimed, “stealing is wrong” is a purely descriptive statement that can indeed be true or false.

The origin of Hedenius’s ideas has been the subject of some discussion. Many scholars have observed that Hedenius used Moore’s
distinction between “the meaning of a statement” and “an analysis of or a theory regarding the meaning of a statement” as a main argument (Nordin 2004b: 111; Petersson 2009: 37). Another, related, source was undoubtedly logical empiricism. Even if Hedenius did not explicitly refer to the emotivistic theory as presented by Ayer (1936) or Carnap (1935), there were many striking similarities. Like Hedenius, both Ayer and Carnap had argued in a Russellian way that value-statements have a deceptive grammatical form, which might cause one to think that they are regular statements (Ayer 1936: 108; Carnap 1935: 24). Furthermore, even if Hedenius did not subscribe to an outright verificationalism in Om rätt och moral, he did claim that “the meaning of a statement is the fact (sakförhållande) that makes it true” (Hedenius 1941: 62), which undoubtedly echoes Wittgenstein’s Tractatus as well as subsequent formulations by different logical empiricists (e.g., Carnap 1928: 325). It is also likely that Hedenius found inspiration in the article “Imperativer og Logik” that the Danish logical empiricist Jørgen Jørgensen had published in Theoria (1938).18 There Jørgensen had stated that an imperative such as “You ought to close the door!” could also be used as a description of the fact that such a command exists, which clearly seems to point in the direction of Hedenius’s distinction between genuine and non-genuine value statements (Strang 2009: 71ff).

Be that as it may, the striking thing with Om rätt och moral is that despite the fact that Hedenius clearly had found inspiration from abroad, and despite the fact that he effectively used these ideas to criticise, modify and radically reformulate Hägerström’s theory, Hedenius did not try to frame this as a philosophical revolution, or even as a definitive break with Hägerström and the Uppsala tradition. On the contrary, he emphasised that he was working within the same tradition, with the intention to improve the theories, and to formulate them in a more accessible and contemporary manner. With Om rätt och moral Hedenius challenged Hägerström’s position as the main advocate of the much debated value-nihilistic theory, and emerged as the main representative of Uppsala philosophy. But simultaneously, Om rätt och moral was also a move by which logical empiricism and analytic philosophy was introduced to Sweden as a natural continuation of the Hägerströmian tradition. Hägerström’s own philosophical intentions and contexts were repressed, and instead he was portrayed as a loner, an
autodidact or something of a philosophical oracle, and as an independent but “similar and contemporaneous reaction against metaphysics as the Cambridge School and the Vienna Circle” (Hedenius 1941: 9). In other words, Hedenius “colonised” the Hägerströmian legacy and used it as a basis for the introduction of logical empiricist ideas to the Swedish philosophical discussion.

Hedenius’ companions Marc-Wogau and Wedberg soon joined Hedenius in this reorientation. Like Hedenius, Marc-Wogau also started publishing articles on Hägerström when the grand old man of Uppsala philosophy had passed away in 1939 (Marc-Wogau 1940; 1946; 1949). Although Marc-Wogau’s articles on Hägerström’s ontology and epistemology were candid efforts to make sense of Hägerström’s philosophy rather than attempts to redescribe it, they must nonetheless be understood as moves to claim the right to interpret the Hägerströmian legacy. In his inaugural lecture “Uppsalafilosofin och den logiska empirismen” (1947) Marc-Wogau argued that Uppsala philosophy and logical empiricism were “united against a wide range of different movements in modern philosophy”. Marc-Wogau did note that there were significant differences between Hägerström and the logical empiricists, particularly regarding their views on natural science and formal logic, but emphasised that these were points where “younger Uppsala philosophers had moved closer to the position of the logical empiricists” (Marc Wogau 1947: 49).

Wedberg, who was the youngest of the three, was less concerned with stressing similarities between Hägerström and analytic philosophy. Instead he did his best to historicise Uppsala philosophy and to present it as a past stage in the development of modern analytic philosophy—or, in Jonas Schiött’s words, “as a talented but uncivilised provincial cousin” of the Cambridge and Vienna Schools (Shiött 2000: 155). In the small booklets Den nya logiken I–II (1945) Wedberg argued that the analytical intentions of Hägerström had been honourable, but that his mission had been compromised by his poor insights into modern logic. According to Wedberg, this was the main reason for some of Hägerström’s paradoxical ideas, for example, that the concept of a “relation” was metaphysical (Wedberg 1945: 5f).
The Analytic Hegemony in Sweden

There was undoubtedly a major shift in Swedish philosophy during the early 1940s. Exactly what it was that had happened depends on your perspective. On the one hand, from the perspective of the 1920s and 30s, Hedenius, Marc-Wogau, and Wedberg defeated the Hägerströmian faction of the Uppsala School and claimed the right to the Uppsala philosophical legacy. This was the way it was seen by the Hägerströmian faction in the internal struggles of Uppsala philosophy. Particularly Vilhelm Lundstedt was angered by Hedenius’s book *Om rätt och moral* which he explicitly interpreted as a continuation of the Phalénian attempts to diminish the importance of Hägerström, and which he believed was based on a complete misunderstanding and underestimation of Hägerström’s philosophy (Lundstedt 1942). The fact that Hedenius also emerged as a leading progressive intellectual in Sweden, claiming and continuing the Scandinavian anti-clerical and socialist-liberal tradition (*kulturradikalismen*) surely contributed to Lundstedt’s animosity.

On the other hand, from the perspective of the latter half of the twentieth century, Hedenius, Marc-Wogau, and Wedberg appropriated Hägerström in order to facilitate for the introduction of analytic philosophy to Sweden. It is striking that even if Hedenius was clearly influenced by logical empiricism in *Om rätt och moral*, he seldom explicitly referred to them, and he never used “logical empiricism” as a label for his own position. Instead he framed himself as an Uppsala philosopher who was developing Uppsala philosophy and improving the Hägerströmian doctrines. Doing so, he made frequent use of phrases such as “conceptual or logical analysis” or “scientific philosophy” which served as rhetorical bridges between his Uppsala philosophical past and his logical empiricist present. From this perspective it was also a stroke of genius of Hedenius to claim the label “value nihilism”, which originally had been coined by the critics of Hägerström and which, to much frustration for the Uppsala philosophers, had become a popular name for the theory in the public debates. By adopting this controversial but popular label, Hedenius emerged as the new Hägerström ahead of all his rivals.

Naturally, the label “analytic philosophy” also suited Hedenius and his companions well when it emerged in the international philosophical
vocabulary around 1950. Even if the “analysis” conducted by Hägerström had been rather different from both logical empiricism and post-war analytic philosophy, it was still possible, and very convenient, to claim that “analytic philosophy” originated in, not only Vienna and Cambridge, but also in Uppsala and Axel Hägerström. For example, when Gilbert Ryle’s famous book *The Revolution in Philosophy* (1956), which canonised Frege, Moore, the Vienna Circle, Wittgenstein and ordinary language philosophy (Strawson) as a distinct revolutionary philosophical movement, was translated into Swedish, it included a chapter by Marc-Wogau on “Axel Hägerström och Uppsalafilosofin” (Marc-Wogau 1957). The preface explained the addition by claiming that the three most significant branches of modern scientific philosophy—“often called analytic philosophy”—are the Cambridge School, logical empiricism and Uppsala philosophy (Marc-Wogau and Wennerberg 1957: 7). The same characterisation was repeated in several publications in the following years, for example in the third edition of Alf Ahlberg’s *Filosofiskt lexikon* (1963: 10), in Marc-Wogau’s *Filosofin genom tiderna* (1964: 123), in Wedberg’s *Filosofins historia* (1966: 366), and even as late as in 1984, in the third edition of Marc-Wogau’s *Filosofisk uppslagsbok* (1984: 23).

In associating Uppsala philosophy with logical empiricism and analytic philosophy, Hedenius, Marc-Wogau, and Weberg legitimised their own personal philosophical development from Uppsala philosophy, through logical empiricism, to analytic philosophy. But it was also a way for them to furnish this foreign philosophy with domestic roots. In the aftermath of the Second World War the position of analytic philosophy was often promoted by either explicitly or implicitly playing the domestic vs. foreign card. A common strategy was to stigmatise continental, and particularly German philosophy (idealism and phenomenology), as semi-fascistic (Östling 2008). Analytic philosophy, by contrast, did not only have strong national roots in Uppsala, but it by now also very much associated with the English-speaking world that in the eyes of many Swedes had emerged from the war as the champions of democracy. The establishment of the analytic hegemony in Sweden was intimately connected with the shift of attention from Germany to the Anglo-American world in Swedish cultural, intellectual, and academic life.
The Nazi stigma was not the only means by which “the other philosophers” were outmanoeuvred. In his inaugural lecture as Professor in Practical Philosophy in Uppsala in 1948, Hedenius claimed that neo-Thomism and Marxism were popular philosophies largely only because of the support they received from the Catholic Church and the Communist party. Existentialism, in turn, was rejected as a psychological reaction to the horrors of the World Wars. Hedenius even claimed that “if philosophy was given full freedom everywhere, the philosophical tradition that now appears as the most scientific one, would probably prevail” (Hedenius 1948: 17–19). In a similar vein in the textbook *Att studera filosofi* (1961), Marc-Wogau made a brief settlement with “philosophy as it should not be studied” in a chapter called “Unscientific philosophy”, before he commenced with philosophy “as it should be studied” in the chapter on “analytic philosophy”. Marc-Wogau was seemingly inspired by Hedenius’ inaugural lecture, as the chapter had the telling sub-chapters “In the grip of politics. Philosophy in the Soviet Union”, “In the duty of religion. Neo-Thomism” and “In the wake of the World Wars. Existentialism” (Marc-Wogau 1961: 1–24). In this way, analytic philosophy was in Sweden presented as the only politically acceptable philosophy, far more autonomous and scientific than its contenders.

**Hägerström and the History of Analytic Philosophy**

What is Hägerström’s place in the history of twentieth century philosophy? Is the story of Hägerström as the founding father of the Swedish analytic tradition nothing but a misleading myth? It is surely incorrect in the sense that Hägerström himself never intended to contribute to an “analytic movement” as it was understood during the post-war period. But from such a perspective it would be equally incorrect to say that Russell, Moore, Wittgenstein or the Vienna Circle were analytic philosophers. It is important to distinguish between those who invented, conceptualised and established the analytic tradition, and those philosophers who thereby became celebrated as the founding fathers or originators of this tradition. Philosophical movements and traditions are often construed in hindsight, by philosophers who like Hedenius try to legitimise their own position by claiming the right to define the position of philosophers that they see themselves as followers of.
The story of Hägerström and Hedenius is far from unique in the history of philosophy or even in the history of analytic philosophy. When the term “analytic philosophy” was established in the international philosophical vocabulary around 1950, it was generally applied backwards in time, and thus philosophers such as Frege, Russell, Moore, the Vienna Circle, and sometimes also the American pragmatists, were framed as the key representatives and founding fathers of this tradition. The fact these philosophers themselves had nursed very different philosophical ambitions, and that they had been working in a philosophical context that was far more complicated than the post war division between analytic and continental philosophy, was largely overlooked and ignored. “Analytic philosophy” was not invented in order to give a historically correct account of a group of philosophers, but in order to distinguish, mobilise and legitimise a contemporary group of philosophers and their ambitions. It was a “speech act” by which these philosophers sought to claim the past in order to define the future. In this sense Hedenius’s appropriation of Hägerström is but a variation of a common theme.

But the story of Hägerström and Hedenius does certainly have its original and peculiar features, which surface especially in a comparison with how the analytic tradition was established in the other Nordic countries. In Denmark, Finland and Norway logical empiricism had been presented as a celebrated foreign innovation, and Jørgen Jørgensen, Eino Kaila and Arne Næss could effectively use their contacts to the Vienna Circle in their local meritocratic struggles. The establishment of the analytic tradition was thus very much parallel with the international development. In Sweden, Petzäll had written two monographs on logical empiricism, and worked hard to pave way for these new ideas on the pages of the journal Theoria, but without succeeding to raise a substantial challenge to the Uppsala dominance of the Swedish philosophical scene. It was not until logical empiricism was, if not disguised as a Swedish movement, then at least given strong roots in the Hägerströmian legacy, that logical empiricism, or rather analytic philosophy, reached its Swedish breakthrough.

Indeed, perhaps there is a difference in how a successful cultural transfer is conducted to a small peripheral country such as Finland or Norway, on the one hand, and to larger more self-sufficient cultures
such as Great Britain (and perhaps Sweden) on the other (Strang 2010a: 64–70; Strang 2011). In a small periphery intellectual discussions are by necessity dependent on foreign influences, and international connections can therefore easily be used as merits in the local debates. In more self-sufficient cultures, foreign ideas can be looked upon with more suspicion, and therefore it might be a successful transfer-strategy to downplay the foreign character of the imported goods. From this perspective, Hedenius’s move of anchoring logical empiricism in the ideas of Hägerström is comparable to Ayer’s introduction of logical empiricism to the English-speaking world as “the logical development of the ideas of Hume and Berkeley”—this on the very first page of his epochal *Language, Truth and Logic* (1936).

During recent years we have witnessed an abundance of books that have tried to look beyond the post-war division between analytic and continental philosophy in order to give a more accurate account of the philosophical situation during the first half of the twentieth century. The recent Swedish scholarship on Hägerström, which in a formidable way has highlighted forgotten aspects of his work, should be seen as part of this revived international interest in the history of analytic philosophy. However, the time is certainly ripe to abandon the programmatically non-analytical reading of Hägerström in favour of a perspective where he is read, not as the mythological founding father of the analytic tradition, but as part of the heterogeneous European philosophical context during the first half of the twentieth century. For sure, Hägerström could have been part of many different (Swedish) philosophical traditions, if he would not have been appropriated by Hedenius, Marc-Wogau, and Wedberg, but this does not mean that Hägerström is without a place in the history of analytic philosophy.

**Notes**

1. See for example Ahlberg (1963: 10) where it was claimed that “the most significant branches of analytic (or scientific) philosophy are the Cambridge Circle, logical empiricism (in its earlier stages the Vienna Circle), Uppsala philosophy, and during the recent years, the Oxford School.” My translation from the original: “Analytisk filosofi eller vetenskaplig filosofi kallas en rad riktningar i nyare filosofi. […] De mest betydande riktningarna inom denna filosofi är *Cambridgskolan*, *den logiska empirismen* (i sitt tidigare skede *Wienkretsen*) Uppsalafilosofin och under de allra senaste åren *Oxfskolan*.”

2. This article builds on research conducted in connection with the work on my dissertation, Strang 2010a and especially on my 2006 article.
3. By the notion of “rhetorical redescriptions” I am referring to Quentin Skinner. See e.g., Palonen 2003: 51–6, 161–9; Skinner 1988: 112.

4. In the article “Modern filosofi III” von Wright separated between a semantic and an analytic faction within modern philosophy. While the semantic faction (represented by e.g., Carnap) was interested in developing formal languages, the analytic faction (Austin and Wittgenstein) was more interested in analysing ordinary language. Two years later, however, in the book Logik, filosofi och språk (1957), von Wright was already using “analytic philosophy” of both factions.

5. This can be confirmed by a search on the terms “analytic philosophy” and “analytical philosophy” in the journals Mind, Philosophical Review, Journal of Philosophy and the Proceedings of the Aristotelian Society in JSTOR’s digitalised archives (www.jstor.org, accessed on February 1st, 2012). While there were only 2 hits in the 1900s, 5 in the 1910s, 4 in the 1920s, 34 in the 1930s and 26 in the 1940s, there were 106 in the 1950s, 181 in the 1960s, and 188 in the 1970s. Google’s Ngrams (books.google.com/ngrams) give a very similar result, with the frequency of “analytic philosophy” progressing rapidly in the 1950s. (As a parenthesis it can be mentioned that the label “continental philosophy” became popular as late as the 1970s and particularly the 1980s, when it was introduced in the US as a counter-concept to the reigning analytic philosophy (see e.g., Critchley 1998). This is also confirmed by a search on the term “continental philosophy” on JSTOR and on Google’s Ngrams.)

6. The conceptual historian Quentin Skinner has claimed that there was a concept of “originality” before there was a word for it. See Skinner 2002: 159ff.

7. See e.g., Michael Dummett 1993; Martin Kusch 1995; Peter Simons 2001: 3.

8. The neo-Kantian line has been emphasised by above all Michael Friedman (1999; 2000). In contrast to this, Friedrich Stadler (2001: 86–103) and particularly Thomas Uebel (2003) have stressed the existence of a special anti-idealistic and anti-Kantian Austrian philosophical tradition around Bolzano, Brentano and Meinong, and in this way highlighted the similarities between logical positivism and phenomenology. Felix Kaufmann, who is counted as one of the members of the Vienna Circle, has been mentioned as a link.

9. During the post-war era this antipathy was directed mostly against socialism in various forms. Internationally Karl Popper was the most famous critic of totalitarianism. In the Nordic countries (who now also belonged to the Anglo-American sphere), a similar criticism was presented by Ingemar Hedenius, Alf Ross, and Herbert Tingsten.

10. Frege was one of the pre-analytic philosophers with right-wing sympathies, while continental philosophy during the post-war period became associated strongly with the political left. See e.g., Friedman 2000: 157.

11. A revealing example is Theodor Adorno’s (1969) and the logical positivist Herbert Feigl’s (1969) contributions to an anthology on the intellectual migration (Fleming and Bailyn 1969). While Adorno in his article describes how alien he was to American culture and academic traditions, Feigl describes how he immediately felt at home in the United States. Of course, Adorno returned to Frankfurt with Max Horkheimer, while Feigl, as most of the logical empiricists, stayed in the United States.

12. This is confirmed by a search on JSTOR, see note 5 above.

13. According to Pap there was also a fourth group of philosophers that did not want to be incorporated in any of these groupings (Pap 1949: x)

14. See e.g. Sellars 1950; McGill 1950.

15. This according to the Swedish Social Democratic intellectual and “Nobel laureate in economics” (that is the Bank of Sweden Prize in Economic Sciences in Memory of Alfred Nobel) Gunnar Myrdal, quoted by Källström 1997: 151. Original: “tilltalade dem som ville ändra på saker och ting”.

16. This was how Hedenius presented the manuscript to Petzäll, see Strang 2010b: 86.

17. Original: “... den skall även formulera något annorlunda än vad som brukas hägerströmianer emellan” and “...en viktig modifikation”. See also e.g., Danielsson 1993; Nordin 1983: 150f; Nordin 2004a: 106–13; Nordin 2004b.
18. The article had also been published in *Erkenntnis* as Jørgensen 1937.

19. Original: “Dessa tre riktningar, wienskolan, cambridgeskolan och uppsalafilosofien är sålunda alla utslag av en nära nog samtidig, rent av negativ reaktion mot den s.k. metafysiken”.

20. Marc-Wogau was actually the first to use “analytic philosophy” in Sweden. In a comment to Hedenius’s *Om rätt och moral* Marc-Wogau argued that he subscribed to Hedenius’s idea that “It is the task of analytic philosophy to clarify the meaning of particular statements” (Marc-Wogau 1942: 61). Original: “Es ist die Aufgabe der analytischen Philosophie, der Sinn gewisser Aussagen aufzuklären”.

21. Original: “...bilda gemensam front mot en hel rad andra riktningar i modern filosofi” and “... där yngre uppsalafilosofer närmast sig den logiska empirismens inställning”.

22. Original: “... en begåvad men obildad kusin från landet”.

23. Original: “[De uppsatser som återges i det följande] behandlar den moderna vetenskapliga filosofin och i viss mån dess historiska utveckling. Det utmärkande draget i denna filosofi är dess avvisande inställning till metafysik och dess åsikt att filosofi är liktydig med vetenskaplig analys av de i vetenskapen använda grundläggande begreppen. Den kallas därför ofta analytisk filosofi. De mest betydande riktningarna inom denna filosofi är Cambridgeskolan (G.E. Moore och B. Russell m fl.), den logiska empirismen (i dess tidiga skede Wienskolan, M. Schlick, R. Carnap m fl) och Uppsalaskolan (A. Hägerström, A. Phalén, mfl). I den engelska upplagan av detta arbete har den sistnämnda riktningen inte behandlats. Det har därför ansetts lämpligt att den svenska upplagan kompletteras med en karakteristik av denna.” The preface was not signed, but it is probably fair to assume that Marc-Wogau was behind these particular lines.

24. “The other philosophers” [de andra filosoferna] was Hedenius’ way of denoting “… not only structuralisms, but also other existentialisms and Neo-Marxisms and drivel-theologies” [“... inte bara strukturalismer utan också andra existentialismer och nymarxismer och svammelteologier”]. Hedenius 1977: 33.


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Axel Hägerström and Analytic Philosophy

Jørgensen, Jørgen (1937) "Imperatives and Logic", Erkenntnis 7: 288–296.


Axel Hägerström and Analytic Philosophy

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The story of how Swedish or, to be more precise, Uppsalian axiological nihilism, or value nihilism (värdenihilism), acquired its name has already been told by others, yet it deserves to be repeated by way of introduction (see, for example, Källström 1986: 93f). In a polemical article published in 1931 in Aftonbladet newspaper, John Landquist turned upon the Uppsala-based philosophy which had been accused of being “nihilist”. The first use of this concept in relation to Axel Hägerström and his followers thus carried an explicitly pejorative meaning.1 In a similar vein, Arnold Ljungdal ten years later wrote his Nihilismens filosofi (The philosophy of nihilism), a Marxist analysis which rejected this entire tradition as a useless conceptual game (Ljungdal 1943). In the interim between these two attacks, however, Ingmar Hedenius wrote an essay on the Uppsala School and axiological nihilism in which he answered his critics by tactically choosing to treat the designation as a neutral concept, thereby changing its originally pejorative sense.2 Hedenius argued that because Hägerström’s critique of axiological statements has the effect of making the latter appear to lack real content—in other words, to denote nothing (nihil)—“axiological nihilism” can be accepted as a description of what this kind of analysis

Chapter 7

Hägerström, Nietzsche and Swedish Nihilism

Hans Ruin
seeks to achieve. In this way, axiological nihilism was incorporated as a constructive foundation of modern Swedish philosophy.

Yet opinion has been divided as to how this doctrine should be defined and interpreted. Internal feuding within the Uppsala School has at times been as bitter as its struggles against an external foe. In his dissertation on Hägerström’s theory of value, Bo Petersson defined axiological nihilism as follows: “axiological terms such as *good*, *bad*, *duty*, *unjust*, or *beautiful* are expressions of feelings, and axiological statements […] are neither true nor false” (1972: 9). Both this tenet and the entire approach to life which generated it have exerted profound influence, positively as well as negatively, on Swedish philosophical and intellectual life during the twentieth century. This attitude has not only left its mark on academic philosophy; jurisprudence, social science, the humanities, and, not least, theology, have also been deeply affected by the rigorous distinction between values and facts implied by Hägerström’s critique. The traces of Hägerström’s doctrines can also be detected across Swedish intellectual life more broadly, where it finds expression in literary works by Karin Boye, Karl Vennberg, Gunnar Ekelöf, and Lars Ahlin.

Hägerström, Adolf Phalén, and their followers are the closest Swedish philosophy has come to developing a national-philosophical programme with overarching cultural-philosophical ambitions along the lines of Vienna Logical Positivism or Cambridge Analytic Philosophy, the two parallel schools most often mentioned as comparisons. On the whole, they, and especially Hägerström himself, could be said to be the only remotely original intellectual movement to have emerged in Swedish philosophy, which is traditionally defined by eclecticism and imitation of foreign models. Even so, his ideas can hardly be described as the focus of any active philosophical interest. In legal philosophy there are occasional studies of Hägerström and the so-called Scandinavian Realists whom he inspired. In Sweden, research on Hägerström is now mostly conducted by historians of ideas. The previous generation of Uppsala philosophers still wrote books and articles on Hägerström’s philosophy, but his own works today only appear rarely on the curriculum.³ He is a half-forgotten monument whose memory remains capable of provoking strong reactions on the fringes of the world of philosophy but who has now been neutralized.
The process of neutralizing Hägerström has gone on longer than would at first glance appear. The fairly substantial literature on his writings and activities that exists in Swedish—ten or so monographs, all in all—evinces a recurrent trait that I shall designate “devoutly marginalizing”. It is exemplified fairly well by Anders Wedberg’s discussion in volume three of his History of Philosophy. Strikingly, Wedberg concludes this thousand-page review of the history of philosophy with a thirty-page chapter on the Uppsala School in which he himself came of age as a philosopher. But even as this summary exemplifies a curious magnification of Hägerström’s historical significance, it is also characterized by a peculiar act of self-distancing from its subject, who is described as a “visionary” whose insights were propped up by “abstruse reasoning” (Wedberg 1966: 368f). Wedberg presents the orthodox Uppsalian historiography according to which Hägerström was not merely a parallel but a veritable precursor of the two most important contemporary sources of what would eventually become analytic philosophy: Vienna and Cambridge. Yet Wedberg is unable clearly to fix Hägerström’s own philosophical position and its development. Like Konrad Marc-Wogau and later writers, he repeatedly emphasizes the tremendous “difficulty” of reading Hägerström, particularly in relation to his central epistemological work Das Prinzip der Wissenschaft (1908). Hägerström is here cast in the role of an obscure visionary precursor of the greatest minds of his day, who nonetheless reached his insights without significant influence from the outside world, a North European oracle in the spirit of Gothicism.

Yet Hägerström’s somewhat naïve followers are not solely to blame for this perception. Hägerström himself was not the kind of thinker who readily granted his readers a glimpse of his working methods. With the exception of his works of historical jurisprudence, which are packed with references to and critical discussion of other scholars, his writings are characterized by an assertive style of argument that unwillingly shares its insights with others and that prefers to use precursors for polemical purposes rather than to acknowledge debts of gratitude. Nevertheless, this attitude is more the rule than the exception among supposedly original thinkers, whose “originality” in fact often rests on a capacity for actively forgetting and suppressing their own sources. It is therefore up to their successors to bring to light the traces which
the master himself has carefully concealed. The purpose of recovering such traces, however, should not be to reduce the original to the trivial, as is often the case when historians of ideas reconstruct the development of an intellectual trajectory. There is also a philosophically-driven approach that sees its task, not just to trace a particular author back to some suppressed origins, but, rather, to reach a deeper understanding of his or her ideas by examining them in their dialectical relationship with a context which the author himself, for different reasons, did not clearly articulate.

Such has also been a stated goal of the philosophically more interesting literature on Hägerström. I am thinking here in the first instance of what is probably still the most authoritative contribution to this body of literature, namely Ernst Cassirer’s book *Axel Hägerström* (1939). Its full title, “A Study in Contemporary Swedish Philosophy”, indicates its ambition of defining contemporary Swedish philosophy in relation to its historical context. This involved summarizing the history of the critique of metaphysics which emerged in European philosophy during the latter half of the nineteenth century, not only in the work of positivists such as Auguste Comte, J.S. Mill and Richard Avenarius, but also in the neo-Kantian circles where Cassirer himself was most at home. Cassirer had no difficulty joining the debates with Paul Natorp and Hermann Cohen in which Hägerström was already involved—explicitly so, at least until his major study of Kant (1902). For Cassirer, it was also apparent that there was a clear parallelism between his anti-psychological reading of Kant and the work currently being developed by Edmund Husserl in *Logical Investigations*, a connection that was rejected in a characteristically provincial fashion by Martin Fries, Hägerström’s most devoted interpreter, in a monograph on the master which appeared a few years later.

The very question of contextualization is and will remain important in this context. From one perspective, it can seem of peripheral interest to investigate whom Hägerström read and what he possibly took from this or that person. To the extent that he articulated something of interest, it ought to be possible for us to evaluate it critically, regardless of our knowledge of how he reached that point. This view is, of course, in some measure justified. All philosophy at some point relies on preceding philosophy, quite simply because everyone has been a student at
some stage. If we were to keep track of everyone’s educational journey, nothing new would ever be thought or said. That said, it is nonetheless important to understand the philosophical rationale for investigating sources. Such a rationale is in fact a matter of understanding the writer in question as profoundly as possible. This cannot be done merely by reading what he or she has said, but also by ascertaining what has not been said, and in relation to what and whom someone has spoken. All speech has a context which gives it shape. For those who come after, it is important to see this context, since it determines the shape and tone of the text in question. Accordingly, contextualization also has a philosophical importance.

Contextualization is also important from a rather more narrowly national perspective. Every philosophical culture develops a certain national awareness in terms of how it understands itself and its historical moment; quite simply, where it stands in the present. The mythology of modern Swedish philosophy still includes a certain perception of an independent and original break with the past, especially in the case of the Uppsala School, whose critique of subjectivism and metaphysics marked an important phase in the development of modern scientific thought. But the notion of Swedish philosophy as specifically modern is not only a historical idea, but also a still vital tenet that determines how this philosophical culture positions itself with regard to the present. Where it has come from also affects where it is going and thus what will decide its future. An active and well-informed understanding of one’s own national philosophical culture is thus an imperative requirement for mastering the present. For this reason, the critical debate over the roots of the Uppsala philosophers is of more than just historical interest. And for this reason, too, the history of philosophy is never merely its history but its entire contemporary context, which is so say, its future.

With regard to Hägerström’s philosophical roots, there is an orthodox position which holds that his ideas were essentially formed without external influence. This stance is exemplified by Marc-Wogau, who has declared that Hägerström would not have been “influenced by anyone except Phalén”. Although this view can be traced, in part, back to Hägerström himself, there is much in his writings to support the claim that he did not work in isolation. The historical basis for his ideas is plainly visible in his earliest publications, which address
Aristotle, Kant, and German idealism. More immediate references are to be found, for example, in the important text “Kritiska punkter i värdep-sykologin” (Critical aspects of axiological psychology), published in 1910, which offers a thorough engagement with the variety of emotivism advanced by Alexius Meinong’s *Psychologisch-etische Untersuchungen zur Werttheorie* from 1894. Besides this link to the Act Psychology movement originated by Franz Brentano and his followers, Bo Petersson has also revealed the significance of Edvard Westermarck’s work, in particular his monumental study *The Origin and Development of Moral Ideas* (1906–08).

However, the first Swedish scholar seriously to problematize the question of Hägerström’s philosophical identity was Svante Nordin. In *Från Hägerström till Hedenius* (From Hägerström to Hedenius), he explicitly remarks upon the historical blindness which had characterized the domestic image of Hägerström. In the same breath, Nordin also rejects the attempt to connect Hägerström with the Cambridge School and to the Vienna Circle. Instead, he takes up where Cassirer left off by foregrounding German idealism in general and the Marburg School in particular, with its strictly rationalist and anti-psychological reading of Kant, as the determining context for Hägerström’s efforts, above all, in the field of the philosophy of knowledge. Like Cassirer, Nordin notes that Hägerström’s axiological nihilism, as it emerged following his study of Kant, has no immediate counterpart among the neo-Kantians. Here one must instead look to different sources, and Nordin identifies, among others, David Hume and Karl Marx. Contrary to the absurd notion—which has been voiced in the Swedish scholarship on Hägerström—that the critique of objective values and the truth-value of value statements was something of a Swedish philosophical discovery at the beginning of the twentieth century, axiological nihilism as generally understood is in fact a position as old as philosophy itself. It may be found among the Sophists and, indeed, in a modified form, even in Aristotle, when he rejects Plato’s understanding of the Good as a given for all time, irrespective of individual or context.

Ancient philosophy offers pretty much every alternative, from pure moral relativism to a metaphysics of value. It is the latter model which subsequently merges with Christian theology, especially in the writings of St. Augustine, where God becomes synonymous with the
Supreme Good and thus also the guarantor of the objective validity of values. It is therefore unsurprising that the European Enlightenment once again ushers in a spirit of sophisticated scepticism which begins, not least among French free-thinkers, to question the absolute status of values. But it is Nietzsche who, partly in direct connection with this latter Enlightenment tradition, has come to be associated most closely with the nineteenth century’s atheistic revolt against Christian notions of value. In his writings the loss of stable metaphysical values find their most famous allegorical expression in the announcement of the death of God, as shouted out by the madman in *The Gay Science* (1882). After gaining the insight that it is man himself who has committed this murder, Nietzsche’s alter ego cries out: “Are we not plunging continually? Backward, sideward, forward, in all directions? Is there still an up or down? Are we not straying as through an infinite nothing? Do we not feel the breath of empty space? Has it not become colder? Is not night continually closing in on us?”

For Nietzsche, however, this condition is a source not merely of despair but also of a tremendous and revolutionary clarity. Only now does man find himself alone with his duty to establish and uphold his values, no longer relying upon a false security in the established order. Yet this is also an intellectual obligation, to identify clearly the traces of Platonic-Christian values in the present moment. Nietzsche develops this programme in his last writings of the latter part of the 1880s, above all, in *The Genealogy of Morals*, his most systematic work. His purpose here is explicitly to investigate “the genesis and development of our moral prejudices” so as to be able to determine “the origin of our notions of good and evil” (1988: KSA vol. V, 248f). According to Nietzsche, such knowledge of “the conditions under which values first emerged” has never before existed. And why is it necessary? It is not for purely historical or psychological-scientific reasons that this question must be posed. The genesis of morals must be examined in order that morals themselves, in their ostensibly objective form, can evade a danger, perhaps “the most dangerous of all dangers” (1988: KSA vol. V: 253). Is it, in other words, for critical-philosophical reasons that moral ideas must now, for the first time, be subjected to an enquiry into their genesis and cultivation.

This was written in 1887 during Nietzsche’s final turbulent years, when he also rapidly wrote *Beyond Good and Evil*, *The Anti-Christ*,...
and *Twilight of the Idols*. Just a few years later, he disappeared into the silence of madness, but the dissemination of his writings was to have an explosive impact. This was particularly the case in Scandinavia, where Georg Brandes gave lectures in the spring of 1888 on Nietzsche’s philosophy, which he described as “aristocratic radicalism”. Some years later, Ola Hansson published an excellent essay on Nietzsche’s thought, and Brandes put Strindberg in contact with Nietzsche (1997). *Fin de siècle* Scandinavian culture was deeply influenced by the reception of Nietzsche, which quickly took shape and resulted *inter alia* in the translation into Swedish of several of his most important works. His influence extended not only to authors but also philosophers and free intellectuals, such as Vitalis Norström and Ellen Key. Nordic Nietzscheanism is the subject of several intellectual histories, notably Harald Beyer’s comprehensive *Nietzsche og Norden* (Nietzsche and the Nordic countries [1957–59]). While Nietzsche’s exceptionally powerful impact in the Nordic countries can be attributed to several factors, there is no question but that the legacy of a strong state Lutheran church played a key role. For many Scandinavian poets and thinkers, Nietzsche was the catalyst and the instrument for breaking down a fossilized, conservative, and Christian structure of values that defined ecclesiastical, academic, and public life in general. Politically and aesthetically, the Swedish Nietzscheans represented an array of tendencies ranging from cultural conservatism to socialism and feminism. Regardless of their affiliation, however, many of that generation saw Nietzsche as contributing to the formulation of a radical break with the established order.

Existing studies of Nietzsche’s influence on Nordic authors and philosophers rarely refer to Hägerström. Judging from previous scholarship in this area, Hägerström appears not to have been among those who read and absorbed Nietzsche at that time. In his own published writings, Nietzsche’s name is mentioned in passing on just a couple of occasions, and then only as a representative of a certain type of moral perspective, “the morals of the Superman”. Nowhere in print is the possibility even raised that Hägerström might have immersed himself in Nietzsche’s writing to any significant degree. And yet it has always struck me, ever since I first read the 1911 inaugural lecture “Om moraliska föreställningar sanning” (On the truth of moral ideas), that this canonical text of Hägerström speaks in what might be called a Nietzschean key. It
shows itself in Hägerström’s emphasis upon the superstitious character of moral truth claims. It can also be discerned in what he says about the emergence of conscience from a long process of authoritarian and religious formation as well as in his suspicion of rational argumentation in the sphere of aesthetics. It is echoed in his hopes of leaving duty and guilt behind him, and establishing for the first time an autonomous set of morals based solely on the supreme values of the individual; and it appears to have been written in letters of fire in the final paragraph of his most famous essay, which prophetically announces that only now are we about to create a moral philosophy “på andra sidan gott och ont”, that is to say, *Jenseits von Gut und Böse*—beyond good and evil. How was it possible, I asked myself, for someone in Sweden in 1910 to write such a thing without having been influenced by Nietzsche?

It might perhaps be conjectured that, despite everything, such an influence had existed but that Hägerström himself had chosen to conceal it. How else to make sense of the fact that in the concluding paragraph of his professorial inauguration lecture, he cites Nietzsche verbatim while expressly dismissing any possibility that his own position should have anything to do with “the morals of the Superman”, that is to say, the morals which everyone could be presumed to identify with the name of Nietzsche? Shouldn’t this more properly be regarded as an unusually clear case of what American literary theorist Harold Bloom has called “the anxiety of influence”? Bloom sought to question the idealized image of authors building upon their predecessors in a spirit of solidarity. Instead, he wanted to investigate the fundamental rivalry that characterizes the shaping of all traditions. Matters are never so simple with “strong poets”, among whom we can always discern traces of suppression and struggles over originality that preclude any linear and harmonious development of genre and expression. Such relations also obtain in the realm of philosophy, needless to say. Beneath the pleasant rhetoric about knowledge progressing when new generations pick up and build on where the older one left off, at some level we all know full well that this often hides a struggle over initiative and attitude which permeates ostensibly rational argumentation and, above all, the honest and rational reading of one’s predecessors. That which once affected us most powerfully also often becomes that from which we must maintain the clearest distance in later life, precisely.
because it was once so powerful. Only by maintaining a proper distance from these originary impacts can an author preserve his or her sense of intellectual autonomy.

In the scholarly literature on Hägerström the possible influence of Nietzsche is mentioned by only one commentator: Svante Nordin, who refers in passing to the likelihood that Nietzsche, in a general and unsystematic way, may have been of significance for Hägerström’s nihilism.17 The principal basis for this supposition is a biography published in 1961 by Hägerström’s daughter Margit Waller. Her gripping and eloquent portrait of Hägerström, as not only a person and a father but also as a thinker, is based in part on an interesting collection of correspondence between the young Axel Hägerström and his fiancée Esther Nyander. Hägerström writes to Nyander with great candour, discussing not only private matters but also religious and philosophical problems and musings as well as the fruits of his reading and his writing plans, including his relationship with Nietzsche. And it is here that we actually find an extraordinary confirmation that Nietzsche was not only known to Hägerström but exerted a profound influence on him.

In a letter of 20 October 1895, Hägerström writes: “In my spare moments I have been occupying myself by reading the biography of a great man—Nietzsche, which has greatly pleased me” (Waller 1961: 89). Two years later he writes to Nyander about his nascent sense of isolation from his friends: “I notice increasingly that among my ‘friends’ there is only one about whom there can be any question of a deeper spiritual rapport. But I do not grieve over it. The meaning of friendship for me lies in the community of ideas, and I can without further friendship be part of such community with, for example, an author, living or dead. I love Kant, Fichte, Brandes, Nietzsche, etc. with as great, if not greater, devotion than any among my friends.” (Waller 1961: 128). A striking letter from the previous year also discusses how one can remain true to the ideals of one’s youth. The 28-year-old Hägerström expresses his disappointment at how his heroes, one after another, have lost their youthful strength and defiance, among them Ibsen, Goethe, and Fichte. The last of these supported the French Revolution in his youth, only later to defend the established order as a professor and public official. Among all these backsliders, however, remained a few who had stayed true to themselves at the price of their own ruin, namely, Byron and
Nietzsche, whom he describes as “a German philosopher, head and shoulders above the others” (Waller 1961: 129). Finally and perhaps most remarkably for our present enquiry, there is the letter of February 5th 1897 in which he announces his plans for the coming year: “You see, I am intending to develop two minor essays, for which I have already drawn up plans and which I will think through during the term, so that they are ready to be written down over the summer. One will be on the fundamentals of Kant’s ethics, the other on the philosophy of Friedrich Nietzsche.” (Waller 1961: 173).

Hägerström thus showed not merely an interest in and appreciation of Nietzsche but even planned to write an essay on him, outlined alongside a book on Kant. This simple fact obscures a quite different image of Hägerström vis-à-vis Nietzsche than that implied by his published writings and the standard scholarship on his intellectual roots. But it also raises a set of new questions. What exactly did Hägerström read of Nietzsche, and what in the latter’s texts did he take a mental note of? What lies behind his striking comment that Nietzsche stood “head and shoulders above” other contemporary philosophers? What was the planned manuscript on Nietzsche, and what happened to it? Was it ever more than just an idea? We know the result of his project to write what he described to his fiancée as “a short essay on the fundamentals of Kant’s ethics”: an eight-hundred-page study *Kants Ethik* (*Kant’s Ethics*), published five years later (1902). This work took priority, and we do not know if he actually began his Nietzsche project. But he did not commit him to oblivion. There is a manuscript for a lecture course in 1926 on the history of modern ethics, part of which contains a thirty-page text on the fundamentals of Nietzsche’s ethics. While belonging not to the aforementioned manuscript but a much later text, it nonetheless overturns our present understanding of Hägerström’s relation to Nietzsche in a number of significant ways. Before presenting and analysing this new material, however, I wish to focus for a moment on the question of Nietzsche’s significance for the young Hägerström. The reason is that further investigation in this area also turned up a number of letters preserved by his descendants. Family members possess not only the correspondence between Hägerström’s parents which his daughter quotes in her book, but also an exchange of letters between the young Axel Hägerström and his older half-brother Gustaf.18
In some regards this correspondence between the brothers is of greater philosophical interest than that between the future spouses. Writing to Gustaf, who was somewhat older and a law student, Axel speaks with greater candour about his religious doubts. Here it is possible to see how the successive stages of his revolutionary break with Christianity were paralleled by his reading of the radical authors of the day, notably Brandes and Nietzsche. As early as 1892, he writes: “Now, all these festivities have probably distracted you from the question of life and its riddle, such that you are no longer interested in philosophical matters. Therefore I should probably keep my mouth shut for the present. You can well believe that I am reading Brandes daily, which is forcing me ever closer to the hydra of radicalism. But I suppose you are making yourself ever more at home among the solid foundations of the bureaucracy. May our love of truth, goodness, and justice always flourish. For in that case little else matters.”

This letter from a young man of twenty-four not only marks the beginnings of Hägerström’s own path in life, it also exemplifies the special blend of trust, warmth, and provocative teasing that is a hallmark of his correspondence with Gustaf. The following year, he pronounces more confidently on Christianity: “it has had its day; the educated world knows a higher and purer religion”. A fascinating letter of March 1893 attests to what appears to be his first encounter with Nietzsche’s writings: “I am currently reading a great philosopher called Nietzsche, whom I find most edifying. He presents such a lucid image of life, so terribly clear that it feels as though an unsheathed sword is passing through one’s very soul, but what it means is that, if the truth can set one free, then you are indisputably free.” Some years later, Hägerström has progressed so far in breaking with the faith of his childhood that he declares Christianity to be “a superstition”, albeit that religion itself remains superior to all other creeds and will always be the supreme possession of every human being. This image is further confirmed in another letter written to his fiancée in 1897: “I am in raptures with reading Ibsen, who is almost my only pleasure. He, Nietzsche, and Brandes, are the stars in my literary firmament. Nothing in the other philosophical systems has made so powerful an impression upon me as the visions of these three thinkers.”

In addition to their accounts of the significant fruits of his reading, and his path towards a free and non-denominational religiosity,
Hägerström’s letters to his brother are also interesting as early examples of Hägerström’s interest in the philosophy of law. It is even possible to detect in their dialogue, with its gentle rivalry, the origins of Hägerström’s determination to define his philosophical relation to the legal system and the concept of justice. In an ecstatic letter about the prosecution of Gustaf Fröding’s *Stänk och flikar* (Splashes and patches) for immorality in 1896, Hägerström calls into question the right of lawyers to play the part of guardians of public morality. He defends freedom from legal interference as the primary condition for a moral life. “As soon as anyone makes the slightest incursion into an individual’s right of self-determination in the legal sphere, he is prevented from developing in an independent fashion his spiritual and material capacities, and thereby from fulfilling the purpose of his life or exercising moral action.” Hägerström’s letter to his brother—the lawyer—concludes: “lawyer, don’t poke your nose into matters that do not concern you and that you do not understand”. The voice speaking here is a world away from the dogmatic and ossified legal realism that would later be associated with Hägerström’s name.

This fascinating material could be applied even further to both the legal-philosophical and the religious aspects of Hägerström’s thought. The latter strikes me as being in particular need of consideration from a fresh angle, given the unhappy relationship between theology and the subsequent exponents of Uppsala Philosophy. At a later stage this philosophical tendency will, of course, become associated with a particular kind of critique of religion that in some respects has been unproductive precisely because of its failure to account for its own religious agenda. Philosophy must take seriously the simultaneously anti-confessional and highly devotional religiosity that was formulated and represented by Hägerström; it is not and can never be philosophically neutral. The precise course of a break with a strong religious faith inherited from childhood determines the philosophical physiognomy of an individual thinker well beyond the simple observations of personal biography. It permeates his intellectual being and marks both his character and the direction of his critique. Although this question seems not to have been considered with sufficient seriousness in the literature on Hägerström, I am unable to go into it in more depth here. It is important, nevertheless, insofar as it concerns not merely Hägerström’s personal development
but also the intellectual milieu to which his work gave rise, including its peculiar repression of the remnants of contemporary religiosity.

As regards the significance of Nietzsche for Hägerström, the letters to his brother undeniably highlight the issues already raised. Philosophically and historically, how should we understand Hägerström’s Nietzscheanism? What the letters throw into relief is that we are here confronting an influence on Hägerström’s philosophy that is not merely of a limited and formal nature but a reading experience of the kind experienced only a few times in one’s life. Nietzsche had a profound philosophical impact on Hägerström, from 1893 until at least 1898. What Nietzsche meant for Hägerström’s ideas and what he did with the “sword of truth” that stabbed at his innards is something that remains unknown but that we can and should think through. More than just a historical or antiquarian detail, it is of genuine interest for philosophers in that it addresses the fundamental character of his thinking and thus also his ongoing legacy.

Since there are no documents to show how Hägerström developed the philosophical impulse which he received from Nietzsche, we must pursue his train of thought ourselves in order to try to recover its potentially Nietzschean elements. In the reading that I will be proposing, Hägerström found in Nietzsche not only the courage and passion to break free from a metaphysics of value founded on Christianity. He also took from Nietzsche a model for how such a critique should be formulated—genealogically. What does Nietzsche add to the notion of genealogy? In what way does he differentiate between a genealogy of morals and a history of morals? Well, the kind of moral history which he finds, above all, in English writers (a Swedish example might be Westermarck) is characterized by a lack of genuine feeling for the historical (Zur Genealogie der Moral, n.d.: 258). Nietzsche means by this a capacity to see the way in which moral concepts themselves have origins and a history. Nietzsche’s own famous example in The Genealogy of Morals is the notion that the original meaning of the value judgement “good” derives not from those who proved themselves to be good in the eyes of others, but, on the contrary, from those who regarded and designated themselves as good, in virtue of being strong and powerful. Inversely, the “slave revolt” in morals means that those who suffer under such self-affirming rulers instead designate them as bad or evil,
and inversely designate themselves as good, but now as a goodness defined by the ones suffering from the other’s evil. Nietzsche is not very specific about when this reversal takes place, but it is clearly implied in his argument that Christian values constitute one example of such a perversion of an original life-affirming scale of values. Without going deeper here into the historical and philosophical validity of this model, we can simply note how it illustrates the genealogical critique. Following this model, a seemingly neutral moral concept needs to be interpreted and understood in its historicity, that is to say, in its historically constructed character, as also an effect of a power struggle that lives on in its usage. No static conceptual analysis can purify the content and fix the meaning of a moral concept such as “the good”, since, as Nietzsche writes, “to speak of right and wrong is in itself utterly meaningless” (Zur Genealogie der Moral, n.d.: 312). Instead, we must subject our moral concepts to a historical-genealogical analysis. Such an analysis presupposes that we abandon dogmatic philosophy and metaphysics, which, for Nietzsche, means thinking “beyond good and evil” (cf. Jenseits von Gut und Böse 1988: KSA Vol. V: 18). The genealogy of morals takes on such an investigation on several levels. Perhaps the strongest expression of this kind of analysis, which has also had a decisive impact on more modern philosophical genealogists such as Michel Foucault and Gilles Deleuze, is the second half of The Genealogy of Morals, where Nietzsche addresses the emergence of conscience as a result of a long and violent period of gestation that was accompanied by the creation of a religious conscience in which human beings internalized an external power.

Hägerström opens his essay “Om moraliska föreställningars sanning” (On the truth of moral ideas”) by dismissing various traditional attempts to establish moral concepts, in order to arrive eventually at the question of whether it is actually an error to ask whether a moral idea is true or false. Picking up his thread, Hägerström makes an effort instead to examine the origins of these notions. He describes how human customs operate by means of fear of a higher power, and continues by noting that conscience has become the supreme norm for modern people. But instead of identifying the appearance of conscience as a supra-historical guiding principle, he proceeds to ask also about its genesis, which he traces back to an “internalization of authority” (n.d.: 49). Conscience, in its secularized form of inner guiding principles,
actually rests on a suppressed fear of God, or, as Hägerström puts it, in a formulation that carries yet another echo of Nietzsche: “One cannot comprehend the workings of conscience without taking centuries of religious upbringing into account.” His argument concludes with the following sentence: “Like a reality that in itself is ‘good’, any moral authority or norm is, objectively speaking, something unreasonable” (n.d.: 52). For Hägerström, moral philosophy can ultimately be defined as follows: “a science of actual moral evaluations considered as historical developments, supported by psychological analysis and guided by penetrating philosophical critique of these active ideas” (n.d.: 65). This is not axiological nihilism as mere emotivism (of whatever stripe); this is essentially moral philosophy conceived of as a genealogy of morals.

The important question that must be asked of Hägerström’s overall view of morals is, of course, how we are to extract from this nihilistic position the positive values that are to guide our behaviour as social beings. To be sure, in all his writings Hägerström denies that his analysis leads to moral arbitrariness or egocentrism. On the contrary, his view is that the genealogical critique frees us from the mechanisms of compulsion and fanaticism of any morality derived from a religious-metaphysical faith in the absolute reality and truth of values. But where are these new values to be found? On this point Hägerström’s generally strict line of reasoning often gives way to somewhat vague indications. Even so, his basic idea remains clear: in principle, people have the capacity to produce by themselves the values which will serve their human condition. In his inaugural lecture, he refers to a “truly autonomous morality” as one determined by love for what we value most highly. Only after the philosophical critique has succeeded in sweeping away all superstitious notions can evaluations based on humanity begin to take shape. In these cryptic remarks we can discern a rapprochement with, but also a decisive departure from, Nietzsche’s approach. Nietzsche, too, works from the premise of some kind of naturally authentic affirmative valuation, one that now and then gestures towards future possibilities, in addition to the premise for his argument about historical decay; yet nowhere in Nietzsche does one find the optimism permeating Hägerström’s thought, which ultimately admits to being a rationalistic-theological model of human development. If nihilism for Nietzsche is the sign of a profound crisis and an overwhelming threat, it is for Hägerström...
the source of a utopian hope. And yet what binds them together, or, rather, what Hägerström takes from Nietzsche’s analysis, is a conviction that moral philosophy must henceforth be a psychological-historical-critical discipline that illuminates the mechanisms and course of events which have produced our presumably objective notions of value. In this regard, Hägerström should be counted as part of the Nordic Nietzscheanism.

The argument which I have here developed on the basis of Hägerström’s inaugural lecture can be extended also to the historical studies of the law and morals which he subsequently undertook. Indeed, it is only when one realizes the fundamentally genealogical character of his thought that his overall intellectual project becomes fully comprehensible. The error of much previous research on Hägerström has been to fixate excessively upon his theoretical philosophy and the way in which his discussion of the concept of reality determines his nihilistic moral philosophy. Theoretical philosophy is clearly an important component of his thinking, but it is partly an independent one. Above all, it is inadequate as an explanation for the way in which he developed his ideas about moral philosophy and the philosophy of law. Understanding this requires one to grasp the essentially historical model to which he commits himself. Take, for instance, his analysis of the concept of duty—a particularly interesting example given how clearly he here dissociates himself (in a Nietzschean fashion) from Kant. The sense of duty that Kant’s moral philosophy accords the status of an a priori principle is subjected to the same genealogical critique as the just and the good. For Hägerström, duty is internalized authority, the result of ancient and now forgotten acts of violence. His interest in the meaning of duty as well as the rights of ownership and agreement through handshake find fullest expression in his thousand-page study of the Roman concept of obligation, by far his most impressive scholarly endeavour (1927). Why did Hägerström devote so colossal an amount of time and energy to scrutinizing every imaginable legal, literary, and religious classical source, especially since in other contexts he directed severe criticism towards the historicist orientation of contemporary humanities? He was clearly not prompted to take on this research task by some ageing professor’s need to pass the time; it is an enquiry driven by the philosophy of law and premised on the idea that we can only get the better of
the unthought-of premises of the natural law tradition by applying a genealogical method to its most fundamental concepts and their origins in superstition and religion.

This historical-genealogical dimension of Hägerström’s thought is the part of his legacy that is perhaps the most philosophically difficult, but also what holds the greatest contemporary relevance. For this very reason it is peculiar that summaries of his work have paid so little attention to it. Instead, we have a scholarly literature that tediously rehearses the exact nature of his form of emotivism, as if it were a matter of a technical problem detached from its historical and existential context. Once again, Hägerström has partly himself to blame. In his oft-cited and oft-discussed “Självframställning” (“Self-presentation”), Hägerström dwells only briefly on his practical philosophy, taking care to show how it follows his theoretical-philosophical discoveries, which is to say, his critique of idealism and subjectivism, and his thoughts on the concept of reality. Even so, it is precisely in his genealogical tendency that Hägerström emphasizes a new and radical step, which will nevertheless be neglected by his immediate successors (for various reasons which I am unable to go into here) in favour of a more conventional nineteenth-century historicism. Yet the proposed connection to Nietzsche’s genealogical programme also reveals this aspect of Hägerström’s thought as a philosophical concern in the present.

At the same time, the hypothesis hereby outlined—one that deserves to be developed in greater detail in relation to Hägerström’s published writings—is not entirely dependent on whether or not he explicitly adopted this particular aspect of Nietzsche’s thought at that time. What I have suggested here is primarily a way to interpret and localize his thinking that, in the final instance, must be able to rely on references to his own texts. In this respect, as far as I can see, much remains to be done.

However, another issue relates to how this proposed reading fits with the aforementioned manuscript on Nietzsche which I found in the archive: a lecture course Hägerström gave in 1926 on the history of modern ethics, focusing on Schopenhauer, Herbert Spencer, and Nietzsche.22 The original manuscript, which is just over a hundred pages, was retyped by Martin Fries in the 1950s. The character of its discussion suggests that the lecture was also written in 1926. The text
fills in many gaps relating to the question of Hägerström’s knowledge and ultimately negative estimation of Nietzsche, even as it leaves many other questions unanswered. In this final section of my essay, I will offer a summary overview of its contents and philosophical tendency before concluding with an analysis of what it contributes to our understanding of Hägerström’s relation to Nietzsche.

Hägerström begins by mentioning Nietzsche’s “most important writings”, among which he unsurprisingly includes *Beyond Good and Evil* and *The Genealogy of Morals* as well as *Thus Spoke Zarathustra* and *Untimely Meditations*. For Hägerström, Nietzsche is primarily a philosopher of will in the mould of Schopenhauer, whose voluntarist philosophy of knowledge leads to radical scepticism. In Hägerström’s stylized characterization, the primary impulse for Nietzsche is the struggle for power, which always presupposes the subordination of someone. He also sees clearly how Nietzsche departs from the pessimism and resignation of Schopenhauer’s philosophy of will in order to highlight the necessity of making evaluations, despite knowing both that they lack any objective basis and that they cannot be interrogated with regard to their truth or falsity. This introduction is then followed by a detailed synopsis of Nietzsche’s argument in *The Genealogy of Morals* about how the ascetic will to power has created a table of values in the form of Christianity and caused a slave revolt in morality. In Hägerström’s account, Nietzsche regards Christianity’s revaluation of values as even today “oppressing the senses and stifling our lion-like natures”.

Summarizing this line of argument, Hägerström observes that it is essentially an extension of the Sophist critique of enduring values, but that Nietzsche at the same time goes considerably deeper, above all in his psychological critique of Christian virtues such as asceticism and compassion. Nietzsche exposes Christian morals as giving “expression to the cruel pleasure taken by the revenger in his oppressor’s hellish suffering” (1926; see note 22). In this summary, Hägerström offers a description of Nietzsche’s thought that is strikingly eloquent yet also clearly tendentious. Drawing on a conventional but nonetheless distorted image of Nietzsche’s moral thought, he gestures at several points towards the idea that Nietzsche ultimately seeks the liberation of a primal, robust, and healthy wild nature: the blond Aryan beast. It is even more curious since Hägerström himself at other points also
polemicizes against this image, expressly underscoring how “wrong it is to reduce Nietzsche’s cult of the active will to power to a cult of the likes of Cesare Borgia, or to see his entire philosophy as the glorification of ‘die blonde Bestie der arischen Rasse’” (1926: 61; see note 22). He likewise emphasizes that, for Nietzsche, the highest form of active creation is the “artwork of the soul”, rather than the deeds of the warlord or the statesman. Following this fairly extensive discussion of Nietzsche’s genealogical critique of Christianity, he then proceeds to discuss the latter’s positive project, which he sees as an attempt to unleash the Superman by breaking down the pernicious evaluations of Christian morality. He argues that Nietzsche saw himself as a bridge to this new form, upon the altar of which he sacrificed himself, even hinting at an identification in this regard with Christ, as articulated in the final section of Thus Spoke Zarathustra.

The more narrowly philosophical critique that Hägerström goes on to develop is aimed primarily at the inconsistency which he sees as characterizing Nietzsche’s thought, insofar as the latter relies on categories which his own radical subjectivism has undermined. This goes for the concept of cause as well as truth and value. According to Hägerström, Nietzsche’s own anti-utilitarian Superman morality has its starting point in the Superman as something objectively valuable. For Hägerström, however, this is of course nonsense. No objective value can confer value upon an act whose goal is also that value. On the contrary, only the desire to live can confer value, and values can only ever be the expression of desires (1926: 65; see note 22). On this issue, both utilitarianism and Nietzsche occupy the same untenable position.

Moreover, Hägerström argues that there is a lacuna in Nietzsche’s genealogical critique of typical Christian virtues, namely, his disregard of the importance of society for the individual. For instance, it is impossible to imagine a purely active and self-sufficient individual in a context of equals. Additionally, rulers must develop among themselves virtues such as considerateness and self-denial. To this Hägerström adds a Hegelian-Marxist argument about how the oppressed acquire value and social standing through work. The overall benefit to society itself leads to the abolition of slavery, thereby preparing itself for a change in norms to which the message of Christianity is well adapted. The same course of events, according to Hägerström, occurs in the transition from
a feudal to a bourgeois social order in the modern era. It is evident, he argues, that greater insight into social context leads to a quite different explanation for the varieties of moral conceptualization than it being merely an expression of weakness, sickness, lack of content, etc. (1926: 73; see note 22). Hägerström thus counters Nietzsche’s psychological-philosophical genealogy with a social-philosophical genealogy.

For Hägerström, Nietzsche’s inability clearly to assess the social context of moral ideas results in a profound self-contradiction, in which the latter’s elitist stance in fact presupposes the very advanced social organization which he criticizes. If actually implemented, the morality advocated by Nietzsche would lead to a societal regression. The austere conclusion of Hägerström’s survey is thus that Nietzsche’s metaphysics of value rests upon the same conceptual confusion as the alternatives which he criticizes, that his historical-genealogical model is fallacious, and that his positive valuation undermines the social organization which he, as an individual, is also presupposing.

Yet this is not the final word. Indeed, it is anything but the final word—and certainly less than Hägerström gives the appearance of having said. For in the very next breath, he goes on to concede that Nietzsche is right on a number of points, specifically his critique of earlier evaluations and their theoretical significance, for example, on the issue of absolute human value, the greatest happiness principle, and more generally happiness as a good itself. It includes the notion of criminal guilt and, not least, the “tedious assertion of compassion and self-denial”. In this Nietzschean spirit, Hägerström also rejects the view of democracy as based on and legitimized by the notion of the equality and personal value of all, while at the same time arguing that democracy can be defended on strictly social grounds as a means to prevent society from being torn apart by internal conflicts.

The nihilistic model highlighted by Hägerström seeks, in other words, to combine an insight into the absolutely unfounded nature of values with a notion of an overarching social benefit. Superficially, it can appear as though this Marxist social-teleological evaluation of history clearly deviates from a Nietzschean analysis. And yet, in a remarkable passage near the end of this intense confrontation, he hints at how the radical-aristocratic core of his thinking remains intact:
It is obvious that Nietzsche signifies a reaction against the narrowness and in reality unsocial excesses of current morality. Even though one considers the democratic principle to be right, indeed, even though one regards social democracy as a necessary and even desirable product of developments, and that one holds that a modicum of considerateness towards others is correct, one need not therefore also see the value of a society in the wellbeing of the masses, or its arrival in the Land of Cockaigne. Given all that, why should an aristocratic evaluation of the spiritually distinguished soul not consider society’s own value as lying in its capacity to create and spiritually cherish individuals who, by the power of their creativity, by the refinement of their feelings, and by the clarity of their vision, lift themselves above the crowd? (1926: 78; see note 22).

After this pronouncement, it hardly matters that Hägerström concludes his lecture with a sweepingly negative account of Nietzsche’s achievements as yet another product of undigested nineteenth-century metaphysics. For what he articulates in these lines is a condensed philosophical autobiography that simultaneously reveals and buries the shock he once received from Nietzsche’s ideas. The aristocratic nihilism speaking here once saw through the false claims of the metaphysics of value and came to the conclusion that no more elevated values could be elicited than those established by the most genuine and highly developed individual human being. But we are also hearing an aged figure who was perhaps once drawn to the revolutionary promise of a superior individual who, despite possessing unbounded freedom, chose to reshape this evaluation in terms of man’s fundamental sociality. For we should be careful not to overstate the role and importance of the Marxist-socialist model for Hägerström’s critique. As early as his 1909 study *Social teleologi i marxism* (*Social Teleology in Marxism*), he had in quasi-Nietzschean fashion revealed the religious-idealistic motifs lurking in Marxism’s utopian thinking.23

In the final instance, the social necessity and the social conditions which Hägerström leans upon in his critique of Nietzsche are not absolute values—naturally, for this would be an obvious self-contradiction. The evaluation with which Hägerström ultimately allies himself is at bottom an aesthetically-driven notion of what constitutes the perfection of a human being. This is a morality which no longer believes itself to be
able to act rationally but which for all that will not resign itself to moral scepticism. It can choose this path because of both a deeply rooted notion of activity and a humanity that always ultimately ascribes value, one way or another, since such evaluation is grounded in life itself. What Hägerström offers could be described as an aristocratically motivated socialism. From the position of this elitist-aesthetic founding concept, he actively affirms the social-democratic reformism that was to be the gift of his intellectual generation to its country.

This combination of Nietzsche and social democracy can initially appear unreasonable. But perhaps it is not so strange as it may seem at first? Do we not already have an answer to this equation, namely in the figure of Aristotle? In Aristotle there is a basis for the kind of anti-Platonic (and therefore anti-Christian) aristocratically motivated communitarianism that Hägerström evokes here in his final settling of scores with Nietzsche. And in so doing he also confirms that the end of a circle is also its beginning. No less invisible in the literature on Hägerström than his great genealogical study of the concept of obligation, is the study with which he began his trajectory: his doctoral dissertation of 1893, *Aristoteles etiska grundtankar och deras teoretiska förutsättningar* [*The Fundamental Ethical Concepts of Aristotle and Their Theoretical Preconditions*]. But at this beginning another history starts, namely, the question of Hägerström’s Aristotelianism, which must, however, await another occasion.

**Notes**

1. Hägerström himself never used the term “nihilism” of his own approach. On the contrary, he refers to nihilism as the position that results from the very out-and-out subjectivism in the philosophy of knowledge that his own thinking sought to avoid at all costs. See his “Självframställning” (Self-presentation) (Swedish trans. from German original by M. Fries) in *Filosofi och vetenskap* (Stockholm 1957): 115.

2. The essay is included in the volume *Om rätt och moral* (Stockholm, 1941).

3. Naturally, this is a truth in need of some modification. Thorild Dahlquist and Sven Danielsson have published essays which further develop our understanding of Hägerström as regards both his historical affiliation and the more precise meaning of axiological nihilism. See in particular Danielsson’s “Nägra värdenihilismer” in *Huvudinnehåll* (Nora 1993), published by Å. Andersson and N.-E. Sahlin: 33–45.

4. Marc-Wogau uses a similar formulation when speaking of Hägerström’s “obscurity”, *Studier till Axel Hägerströms filosofi* (1968: 8).

5. Axel Hägerström. *Eine Studie zur schwedischen Philosophie der Gegenwart* (Gothenburg, 1939). During his brief stay in Sweden, Cassirer evidently managed to form a picture of the peculiar and partly intentional isolation in which the Uppsala School carried out its work. In
his introduction, he declares that it is from this “isolated position” that he wants to liberate Hägerström.

6. Cassirer suggests a connection to phenomenology on p. 24 of Axel Hägerström (Gothenburg, 1939). Fries includes a ten-page discussion of Cassirer’s book in his comprehensive study Verklighetsbegreppet enligt Hägerström (1944: 471–81). His description of how Hägerström’s celebrated critique of subjectivism was to impact on Husserlian phenomenology attests to his superficial acquaintance with this intellectual movement. Einar Tegen’s review of the book in Lychnos (1939) ends by correcting Cassirer in a rather presumptuous fashion by suggesting that both Kant and Cassirer fall prey to the kind of “subjectivism” that Hägerström has criticized. A proximity to a Husserlian perspective in the service of philosophy of knowledge is in my view evident in the more popular study Botanisten och filosofen. Om kunskapsfilosofiens nödvändighet (1910b). However, developing this point further would require a more detailed discussion, above all, of how the notion of intentionality anticipates Hägerström’s attempt to find a way out of transcendental philosophy understood as solipsistic by considering conscience as essentially object-related.

7. Studier till Axel Hägerströms filosofi, n.d., 8. It should be noted that this assessment relates to his development after 1905.

8. Marc-Wogau’s observation goes back to what Hägerström himself says in his late “self-presentation” about how his views have developed from Das Prinzip der Wissenschaft onwards, and about how Phalen’s investigations in particular have contributed to clarifying his own understanding, while he additionally “has not been particularly influenced by contemporary philosophy since this has in my view an uncritical perspective”, “Självframställning”, n.d., 120.

9. Hägerström’s text was published in Festskrift tillägnad E.O. Burman på hans 65-årsdag: 16–75. (Uppsala, 1910).

10. The Origin and Development of the Moral Ideas I–II (London, 1906–8). For Petersson’s analysis, see n.d., 95f To be fair, it should be noted that the question of philosophical influences plays a subordinate role in Petersson’s study, which is primarily intended as a rational reconstruction of Hägerström’s theory of value and its progressive transformation. Petersson argues that three phases can be identified, from nihilistic emotivism to a falsificationist view of value and then back to nihilism.

11. Nordin writes: “Curiously enough, the literature on Hägerström includes no successful attempt to investigate the sources of inspiration for and context of its subject. This lacuna has occasionally been lamented and sometimes also defended by way of accepting Hägerström’s view of himself as an autonomous thinker more or less uninfluenced by previous philosophy”, Från Hägerström till Hedenius: 27 (Lund: 1983).


13. Brandes’s article with this title was published the following year in the book Fremmende personligheder (Copenhagen: 1889).


15. Compare, for example, his professorial inaugural lecture “Om moraliska föreställningars sanning”, published in Sociofilosofiska uppsatser (Stockholm: 1939a): 37–65, as well as in the posthumously published lectures Moralspsykologi:27, and also 144 (Stockholm: 1952).


17. Nordin, n.d., 31. In an article on Hägerström commissioned for The Routledge Encyclopedia of Philosophy, authors Thorild Dahlquist and Ann-Mari Henschens-Dahlquist mention that Nietzsche, in addition to Westermarck, may have exerted an influence.

18. Extracts from this correspondence was published for the first time by Per-Åke Walton in the newsletter of the Society for Philosophy and Psychology Teachers Sophia 1997:2: 14–17.
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19. Ibid.: 50f.
20. Compare, for example, "Om pliktmedvetandet" in Socialfilosofiska uppsatser: 69–92 (Stockholm: 1939b).
21. A second volume, subtitled Über die Verbalobligation was published posthumously (1941). Part of this second volume comprises detailed replies to critiques expressed in reviews of the first volume.
22. The copy has the catalogue number 110: 8 in Uppsala University Library’s catalogue to the Hägerström Collection.
23. Social teleologi i marxismen (Uppsala, 1909), inter alia on p. 64, where he summarizes his analysis: "Marxism itself has provided a morality of the masses whose significance is considerably increased by virtue of its connection to a powerful religious reliance on the ultimate realizability of this ideal".

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Metaphysics, Neo-Kantianism, Religion

——— (1941) Über die Verbalobligation. Uppsala.
——— (1957) ”Självframställning” (Self-presentation) (Swedish trans. from German original by M. Fries) in Filosofi och vetenskap. Stockholm.
Hägerström developed his legal philosophy on a foundation consisting of ontological naturalism and a non-cognitivist meta-ethics. Accordingly, the bulk of his writings in legal philosophy were devoted to a critique of will-theories of law, according to which positive law expresses and derives its validity from the will of the legislator or the people. But he also analysed the concepts of duty, rights, and declarations of intention in private law and offered an interesting explanation of the tendency of judges, lawyers, and others to ascribe binding force to legal rules. Even though he did not put forward a positive account of the concept of law, he maintained that the law can be conceived of as a social machine in which human beings are the cogs. He was also the first to propose a non-cognitivist meta-ethics and this, together with the critique of will-theories of law, is arguably his most important contribution to legal philosophy.
Chapter 8

Axel Hägerström’s Influence on Legal Thinking in Sweden: All Mod Cons in the Valley Between What Is and What Ought To Be

Torbjörn Andersson

1. Introduction

This text is intended to describe the influence of Axel Hägerström on legal thinking in Sweden. I have chosen to focus on the constructive efforts made by Hägerström’s disciples in the field of civil and criminal procedure. The point of the chosen perspective is to try to show Scandinavian Realism at work in a discipline of legal dogmatics (Rechtsdogmatik), rather than comment on theory in the abstract.

The text is mainly concerned with two of Hägerström’s disciples who were professors of procedural law, Karl Olivecrona and Per Olof Ekelöf. Both of them became professors at early age and during a period when there were only three professors of the subject in Sweden. Although often in disagreement among themselves over the correct applications of different procedural rules, over the years both of them remained loyal to the ideas of Hägerström on the concepts of reality and law. Accordingly, there are few disciplines of law whereon the impact of Hägerström has been more profound than Swedish procedural law.
Apart from Olivecrona and Ekelöf, there are of course a number of disciples of Hägerström, who exercised similar influence and gained similar reputation by their works on law. Vilhelm Lundstedt was a professor of private law, a colourful personality promoting the ideas of Hägerström with the same force as he opposed the contemporary understanding of the ideology of law. Alf Ross differed from the previously mentioned disciples not only by joining Hägerström and the Scandinavian Legal Realism movement from elsewhere but from Uppsala; Ross’ conception of law contains a mix inspired of the ideas of both Hägerström and those of the American Legal Realism movement. Out of Hägerström’s disciples Ross is probably the one creating the most elaborate theory of legal philosophy.

Hägerström’s big contribution to legal thinking was his firm nihilistic stand and the implications which followed from it. Once you accept his quite narrow comprehension of reality, it was rather easy to criticize and reject the nineteenth century ideas which early twentieth century law was built upon. His ideas were fresh and radical and in sync with the changes put in motion in early twentieth century Europe. In fact Hägerström’s conception of reality and his understanding of science were perfect tools for the modernistic kill of pre-modernistic thinking. And this was particularly so in the field of law and perhaps particularly in Sweden.

Accordingly, the young disciples, the newly converted law professors made good use of their tools when they dug into the contemporary understanding of law and they did it with commitment and devotion in the name of science and truth. They refused to accept the concept of rights—how could there be any rights if you could not touch them, see them or hear them? Rights were just metaphysics, imaginary stuff, the stuff that dreams are made of. How could the law be an expression of will of the sovereign, be it a king, dictator or parliament? The will-theory was just a persuasive, but scientifically futile, attempt made by positivists to rescue the justification of the binding force of law, after the quashing of natural law and God as sources of legitimacy.

Of course spreading gospels with a dubious and provocative content did cause reactions, particularly when the spreading took place in an environment of academic pressure and resistance. In 1926 Alf Ross’ dissertation was rejected at the law faculty in Copenhagen and in 1930
Karl Olivecrona was declared incompetent when applying for a chair of procedural law in Lund. With respect to the latter decision, it may be interesting to recall a comment from the protocol of the faculty meeting: Prof. Ernberg held that for the applicant’s scientific competence to reach the level of a professor in the future, essential elements of the applicant’s scientific psyche, as it appeared in his production on procedural law, had to be subject to severe changes (The episode of Olivecrona’s application for the chair of procedural law in Lund is described by Ekelöf in the Festschrift for Henrik Hessler 1985: 131ff).

After this introduction, I would like to deal with the subject-matter of this paper in the following way. First, I will submit some examples of pre-Hägerströmian thinking in Swedish legal dogmatics. In that section I will also refer to the criticisms raised by Olivecrona and Ekelöf and briefly mention some consequences of the clashes between paradigms appearing between academic lawyers in the 1920s and 1930s in Sweden. Second, I will provide some examples of how realist thinking was used to reconstruct the conception, the idea, of various procedural rules and principles. Third, I will critically analyse the reconstruction of Swedish procedural law, using the perspective of the realists themselves. In this section I claim that the realists did not respect the separation between the is and the ought and that they did not hesitate to build their constructions upon values and evaluations. Fourth, I claim that today Scandinavian Legal Realism appears like just a northern, rough version of legal positivism and that Hägerström’s conception of reality makes it impossible to reconcile meaningful dealings with law with scientific requirements. In this section I will also address the realists’ view of power and stress that the movement, in its reconstruction of Swedish law, displays strong modernistic features while the emotivistic features are weak. Fifth, I conclude by briefly recalling the positive impact of Scandinavian Legal Realism, but also point out why today the theory appears to be outdated.

2. Pre-Modernistic Conceptions of Law and Realist Critique

Björne (2007) says that Scandinavian legal theory during the early twentieth century contained at least four different movements, all of which overlapped each other and all of which embraced scholars who
were not easily placed in just one movement. Therefore, it is of course oversimplifying and clearly misleading to label the Scandinavian Legal Realism modernistic and distinguish it from other “pre-modernistic” movements. Still, for the purposes of this paper I do just that in order to try to, roughly and tentatively as it may be, illustrate the then prevailing ways of thinking which the realists turned against.

When Olivecrona and Ekelöf entered the scene of Swedish procedural law it was generally considered that the ultimate purpose, aim and objective of civil procedure was the protection of individual rights. The subject-matters of concrete litigation were considered to be alleged subjective rights and the judgment was considered to be a determination of the content of the legal relation alleged before the court. (E.g., Munch-Petersen 1917–19: 3; Granfelt 1908: 1ff.; Thiere 1980: 4). A judgment could either compensate for infringements of rights or prevent future infringements of rights by declaring and clarifying the legal positions of the parties. It may be interesting to observe that this is pretty much the same idea which has motivated the European Court of Justice to promote and develop the effects of EU law in the member states since the 1950s via the general principles of direct effect and protection of individual rights. The application of EU law in Sweden, therefore brings with it some necessary theoretical elements which seem alien from the perspective of Swedish legal thinking.

Anyway, the theory of protection of individual rights is based on an older German theory on the claim for legal protection (Rechtsschutzanspruch). According to this theory, the state, by prohibiting individuals to exercise their right to self-protection, has accepted an obligation to provide protection for individuals when they are in need for it. (Olivecrona 1960: 377ff with references to Laband, Das Staatsrecht des deutschen Reiches [1880]; Wach, Handbuch des deutschen Civilprozesses I [1895] and Der Feststellungsanspruch in Festgabe der Leipziger Juristenfakultät für Windscheid [1888]). The individual’s right versus the state has a public law, or pre-procedural, nature (Kallenberg 1918: 862ff). The Scandinavian version introduced by Kallenberg in the early twentieth century was merely thought to put the judge under an obligation to decide in good faith on the material presented. According to the original German theory however, a person substantively holding a right was considered to have a claim on the state/the court to provide
a substantively correct judgment and thereby to rightfully protect the right. Originally, the term *abstract* or *public standing* referred to the right held by somebody substantively entitled to something, when that somebody brought a claim before a court claiming the protection of the right. Of course, also those not holding substantive rights were entitled to bring claims before courts and possibly win cases (c.f. Olivcrona 1939: 85ff), but under the theoretical construction such persons lacked competence of a genuine quality of right and thus, they did not possess abstract or public standing against the state (Kallenberg 1918: 862).

The idea of a public duty of the state to protect individual rights is of course closely related to the then prevailing idea that the purpose of civil procedure is to provide such protection, that is, to work for the realization of the substantive private law. There were some other implications following from these conceptualizations of rights and civil procedure.

As to the subject-matter in civil proceedings, it was understood to be the claim made by the claimant alleging the specific right the claimant was holding. The defendant’s claim was understood to be a denial of the existence of the right allegedly possessed by the claimant. The task of the court, then, was to make clear the true legal relation between the parties and provide sufficient protection to the one who proved to be in possession of a right. Therefore, the judgment was considered not just a normative judgment regulating the parties’ relation for the future, but a determination, almost a disclosure, of the already existing pre-procedural reality of subjective rights.¹

This kind of view of civil proceedings is based on the assumption that every legal relation consists of a pre-existing concrete relation between individual right and obligation and that relation has a specific content. That assumption attracts basically three theoretical questions. First: Is it theoretically possible to assume that substantively every legal relation between two parties has a given a content—a specific subjective right? Second: Even if this assumption is theoretically possible, is it possible to obtain knowledge of the true content of the legal relation? Third: If such knowledge cannot be obtained, how is it possible to claim that the purpose of civil procedure is to provide protection of existing substantive rights of individuals?

Olivecrona devoted the larger part of his scientific production to these three questions and his answers were all in the negative. On
subjective individual rights he held that they do not exist in the world of facts, but “only in the imagination of men” (Olivecrona 1939: 85). Still, Olivecrona held that the notion of rights has a meaning in law and that it is a means to understand the implications of the law and an incitement to follow the law. It seems like Olivecrona implicitly acknowledged the idea that in the imaginary world of law, a proposition that a specific person in a specific legal relation should be considered to be the owner of a subjective right could be correct or incorrect, even if such a proposition could never be true or false (c.f., e.g., Olivecrona 1939: 109ff). Accordingly, as an objection to the contemporary idea of the judgment being a determination of subjective rights, he held that determinations of subjective rights (he put it differently, though), should be founded on the substantive rules and all the relevant facts which have actually taken place. But a judgment is founded on substantive rules, some of the relevant facts and procedural rules, e.g., the burden of proof (Olivecrona 1944: 735). Therefore, Olivecrona held that the substantive issue of whether x has a subjective right in his relation to y, only corresponds to the question of whether a claim from x against y should be upheld in a court judgment or not (Olivecrona 1939: 105; also Ekelöf 1956: 73ff).

Thus, as I have understood it, Olivecrona would say that it is theoretically impossible to say anything about the existence of subjective rights, even if the ideas of subjective rights are meaningful, yes, even useful. He avoided directly addressing the question of whether it could be meaningful or useful to apply an idea of civil procedure’s purpose being the protection of such imagined rights—what is a purpose or an objective but an idea of intended use—but anyway held that the judgment is not an answer to the question of whether a substantive right (existing or imaginary) is at hand. Consequently, Olivecrona took the position that it cannot be correct to say that the judgment is a determination of existing subjective rights (real or imaginary) or that the overriding objective of civil procedure is that of protecting subjective rights.

The classical idea of civil procedure’s objective being providing protection of subjective rights brings with it a retrospective view on specific proceedings. If the purpose of court proceedings is to reveal the true nature of an existing relation, you tend to focus on the past. You have to consider the consequences of the judgment with a view to
the pre-procedural relation between the two parties and then assess whether the judgment has determined what was there before the court proceedings. The realists would not accept that, but favoured a prospective view on proceedings. To them it was crucial that the judgment would provide incentives to the parties, but more important to citizens in general, to adhere to the substantive rules applied, but also to law in general. Whereas the contemporary proceduralists focused on the effects of judgments on the parties involved and their existing relation, the realists were primarily concerned with the effects on society at large and for the future (See e.g., Ekelöf 1985: 155).

The views of Olivecrona and Ekelöf on the objective of civil procedure is strongly influenced by the theories of Hägerström, but also by Lundstedt’s explicit utilitarian stand (Ekelöf 1991: 78). They regard civil procedure as one among many means by which to psychologically influence the general public to act according to the rules of private law; other means would be propaganda, education and, in fact, the idea of subjective rights (Ekelöf 1937: 51; Olivecrona 1960: 104, 157ff; Ekelöf 1988: 27). Thereby the objectives of the substantive private-law rules are met.

They had the view that concrete judgments contribute to the general adherence of rules in two ways. First, judgments upholding specific rules have the effect of nourishing the general idea that rules should be followed. Second, judgments provide knowledge on how individuals should act in order to adhere to the law in various situations and thereby the adherence of specific rules and principles is promoted; by the exercise of sanctions and threats of sanctions, the temptation to breach rules is oppressed (Olivecrona 1939: 155). The influence on the general public is indirect via deterrence and the threat of sanctions, which exercise a sort of moral internalising, psychological pressure: in the long run individuals cannot burden their psyches with a combination of desires of breaching the law and the suppression of these desires in fear of sanctions. The desires to breach the law are erased from the conscience for reasons of self-preservation (Olivecrona 1939: 147ff). The citizens do not chose their courses of action by conscious choices, after balancing advantages and disadvantages, but by habit.

Olivecrona submits that the idea of a moral duty to abide by the law must be cultivated under certain conditions in order to sufficiently exercise its influence on behavior. Citizens must accept the laws which
they are required to abide by. It must be acceptable that society enforces sanctions for some behavior and the exercise of coercion must not be considered to be arbitrarily.

It is obvious that Olivecrona and Ekelöf borrowed heavily from Hägerström’s ideas on how law functions in society, ideas which were apparently in line with a modernistic wave of thinking sweeping Europe and the Western World in the aftermath of the First World War. It would seem like those of the classical values which did make it home from the trenches, did not stand a chance in the modern world developing during the early twentieth century. Further on in this paper I will suggest that the Scandinavian Realists did use Hägerström’s value nihilism to rid Scandinavian legal thinking from classical values, but that those values were replaced by modernistic values and that consequently legal science did not become a science confined to facts, as might had been implied early on.

Olivecrona made his dissertation in law in Uppsala in 1928 and Ekelöf his in 1937. Gradually their view on procedure and its role in society, picked up from Hägerström’s thinking, replaced the view prevailing in Sweden in the early twentieth century. You may well say that a shift of paradigms took place during the second and third decades of that century. As has been implied earlier in this paper, this was not a smooth and easy process. In particular, Olivecrona was squeezed between the blocks of legal ideology.

One illustration of this may be the questioning of the above-mentioned German dogmatic theory of an obligation on the state to provide legal protection for the holders of individual rights. In the 1920s this dogma was presented as part of the system of civil procedure by the undisputed king of Swedish civil procedure at the time, Ernst Kallenberg in Lund. In 1925 the then fresh academic Olivecrona claimed that Kallenberg had made a scientific error and that the idea of an obligation on the state to provide legal protection to individuals was a dark heritage of natural law (Olivecrona 1925).

Now, admittedly it is always difficult to recognize a shift of paradigms, even if you take metaphysics for reality, and especially so if you are the master being mastered by a newcomer speaking out loud, drawing his arguments from theories which are not only unfamiliar, but also in conflict with most of everything you have ever learnt, studied and
thought. Kallenberg’s reply was harsh and patronizing, yes, even scornful. Eventually, half a decade or so later Olivecrona’s reaction had the effect of him being declared incompetent when applying for the chair of procedural law in Lund. Of course this was a great disappointment for Olivecrona, even if it could be argued that from the point of view of a value-nihilist a chair would be nothing but a social construction, and thus metaphysics. The episode was later referred to by Ekelöf as a scientific tragedy (Ekelöf 1985).

3. Reconstruction Time

As said above procedural law thinking in Sweden before Olivecrona and Ekelöf were established as professors, was based on the prevailing idea that civil procedure had as its objective the determination of the true nature of legal relations and to provide legal protection for subjective rights. Consequently, rules and principles on burden of proof were understood to promote a realization of substantive law (see Tybjerg 1904; Augdahl 1929); in situations where the facts are unclear, rules on burden of proof have a supplementary function by certifying that judgments in such situations will be substantively correct as often as possible (see Ekelöf 1985: 133).

Olivecrona held that judgments did, and should, promote the objectives of substantive law, irrespective of whether judgments were in correspondence with the pre-procedural legal relation of the parties. Therefore, he opposed the idea that the task of the judge is to clarify the pre-procedural legal relation between the parties and that rules on burden of proof have the purpose to promote a realization also when the facts are not certain. Instead, he claimed that rules on burden of proof should be understood from the perspective of society at large and that from such a perspective the result of the specific proceedings for the parties is less important than its incitement for the general public (Olivecrona 1930).

A commonly used example may illustrate the disagreement between Olivecrona, whom Ekelöf subsequently joined, and his older colleagues. Assume that a creditor brings court proceedings against a debtor and claims that the debtor has not honoured the debt in due time. Assume furthermore that it is not certain whether or not the
debtor has paid. According to classical procedural theory, such a situation is difficult since it requires the judge to take a decision without knowing in which direction the facts point and consequently there is a risk that the judgment will not meet its purpose to provide protection for the “real existing right”; in such situations, it was considered, the fundamental principle of the rules on burden of proof could merely motivate a calculation of probabilities (Ekelöf 1985: 133ff with references to Tybjerg and Augdahl). As far as I understand this means that, in situations of factual uncertainty the judge should weigh all evidence and allow the slightest tip of balance to be decisive for the assessment of whether or not the debtor has honoured the debt.

Olivecrona objects to this line of reasoning. He submits that it is more important that rules on burden of proof have the effect that debtors in general honour their debts than certifying that judgments as often as possible promote substantively correct outcomes. He writes that the social purposes which rules on burden of proof serve have to be the same purposes which are decisive for legislation in general. It is impossible to distinguish between the purpose of the substantive rules and the purpose of rules on burden of proof, if you consider utility the leading principle of legislation. The usefulness of an act depends of its social effects. But the act will have social effects only in case it is enforced through the courts. From the perspective of the legislator it is always a question of how to reach a certain result through a proper combination of rules on burden of proof and of substantive rules (Olivecrona 1930: 130ff, 158). Furthermore, he claims that rules on burden of proof should be applied in every case, not just when it is uncertain whether payment has been undertaken.

Applying Olivecrona’s ideas and drawing from Lundstedt, Ekelöf later elaborates them in respect of the example with the debtor. Ekelöf submits that a developed credit market is necessary for business and the general welfare in a society. The willingness to offer loans requires that under the law, creditors are put in secure positions. A creditor should be able to rely on a debtor to honour the debt, which requires that a debtor could be subject of coercion. In case creditors would have to prove that debtors had not paid in order to obtain a judgment and a ticket to the enforcement authorities, they would not be put in sufficiently secure positions and consequently they would be less willing
to offer loans. And that would impair the development and prosperity of society (Ekelöf 1985: 137ff).

Thus, Ekelöf and Olivecrona claim that a heavy burden of proof put on the debtor is an important incitement for debtors to honour their debts in due time. Ekelöf raises the question of whether or not the construction of rules on burden of proof really matters in practice—generally debtors honour their debts by habit and should they sometimes be tempted, Ekelöf considers that their sense of duty rather than the fear of judgment and execution, persuades them to stand firm against temptation (Ekelöf 1985: 138). Still, Ekelöf again drawing from Hägerström, Lundstedt and Olivecrona, says that our sense of duty is dependent on the pressure exercised in society, particularly from the mechanism of sanctions inherent in the legal machinery. And Ekelöf says that rules on the burden of proof are important in that context. He analyses the hypothetical effects of a reversed burden of proof, that is, that creditors would have to prove non-payment. In that case, a growing number of debtors with an interest to escape paying would get away with it by false objections of payment. If that would become common practice, yet others would use this simple way of getting rid of their debts and eventually the moral inclination to honour one’s debts would be undermined.

Furthermore, and more hands on, from the point of view of the debtor and the debtor’s rightful claim for security, both Olivecrona and Ekelöf observe that undoubtedly it is easier for the debtor to secure evidence for payment, than it is for the creditor to secure evidence for non-payment (Olivecrona 1930: 124). Ekelöf adds that placing the burden of proof upon the debtor does not make the position of debtors in general insecure: any debtor honouring a debt has the possibility to require a receipt and invoke it against a second claim from the creditor (Ekelöf 1985: 138ff). Even if Ekelöf acknowledges that placing the burden of proof on the debtor and require strong proof may have the effect of some debtors having to pay the same debt twice, this is a necessary consequence of a correct application of the rules; Ekelöf characterizes this as occasionally some debtors have to be sacrificed at the altar of a functioning credit market.

Olivecrona wrote his book Bevisskyldigheten och den materiella rätten (The burden of proof and the substantive law) in 1930. As mentioned above he applied for a chair in Lund, when Ernst Kallenberg retired, and
was declared incompetent. Three out of four external experts considered that he was competent, but made objections against Olivecrona’s works. None of the experts was convinced by Olivecrona’s ideas on the relation between the burden of proof and the substantive law. One of the experts rhetorically asked: if procedure should not serve the realization of the law, then what should it serve? (This is commented on by Ekelöf who says that the contemporary thinkers had difficulties grasping the difference Olivecrona made between legal rights and laws; Olivecrona was concerned with the realization of objective law, whilst the prevailing view was that rights should be realized. See Ekelöf 1985: 144.) The expert voting for a declaration of incompetence, referring to the works of Kallenberg, held that a civil judgment shall provide legal protection in accordance with the pre-procedural legal relation and that where this relation cannot be established with certainty during proceedings, the rules on burden of proof should promote the fulfilment of procedure, that is the declaration of a substantively correct judgment. Furthermore, he held that Olivecrona devoted less energy to establish positive results in comparison to his analysing the opinions of others.

Eventually, first the faculty and later the board of the university decided against Olivecrona. A theologian at the board claimed that Olivecrona’s philosophical views were the reason of the negative assessments; he had been criticized for a narrow focus on theoretical issues, an inclination for abstract reasoning and a negative attitude. The contemporary comments on Olivecrona’s ideas on how to understand the burden of proof were overall dismissing, except for a review by Alf Ross who submitted the view that he never had seen the questions discussed more thoroughly and clearly (Ekelöf 1985: 145ff).

A few years later the chair was again vacant and Olivecrona applied again, now presenting a new book on the procedure regarding executive sales of real estate, written in a more traditional style. This time he was unanimously considered competent and appointed. Even if Olivecrona’s and Ekelöf’s ideas on the burden of proof never were entirely accepted by everyone in detail, the introduction of them had the effect of eventually outdating the contemporary theories and provide a fresh modernistic approach to civil procedure.

As has been said, Olivecrona and Ekelöf spent the better part of the twentieth century to criticize and reject the arguments and the
reasoning which explained and justified the law. Often this had the effect that the meaning of some piece of law, and its application in a specific context, had to be altered. One example of this would be the impact of a dissertation on res judicata in criminal procedure published in 1949 by a young scholar, Lars Welamson, working closely with Ekelöf.

As has been said, the pre-modernistic conception of civil proceedings contained the idea of the court by its judgment determining the real legal relation before it, the real content of the subjective right in dispute. Consequently, when applying rules on res judicata in civil procedure—that is, deciding whether the subject-matter in dispute had already been dealt with and should be formally rejected—a doctrine on the subject-matter of proceedings was developed. Under this doctrine a right which the claimant alleges in a specific proceeding constitutes the subject-matter of proceedings and is the factor determining how rules on altering the claim or res judicata should be applied. An alteration of the claim should be allowed, as long as the alteration did not alter the subject-matter of proceedings (corresponding with the subjective right alleged). But a second claim should be dismissed even if the claim differs from a previous claim, should the subject-matter of proceedings be the same as had been subject of a previous judgment, that is, concern the same right.

In criminal procedure, Welamson’s field of inquiry, the concept of gärning (accusation, alleged deed) was used in a similar way. A priori the prosecution was considered to be the subject-matter of proceedings, which had to have the same limits when you decided on the application of rules on its alteration, lis pendens or res judicata. Welamson held that this conceptual understanding of the application of rules was severely Begriffsjurisprudentlich; not in civil procedure, nor in criminal procedure, should practical consequences be deduced from an a priori determined concept like the subject-matter of proceedings. That would be incorrect, just as in private law it would be incorrect to make conclusions on legal consequences from the categorization of a certain situation as belonging to a specific fixed concept of subjective rights (Welamson 1949: 109). Welamson held that, from the view of modern legal science, it would be unsatisfactory to exclude all consideration of the objectives of the rules. On the contrary, every situation which may be practically relevant, should be assessed from the objectives at hand in
precisely that situation, save that the interests of clarity and uniformity (objectives in themselves) might outweigh other objectives (Welamson 1949: 109).

Accordingly, Welamson argued that the rules concerning *res judicata* should be understood in a different way. The above-mentioned term *gärning*, referring to the criminal act allegedly undertaken by someone prosecuted, had to be attributed different meanings when it appeared in different sections of the code of civil and criminal procedure. The contemporary understanding of *res judicata* was quite narrow. Thus if someone first was tried for physical assault constituted by a hit by the fist, nothing stopped a second trial in which the prosecutor added that at the same occasion the same perpetrator against the same victim, allegedly, had thrown a kick against the head. And this was because the alleged kick would qualify the assault to serious assault which constitutes a different crime than plain assault.

Welamson claimed that this sort of reasoning had the effect of depriving the law of its possibilities to reach its objectives. The meaning of each section of the statute should be understood in the light of the function it was expected to have. Accordingly, under the section which fulfils the function of concentrating the trial and clarifying the prosecution, the allegations by the prosecutor must be attributed the meaning that the court cannot rule on a kick if the prosecutor has not claimed that the accused has kicked. But when applying the rule of *res judicata*, a kick should be considered to have been precluded by an earlier trial concerning plain assault. Welamson’s reason for this is—simply put—that the different kinds of alleged violence are linked together by time and place and have similar character and that *res judicata* promotes the objective of protecting individuals from double jeopardy and impairing unnecessary trials.

Welamson’s ideas were adopted by the courts and, without legislative interference, the law was reconstructed in line with the realistic conception of law and the modernistic way of thinking.

### 4. In the Valley between What Is and What Ought to be

As I have understood, in philosophy it is important to know that there is a gap between *is* and *ought*. According to some philosophical theories
you cannot bridge this gap: you cannot decide what should be from how things are and you cannot tell how things are from knowing how they should be.

The gap between is and ought is perhaps especially difficult in respect of theories on law. The very idea, or concept, of law presupposes that you mix norms and facts. Of course this goes for the application of law. But also mere interpretation of law (the ought) requires consideration of (at least hypothetical) facts; otherwise interpretation of legal norms would become artificial and drift away from what is considered relevant from the view-point of law and lawyers. And studies of facts, such studies which sociologists of law undertake, must take legal norms under consideration in order to qualify as studies of law.

From the point of view of science, this makes law a suspect area of investigation. At best, you can study how law works or the meaning of rules and slip through the narrow pass into science. But it would seem impossible to consider inquiries on how the law should be applied in different situations to have a scientific character. That kind of inquiries would seem more similar to preaching the meaning and concrete consequences of theological dogmas. Still, the major part of the research done at law faculties over the world is of such dogmatic character, probably due to the apparent societal need of such practically oriented research.

There are a number of ways to theoretically deal with Hume's guillotine and thus also justify the legal dogmatic research done at the universities. The first and most obvious way would be to simply ignore the theoretical difficulties connected to the is and the ought. There are a considerable number of academic lawyers who would not consider it important that their research meets fundamental philosophical standards. It would merely be enough that their work is practically important and appreciated by practitioners. And there is no doubt that the law works and presupposes an interrelated usage of facts and norms. You may actually say that law has its natural home between the is and the ought and that the space occupied is more like a valley than a gap. Should this mean that the academic treatment of questions of law are unscientific—so be it! It would only serve to indicate that the requirements of science are too harsh.

Accordingly, another way to deal with the is and the ought and uphold the aspirations of scientific status of legal dogmatics, would be
to deny the validity of Hume’s guillotine; that is, to join the moral philosophers and meta-ethics to whom it is perfectly possible to mix facts and norms in scientific reasoning.

Yet another way would be the adjustment of the way legal dogmatics are done. Either you turn purely to the world of legal norms without evaluating them (like Hans Kelsen) or to mere compilations of legal sources, like legislation, court cases, but with no evaluations or recommendations as to how the law should be understood and applied (this was the route taken by professor Knut Rodhe, a route sometimes referred to as the Stockholm School).

At the end of his career, Rodhe made a short but clear statement on how he had understood his task as a professor: “What society needs are non-committed observers!” Rodhe held that traditionally Swedish legal science was undertaken in either of three different ways. First, academic works on law can contain descriptions of facts; that is, acts by legislators and courts, but also society in general, the reality of which has an influence upon the legal system. Second, academic works on law may deal with predictions (prognoses) of how the courts are expected to judge and a pinch on what kind of legislation which could be expected. Third, academic lawyers would engage in recommendations to courts on how they should judge and to the legislator on what to legislate. For his own part, Rodhe had the opinion that a scientist in law should devote the energy to making descriptions of facts and to the making of prognoses, but should refrain from recommendations. Rodhe held the view that scientists should not be involved or participate in debates on law or politics or policy of law, to an extent exceeding that of providing information on the contents of legal rules, correct misunderstandings and draw attention to misunderstandings (Rodhe 1996–97: 3). Polemically—I hesitate before using the word since Rodhe published his reply in 1996 to a lecture given by Ekelöf in 1951, in which Ekelöf said that legal science would become extremely boring unless recommendations were to be allowed (Ekelöf 1951)—Rodhe submitted that a piece of legal dogmatics containing a description of facts and arguments pro et contra, would appear to be just as enjoyable whether or not it would end in an expression of the author’s personal view. Rodhe considered his own opinion proved by the fact that his writings succeeded in finding readers, though they lack recommendations. Thus, a scientist in
law fulfils his task for society if he is a non-committed observer, yet his non-committed observations should be undertaken with eagerness and commitment (Rodhe 1996–97: 4).

In this section, I have repeatedly held that meaningful dealings with law require that you mix norms and facts and thus breach Hume’s law. Unless, of course, you narrow the scope of meaningfulness to what is simply compilatory, “non-committed” (boring) academic business, undertaken high enough up at the mountain slope of “facts” to keep a safe distance to the fruitful intercourse constantly going on in the valley below.

Rodhe is not known for being a realist, yet he found a pure spot on the hill of facts, a place allowing the reconciliation of Hägerström’s view on reality and science, and a scientific dealing with the dogmatics of law. The unfortunate price he had to pay was that of being boring to everyone but himself. I would say that that goes also for the safe spot on the other side of the valley situated on the hill of the ought, a place where you would find Hans Kelsen.

I have already mentioned that Ekelöf found the position chosen by Rodhe too narrow. Olivecrona did not explicitly discuss or justify his own recommendations on how i.e. procedural law should be understood and applied. There is no doubt, however, that both Olivecrona and Ekelöf when reconstructing procedural law, fell short of the strict scientific requirements laid down by Hägerström.

For instance: When Olivecrona and Ekelöf claim that the burden of proof in civil procedure must be understood in light of the objective to promote the effectiveness of substantive law, I would say that they make the same mistake which they accuse the old school of making. That is, they hypostatized. To me, objectives of legal rules no more than rights can be seen, heard or touched. Furthermore, it is difficult to understand how the idea of legal rules having specific objectives or functions which justify particular applications of the same rules, could pass the strict science test of Hägerström. Thus, the realists did not seem to hesitate to use abstract ideas (like the objective aims of rules) and values (like the law shall produce happiness and growth) as if they were facts and norms.

Here and there Olivecrona and Ekelöf touch upon the idea that the notion of rights and obligations, erroneous as it may be, fulfils a useful
purpose. It makes people abide by the law, even in situations where there is no risk of being caught with breaking it and facing the horrors of the state’s repression. But you cannot find explicitly a statement where one of them says that legal reasoning necessitates hypostatizing, that law necessitates social constructing.

Apart from Hägerström’s thorough investigations on legal thinking historically, you may observe his intense focus on how law functions in society. In his opinion, the successful function of law is dependent on four factors: social instinct, moral inclination, coercion/deterrence and fear of divine punishment. This draws on Freud and Weber and is in line with modernistic social research of the early twentieth century in general. You find almost identical conceptions of society as a grand self-contained system progressing in many thinkers in his time (see e.g., Talcott Parsons in the field of sociology). The belief in and promoting of such grand, systemic conceptions of society eventually attracted reactions from the new young, the post-modernists, as the twentieth century rolled on in constant acceleration.

It is important to observe, though, that in his work, Hägerström was merely discussing how law functions, that is, when not rejecting explanations and arguments justifying how it should work. Hägerström himself never, as far as I have understood, made a suggestion in respect of why the law should be applied or why a certain rule should be applied a certain way in a specific case.

But as I said before, his disciples used Hägerström’s explanations—which corresponded with the contemporary new thinking on society in general—of how the law functions and used them as a basis to justify how the law should function. Lundstedt was very explicit when he referred to the common good of society as an ultimate goal and the same goes, but less explicit, for Olivecrona and Ekelöf when discussing the application of different procedural rules.

The theoretical difficulty, though, is that you cannot deduce how a rule should work from how it works. You cannot bridge the valley between the *is* and the *ought* just because Hägerström has said how it *is*.

Still, there is every reason to be grateful for that particular theoretical flaw; a Rodhesian or Kelsian “cultivation” of Swedish procedure may well have been theoretically kosher, but would probably had provided meager soil for legal development. And that, if anything, support the
growing suspicion that even if Hägerström’s narrow and harsh conception of reality and science provided solid ground for criticizing scientific treatment of law in the early twentieth century, it really was impossible to use it as a basis for any sort of constructive legal science. And that would include the constructive works of Olivecrona and Ekelöf. They deserve criticism for making basically the same theoretical “errors” as they blamed their older colleagues for and for not being explicit on whether or not and how Hägerström’s concepts of reality, science and law would be reconciled with their own constructive works.

Even if I have made the points I consider important to make in this section, I would like to conclude with three rather brief remarks to tie up some of the remaining loose threads.

First, it should be observed that Ross’s theory on law means that assessments of what the law is in a specific situation should be founded on prognoses of how the courts will (or would if the case never emerges) decide on it. Ross’s theory on law in respect of legal dogmatics comes clean of mixing norms and facts; it will only deal with facts, future facts yes, but still only facts. Elegant as it may be, you can criticize theories claiming that the contents of the law are predictions of future decisions by courts, in pretty much the same manner as you can criticise suggestions like Lundstedt’s (and the young Olivecrona’s) that rights were merely positions from which individuals could count on protection from courts and execution, when questioned. Such theories lack a certain dimension of what it actually means to “think law”. When a law expert submits a proposition on how the law should be applied, that expert does not make a prognosis on how the courts will decide the matter; the expert tells the world, including the courts, his or her informed opinion, that is how the piece of law should be applied correctly. And similarly, like the later Olivecrona acknowledged (see supra section 3), when we say that a certain person holds a right, we consider that person in possession of the right irrespective of whether or not the person manages to prove the right before the courts and irrespective of whether or not the position in practice will be protected via society’s coercion. (See also Hart’s objection to Oliver Wendell Holmes’ prognosis-theory in *The Concept of Law* [Hart 1961]).

Second, as I have already submitted neither of Olivecrona and Ekelöf did respect the philosophical border between norms and facts,
but engaged in constructive intercourse in the valley in between. It might be interesting to note that Ekelöf seems to have exercised the constructive side with greater appetite and sense of ingenuity than Olivecrona, which appears to have been a bit annoying for the latter. There is no doubt that out of the two lifelong competitors, Olivecrona, being the older, had to take all the hard blows first, or that Olivecrona was by far the best stylist of the two. Still, when it came to find solutions to specific procedural problems, he could not match Ekelöf’s swiftness, inventiveness and, yes, intelligence. In fact, in a lengthy discourse on the correct understanding of how rules on altering claims in civil procedure should be applied, Olivecrona criticized Ekelöf for taking too lightly on the historically correct understanding of the rules (Olivecrona 1960: 263ff). This is just one example of Olivecrona, tough as he might have been in criticising the theoretical foundations of the contemporary law, being quite loyal toward the historical conception at least in respect of interpreting the law; you may well say that in that sense he showed a degree of respect and care, which you cannot find with Ekelöf.

Third, supra I mentioned that Ekelöf gave a short lecture (which eventually got published) on the theme, or rather the question, “Is academic writing in law science or technique?” and criticized the position of Rodhe. In this context, I would like to point out that Ekelöf did not give a clear answer to his own question, but that most of his conclusions point to an answer in favour of technique rather than science.

5. All Mod Cons

From what has been submitted above in this paper, hopefully some opinions have been made clear. First, when rejecting the old thinking using the tools devised by Hägerström, the Scandinavian realists were strict scientific puritans. Some examples mentioned earlier may suffice to illustrate this. Accordingly, it was submitted: Since individual rights do not exist, you cannot use the idea of rights or a system of rights, to justify the application of a legal rule in a specific case. Since there are no subjective rights in existence, you cannot say that the purpose of civil procedure is the realization and protection of subjective rights. Since citizens never gave up their rights to protect themselves and since the state is under no obligation to protect individuals, there is simply
no right to protection of rights for individuals (and no corresponding obligation on the state). Since it is conceptual jurisprudence to deduce specific legal consequences from positions ideally held to be rights, that is out of touch with modern theory.

But once the old way of thinking was rejected and the realists entered the phases of construction and reconstruction, they left their scientific purity behind. In the preceding section I held that the Scandinavian realists, at least Olivecrona and Ekelöf, did not respect the difference between is and ought when construing procedural law in Sweden. I also said that that might be just as well, due to the general understanding and comprehension of law, but that it would have been appropriate to have an explicit discussion on how to handle the extremely narrow peephole from which Hägerström allowed the world to be observed.

As implied in the preceding section, it is very difficult to say that the realists were value nihilists, emotivists. As I have understood these terms, nihilists and emotivists consider that propositions expressing values or evaluations cannot be true or false and thus exist only as expressions of emotions of persons expressing them. Such propositions are not propositions about reality, about the real world. Accordingly, since rights cannot be seen, heard or touched, they could not exist. Etcetera. But as was said in the preceding section, teleological reasoning and using utility as a primary goal of society, constitute an introduction not only of norms but also of evaluations in the context of academic analysis of law. And I guess this would be difficult for a value nihilist, limiting the world of science to the small peephole drilled by Hägerström.

It may be interesting to observe that the Scandinavian realists, radical as they may have appeared to be from a scientific point of view, seem to be extremely loyal to the law as it is and consequently to the power in reign. Even if they cleansed the law from the idea of the will of the sovereign or the legislator, they seem to have remained convinced that it is somewhat inherent in the concept of law to matter in society. And it seems clear that it was not only the task of the courts and public officials, but also of law professors, to see to it that rules and principles in force should be enforced in a way which would objectively appear to be sensible.
Hägerström and the Scandinavian Realists share their view on how law works in a society with many contemporary movements of the early twentieth century. An obvious example would be the American Legal Realism, which in its early days seems to foreshadow Hägerström and his effect on young academic lawyers in Uppsala. That is not surprising really. As has been said, the classical way of thinking of concepts like, monarch, nation state, society and people, suffered severely from the horrors of the First World War. The modern ways of thinking of society and law did not only create the Scandinavian and American Realist movements; stressing society at large, development and prosperity before the individual and justice is typical of the new political systems emerging in the early twentieth century: Nazism, fascism, socialism, the welfare state and the New Deal. But of course there are also new modern ideas and expressions in music, art and literature: futurism, dadaism, Vienna …

Thus, you may safely draw the conclusion that the Scandinavian Realists shared the inclination for modernism with the political, philosophical and artistic movements gathering, forming and spreading in the beginning of the last century. From the outset, Hägerström and his followers looks like just another (northern) branch of the movement of Logical Positivism or Logical Empiricism, a similar, contemporary, but grander, yet more contradictory, quest for facts and logics. But strange as it may seem the Realists did not share the value nihilism of people like Francis Picabia and Marcel Duchamp, except perhaps as something to pay lip service to. It would seem like the effect of Scandinavian Realism at work was not value-cleansing the valley between is and ought, but on the contrary, the introduction of modern values and furnishing the valley with all modern conveniences.

In comparison to most other modernistic or post-modern philosophical movements, the loyalty and adaptability of the Scandinavian Realists versus the power and politics in reign is striking. Here is a difference in comparison to the American Legal Realism, which shared the analysis of how law works in society—the is—but eventually not of how it should work—the ought. The same goes for philosophers like Foucault, who would sign on Hägerström’s analysis of how society works, but never support the ought-consequences which people like Olivecrona and Ekelöf implicitly would draw from the analysis. In
practice, the close connection between politics and law, together with emphasis being placed upon on society at large, the future, development and growth, meant that Scandinavian Realists came to contribute to the planning, construction, engineering and running of the Scandinavian welfare states.

6. Conclusions

The internalisation of Hägerström’s ideas into legal thinking was vital for the modernization of Swedish society which took place during the twentieth century. His ideas provided direct support for the value-cleansing of certain aspects of law and legal thinking. Indirectly, his ideas provided a basis for reconstructing an ideology of law, which inevitably meant that again law turned value-soaked, but now with modern flavour. Retrospectively, you may regret that Hägerström’s narrow concept of reality probably had the effect of impeding the development of theories on social construction in Scandinavian law. Olivecrona’s and Ekelöf’s works contain embryos to such an understanding of law, which would be less based on facts, but more in line with what they in fact did do when constructing Swedish procedural law. In that context it is possible to go to the horse’s mouth. Hägerström wrote on the judge’s finding of the existence of a subjective right within the context of specific proceedings: You may always attribute to the finding of the judge the meaning of the judge placing himself in the social condition which must be considered the purpose of laws, with the procedural order as a means, and find that in conditions like this, if they were real, some actual advantages would come to the claimant as against the defendant. This view constitutes a bridge between a realistic understanding of the law and the inherited, basically mystical, yet practically so important view of subjective rights (Hägerström TfR 1931: 91).

Today, Hägerström’s ideas are still impossible to escape when you are into legal dogmatics in Sweden. In Swedish literature or in official documents you can see no references to the will of the legislator. Neither can you escape the distinction between questions of fact and questions of law as a judge. And as a scholar, when you correspond with European colleagues, you must bite your tongue when you get involved in discussions drawing from the categorization of individual rights.
Still, even if there has not been an anti-thesis presented to quash Scandinavian realism, the ideology upon which its constructions were founded seems to be slightly passé. The explanations of society and the role of law in society, have a strong connection to the early twentieth century characterized by common objectives, relative homogeneity, industry and growth. The world today is, like always, ever more complex. Our societies are Europeanized, globalized, value-pluralistic and we have no straight objectives which are undisputed. In this new context the role of law is much more difficult to have a determined opinion of, but suffice to say that Hägerström probably will not guide us this time. On the other hand, the understanding of law which is employed and directly applied within the European Union in the development of probably the biggest law project of our time, is a concept of rights which was outdated before the creation of the Union in 1957. And that is, again, the concept of rights reinvented by the European Court of Justice, requiring the courts of the member states to acknowledge the subjective rights and protect them. Roll over, Hägerström!

**Note**

1. Editorial note: The term “subjective” might be redundant in this context, since all rights are subjective, an argument recently developed by Thomas Mautner in “How Rights became ‘Subjective’”, in *Ratio Juris*, vol. 26 (March 2013): 111–132.

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1. Introduction

The spiritual father of Scandinavian realism, Axel Hägerström, erected his theory of law on, and formulated his critical remarks on other theories of law from, a philosophical foundation consisting of ontological naturalism and ethical non-cognitivism. The author of the Pure Theory of Law, Hans Kelsen, on the other hand, rejected ontological naturalism out of hand, arguing that law belongs in the “world of the ought”, a realm of norms and values beyond the world of time and space, and that any theory of law that locates law in the world of time and space cannot but fail to grasp the specific meaning of law. His meta-ethical position, as we shall see, is not crystal clear, though he appears to have been a meta-ethical relativist. Unfortunately, there was not much intellectual interaction between these two important legal philosophers. While Hägerström occasionally turned his attention to Kelsen’s writings, Kelsen does not appear to have directly addressed Hägerström’s theory or criticism of Kelsen’s theory, though he (Kelsen) did engage with Alf Ross’s realist jurisprudence, especially with the critical remarks made by Ross on Kelsen’s theory (see especially Kelsen 1959/60).
Hägerström’s thoughts on Kelsen’s theory found expression above all in a rather thorough review essay on Kelsen’s Allgemeine Staatslehre (1925), a review essay that was first published 1928 in the journal Litteris and was later translated in Hägerström’s posthumously published work Inquiries into the Nature of Law and Morals (1953), edited by Karl Olivecrona. Hägerström’s important text has to my knowledge not attracted the attention of contemporary jurisprudents, except the Scandinavians Jes Bjarup (1978: 118–21; 1982: 384–417; article manuscript: 1f) and Åke Frändberg (2005), but it is nevertheless of considerable interest. Not only are the arguments in it interesting in and of themselves, but a perusal of the text will also give the reader a sense of the considerable intellectual debt that Scandinavian realists, such as Vilhelm Lundstedt (1956), Karl Olivecrona (1939; 1971), and Alf Ross (1989 [1946]; 1959), owed to Hägerström, as well as a deeper understanding of their harsh criticisms of Kelsen’s theory.

In this article, I therefore intend to take a closer look at Hägerström’s criticism of Kelsen’s theory as it was put forward in the above-mentioned review essay, especially the claim that Kelsen’s theory should be rejected on the grounds that it cannot be squared with Hägerström’s naturalistic theory of reality. I am going to argue, more specifically, (i) that while Hägerström’s objection to Kelsen’s non-naturalism is plausible, Hägerström’s theory of reality is not without its problems, and (ii) that Kelsen could in any case meet Hägerström’s criticism by abandoning his non-naturalism and adopting instead a naturalist, and more specifically, a conventionalist analysis of the existence of legal norms. I am also going to argue (iii) that Hägerström’s claim that Kelsen’s theory shows a strong affinity to primitive positivism, in assuming that the act of legislation necessarily and immediately gives rise to the existence of valid (in the sense of binding) legal norms, is undermined by Hägerström’s failure to appreciate that Kelsen saw the presupposition of the basic norm as being conditional upon a wish on the part of the person who makes the presupposition to conceive of the legal raw-material as a system of valid norms.

I begin by introducing Kelsen’s theory in brief outline, giving special consideration to the non-naturalist features of the theory (Section 2). I then consider Hägerström’s two main objections to Kelsen’s theory, namely that it shows a strong affinity with primitive positivism (Section
3), and that it makes law socially irrelevant because there can be no connection between the “world of the ought” and the world of time and space (Section 4). Having done that, I consider Hägerström’s theory of reality (Section 5) and the problem posed for this theory by Karl Popper’s theory of the three worlds (Section 6). The article concludes with a very brief consideration of legal conventionalism (Section 7).

2. Kelsen’s Theory

As is well known, Kelsen (1960: 1) maintains that his theory of law is pure, in the sense that it holds that law—conceived as a system of valid norms—is conceptually independent of both nature and morality. What Kelsen means by the separation of law and nature is that law exists in a realm beyond time and space, in the “world of the ought”.4 His idea is that the peculiar property that turns an alleged judicial decision, say, into a (genuine) judicial decision cannot find room in the world of time and space (1960: 2). For, he reasons, if we analyse a piece of legislation or a judicial decision, we will find that it consists of two elements, namely one element that belongs to the world of time and space, such as a human action or an event, or a series of human actions or events, and another element that does not exist in the world of time and space, namely a specifically legal, normative meaning, which legal norms confer on it. This normative meaning is that the norm ought to be applied or obeyed, and it is this property that Kelsen refers to as validity or, occasionally, as bindingness. As he puts it, “[t]o speak … of the validity of a norm is to express first of all simply the specific existence of the norm, the particular way in which the norm is given, in contradistinction to natural reality, existing in space and time. The norm as such, not to be confused with the act by means of which the norm is issued, does not exist in space and time, for it is not a fact of nature” (1992 [1934]: 12).

Kelsen does not, of course, deny that the legal raw material—statutes, cases, customs, etc.—is to be found in the world of time and space. What he denies is that valid legal norms—that is, norms that are binding not only when seen from the point of view of the person or organ who issues the norms, but also from the point of view of an independent third party (1960: 7)—exist in the world of time and space. He reasons that since one cannot deduce an “ought” from an “is” (1992: 5) and since
there is no conceptual connection between law and morality (1992: 68f), a person who wishes to conceive of the legal raw-materials as a system of valid norms needs to presuppose the basic norm (Grundnorm), which can be formulated schematically as follows (1992: 57): “Coercion is to be applied under certain conditions and in a certain way, namely, as determined by the framers of the first constitution or by the authorities to whom they have delegated appropriate powers.” The presupposition of the basic norm, he explains, is necessary for anyone who wants to conceive of law as a system of valid norms, while remaining within the framework of legal positivism (1999 [1945]: 116): “To interpret these acts of human beings as legal acts and their products as binding norms, and that means to interpret the empirical material which presents itself as law as such, is possible only on the condition that the basic norm is presupposed as a valid norm.” The reason, of course, is that the separation thesis of legal positivism—which has it that law and morality are conceptually distinct—bars the legal positivist from grounding the validity of law in morality, say, by reference to democracy or human rights, or, for that matter, by reference to the will of God.

Kelsen emphasizes, however, that although one may, one does not have to, presuppose the basic norm, which is to say that although one may, one does not have to, conceive of law as a system of valid norms. On this analysis, then, the validity of law is conditional upon the presupposition of the basic norm, and the presupposition of the basic norm in turn is conditional upon the wish of the person making the presupposition to conceive of law as a system of valid norms. As Kelsen puts it, the basic norm plays only an epistemological—not a justificatory—role in the analysis (1992: 58, 64; 1960: 224). Here is Kelsen in the second edition of the Reine Rechtslehre:

It [the Pure Theory] describes positive law, i.e., every on the whole effective coercive order, as an objectively valid normative order, and establishes that this interpretation is only possible under the condition that a basic norm is presupposed whereby the subjective meaning of the law-positing acts is also their objective meaning. It thus characterizes this interpretation as a possible one, not as a necessary one, and portrays the objective validity of positive law as conditioned only: as conditioned by the presupposition of the basic norm. That one only can, not must, presuppose the
basic norm of a positive legal order means that one can, but not must, interpret the interhuman relations under consideration normatively, i.e. constituted through objectively valid norms as duties, authorizations, rights, competences, etc., that one can interpret them unconditionally, i.e., without presupposing the basic norm as power relationships, as relationships between persons commanding and persons obeying or not obeying, i.e., sociologically, not juristically. Since—as was stated above—the basic norm, as a norm conceived in the establishing of the validity of positive law, is only the transcendental-logical condition of this normative interpretation, it does not serve an ethical-political, but rather an epistemological function. (1960: 224f See also 1991: 255f, 206; 1992: 34, 58; and 1999 [1945]: 394f).6

Although Kelsen does not say so, it seems to me that his non-naturalism about valid legal norms is not too different from the non-naturalism defended by G.E. Moore (1993 [1903]). On Kelsen’s analysis (1960: 5n*), the property of validity (or bindingness) is precisely undefinable and non-natural. Speaking of the concept of ought,7 Kelsen states the following: “Von dem Begriff des Sollens gilt dasselbe, was George Edward Moore … von dem Begriff ‘Gut’ sagt: ‘‘good’ is a simple notion just as ‘yellow’ is a simple notion.’ Ein einfacher Begriff ist nicht definierbar und—was auf dasselbe hinausläuft—nicht analysierbar.” And this, it seems to me, is the reason why Kelsen feels that he has to introduce the theory of the basic norm—if he did not operate with such a strong notion of validity, why would he argue that we need to presuppose the basic norm?

One may, however, wonder whether this moral non-naturalism can be squared with Kelsen’s often repeated rejection of moral objectivity. In a discussion of justice in the General Theory of Law and State (1999: 6ff.), for example, Kelsen maintains that value judgements, including judgements about justice, are determined by emotional factors and are valid only for the speaker. Pointing out that a judgement about the means to an end is a scientific, not a moral or political judgement, he goes on to maintain that a value judgement is a judgement about an end, and, in particular, an ultimate end. Such a value judgement, he explains, is always determined by emotional factors and cannot be justified by rational considerations, even in principle. Since he also emphasizes the
social character of morality (1999: 7f; 1960: 60f), my guess is that he accepted (a version of) meta-ethical relativism rather than (a version of) non-cognitivism. The important point in this context, however, is that he was clearly not a moral realist or any other kind of moral objectivist.

I do not, however, think that this amounts to a contradiction on Kelsen’s part. I take it that Kelsen attributes the presupposition of the basic norm to the “juristic consciousness” (1999: 116f) because he believes that the presupposition of the basic norm can explain the strong notion of validity that he also (indirectly) attributes to the juristic consciousness. In this hypothetical way, the theory of the basic norm reflects the acceptance of moral realism in the shape of non-naturalism. So if this is how Kelsen reasons, his use of moral realism does not seem to amount to a contradiction.

3. A Strong Affinity with Primitive Positivism

Hägerström begins his review by pointing to the various ways in which traditional, positivist legal scholarship has uncritically drawn on ideas of the natural law tradition, *inter alia*, by tacitly assuming that the actual sovereign power can obligate itself by issuing legal prescriptions, an idea that presupposes a tacit invocation of the natural law principle *Pacta sunt servanda*, and by assuming that a judge who decides a case analogically or *contra legem* is nevertheless applying pre-existing law, conceived as the content of a sovereign will, even though this is a hopeless fiction (1953: 257ff). And he proceeds (1953: 260f) to commend Kelsen for competently unmasking and exposing these and other flaws in traditional scholarship, saying that “[t]his acute criticism of the usual theory of law, with its falsifications of reality and unsound confusion of legal and moral rights, is well worthy of attention both for the philosopher of law and for the jurist”.

Having discussed Kelsen’s criticisms of the traditional theory of law, Hägerström turns to consider Kelsen’s positive theory of law, which (as he notes) was put forward for the first time in systematic form in the book that he is now reviewing. He notes that like the defenders of the traditional theory, Kelsen assumes that positive law is a closed system that is distinct from both nature and morality, and that therefore legal science (*Rechtswissenschaft*) has a peculiar character, which
distinguishes it from both social and moral science (1953: 261f). And, he points out (1953: 262), “[i]t is of the utmost importance to see where one gets to when one tries, with the help of such a distinguished leader as Kelsen, to pursue such an assumption to the end, without being content with incorrect ideas about reality and an illegitimate admixture of the moral with the legal point of view”.

Hägerström (1953: 262–9) proceeds to offer a characterization of Kelsen’s theory, beginning with a consideration of Kelsen’s ideas as they were set forth in his first book, Hauptprobleme der Staatsrechtslehre (published 1911), and goes on to consider them as they find expression in the book under review (1953: 269–78). He finds Kelsen’s view that law is conceptually distinct from natural (and social) reality to be especially troublesome. To begin with, he sees a contradiction in Kelsen’s view that although legal validity, via the presupposition of the basic norm, is meant to explain why one ought to obey (or apply) the law, the efficacy of law is at the same time considered to be a necessary condition for legal validity (via the presupposition of the basic norm):

The inconsistency in question is not contingent, it springs from the roots of the system. On the one hand, the legal prescript must have within it categorical validity, to the extent that something ought to follow under the conditions laid down. Without this inner categorical validity it is impossible to decide that a legal act occurs when the legal prescript is applied. Yet, on the other hand, the legal prescript must be applied in order that the ought which is contained in it should be valid. Since genuine legal acts must be regarded as issuing from the legal unity itself, the latter is itself obviously inactive when a legal prescript fails to be enforced, i.e., the ought itself lacks the requisite power (1953: 264).

But Hägerström misunderstands Kelsen when he assumes that Kelsen takes the basic norm to provide the law with a categorical (unconditional) validity that can in turn explain why one ought to obey (or apply) the law. The problem disappears as soon as one realizes that Kelsen’s view (as we have seen in Section 2) is that the presupposition of the basic norm, and therefore the validity of legal norms, is conditional upon a wish of the person presupposing the basic norm to conceive of the legal raw-material as a system of valid norms. That this was Kelsen’s
view already in the book that is being reviewed by Hägerström is clear from Kelsen’s comparison in this very book between the positivistic idea of a hypothetical basic norm and the natural law idea of a social contract, and the subsequent comment on the latter idea (1925: 251):

Since one chooses as a foundation something factual [Tatbestand] instead of a pure and only presupposed norm, which is not posited as something factual, the consequence is that what is nothing but a hypothetical assumption, establishing the unity of the national legal order, is misrepresented as a historical fact and, owing to this fiction, is deprived of its original, inherent meaning.9

That Hägerström really takes the theory of the basic norm to provide the law with unconditional validity is clear from his discussion of what he calls a “strong affinity with primitive positivism” on the part of Kelsen’s theory (1953: 272). He attributes to Kelsen the view that the act of legislation immediately and necessarily gives rise to valid (binding) legal norms, a view that is clearly incompatible with Kelsen’s view that the presupposition of the basic norm can ground only a conditional legal validity. And although Hägerström seems to note the relevance of the theory of the basic norm to the issue under consideration (1953), he fails to consider the important question whether the presupposition of the basic norm is meant to be conditional or categorical.

Hägerström proceeds to point out that Kelsen’s criticism of the theory that a federal state based on a covenant can be dissolved by reference to certain “rational” principles for the validity of covenants under international law illustrates well the affinity of Kelsen’s theory to primitive positivism (1953: 273f). He observes that in his efforts to expunge all traces of natural law from his theory, Kelsen is driven to reject the existence of such “rational” principles and to hold that any covenant that does not include a clause about termination is bound to hold eternally pursuant to the legal principle Pacta sunt servanda. But, he points out (1953: 274), the consequence of such a dogmatic stance on Kelsen’s part is that the usual methods and techniques for the interpretation and application of the law must be rejected in so far as they depend on or include such “rational” principles. Thus, he says (1953: 274), “we must completely exclude, e.g., the motive of the law,
legal analogy, the spirit of the law, equity and reasonableness, judicial practice, and the results of jurisprudence, as principles for ascertaining the positive law”. He insists, however (1953: 274), that the result must be an overly narrow conception of jurisprudence, in which this discipline will concern itself only with “a systematization of the laws according to merely formal principles, without any regard to the requirements of social life or to the ‘ethico-political postulates’ which are in fact present in the community”. And he concludes that “in this way Kelsen is led back to the view of primitive positivism and to the so-called grammatical method of interpretation associated with it, which we find in ancient Rome” (1953: 274).

I do not, however, believe that Hägerström is justified in drawing these conclusions. First, I cannot see that the usual methods and techniques of legal reasoning involve a significant amount of “rational” principles or similar entities (on these methods and techniques, see Spaak 2007: chap. 3). Secondly, even if they did, I cannot see that the judge would be driven by his (required) rejection of such principles to engage in nothing but textual interpretation. Why could he not equally well invoke systemic, intentionalist or teleological interpretive arguments? Since legal norms do not interpret and apply themselves, a choice between competing interpretive arguments will typically, though not necessarily, depend on a further choice between the values that underlie the respective interpretive arguments, such as between predictability and legislative efficiency (on this, see Spaak 2004). To choose textual over other types of interpretation is thus to choose to promote predictability over, say, legislative efficiency, a choice that can hardly be said to be value-neutral, or in any sense more “primitive” than, say, the choice to adopt a teleological approach to legal interpretation.

4. Social Irrelevance

Hägerström’s central objection is that under Kelsen’s theory law becomes socially irrelevant, because the “world of the ought” (where law is located) cannot be thought of as even existing alongside the world of time and space. Pointing out that the reason why Kelsen makes no false statements about social facts is that he does not allow his legal philosophy to have anything to do with such facts, Hägerström states the following:
A legal prescript is, in fact, for him [Kelsen] a judgement concerning a supernatural existent, which nevertheless (at least in so far as his view is carried out consistently) must be completely realized in the world of nature. But this is an absurd idea. The supernatural juridical system cannot be thought of as even existing alongside the natural order. For no knowledge of any reality is possible except through relating its object to a systematically interconnected whole. But the supernatural and the natural systems, as being different in kind, cannot be co-ordinated in a single system. Therefore, so far as I contemplate the one, the other does not exist for me. But, if the jurist as such must abstract from the natural order, it is to be feared that the legal prescripts which he sets forth will be far too empty. He cannot, e.g., talk of legal transactions as juridical facts, for that becomes altogether meaningless if one may not assume any natural causal nexus. Again, he cannot speak intelligibly of punishment, since a ‘punishment’ which led to no consequences by way of natural causal connexions could not be called a punishment. He must simply be left gasping for air! (1953: 267).

What Hägerström is saying here is that we cannot even conceive of the two worlds in question—the “world of the ought” and the world of time and space—as existing side by side, because it is necessarily the case that everything that exists is part of the one (and only one) all-encompassing framework that he mentions. And since, on Hägerström’s analysis, this framework is the framework of time and space, there can be no place for any other framework, such as a non-natural world of norms and values.

Hägerström then proceeds to spell out the implications of the lack of connection between the two worlds. First, he points out that on Kelsen’s analysis, a person who is focused on the law cannot even admit the existence of either morality or the goings-on in the natural world. As he puts it in the quotation above, “so far as I contemplate the one [world], the other [world] does not exist for me”. Quoting Kelsen’s pronouncements on this issue, he concludes that the “jurist as such”, that is, the jurist who is focusing on the law, must deny both that there are men in the biological sense and that one ought to act morally (1953: 268). He notes with satisfaction that in light of this it is only to be expected that Kelsen should think of the act of legislation
as a great mystery (1953: 268) as Kelsen does in *Hauptprobleme der Staatsrechtslehre*. Says Kelsen:

> Es ist das große Mysterium von Recht und Staat, das sich in dem Gesetzgebungsgakte vollzieht [namely, that this act can produce legally valid norms] und darum mag es gerechtfertigt sein, daß nur in unzulänglichen Bildern das Wesen desselben veranschaulicht wird (Kelsen 1984 [1923]: 411).¹⁰

Hägerström proceeds to consider in this light Kelsen’s doctrine of *imputability* (*Zurechnung*) of the wrong (action), arguing that this doctrine makes it impossible to understand how human beings can have legal rights and obligations (1953: 268–71). Kelsen’s idea here is that “the wrong” committed by a law-breaker cannot be imputed to a human being, but only to that legal construct of a *person*, that complex of norms, that in some sense corresponds to the human being. As Hägerström puts it (1953: 268f), “the subject of imputation is, from the juridical point of view, the inner essence of a man, which is raised above all natural willing, feeling, and cognition”. He objects, however, that this construction is untenable (1953: 269) and concludes that in his efforts to purify the notion of legal obligation, Kelsen approaches primitive superstition and mediaeval scholasticism:

Kelsen, in proportion as he tries to purify the juridical notion of obligation, by freeing it from fictitious elements, such as the demands of the state authority, etc., and by eliminating moral considerations, approaches instead to primitive superstition and mediaeval scholasticism. It is true that he holds that the mystical juridical person, elevated above the whole of nature, to whom wrong-doing is to be imputed, is only a juridical construct and therefore lacks the palpable reality of the ghosts of superstition. Nevertheless, the jurist as such must surely conceive of something as the subject of imputation for wrong-doing, when he uses his words person, partial system of norms, etc. In so far as he does so he approaches decidedly to the old animistic belief that the *innermost* part of man—his animus or anima—is contaminated by his crime, and that for that reason this spirit is to be handed over to the anger of the gods (1953: 271f).
Hägerström returns to the topic of scholasticism at the end of his review, saying that Kelsen’s theory is a fine example of scholasticism in jurisprudence, and that through his energetic criticism of the prevailing (scholastic) theory of law Kelsen has actually sown the seeds of the destruction of his own theory (1953: 298): “… the stronghold of scholasticism in jurisprudence has been so greatly weakened by Kelsen, through his demolition of all its outworks, that it can hardly defend itself further against the attacks of sound reason.” I am not sure, however, what, exactly, Hägerström has in mind here. I am, indeed, not absolutely sure what he means by “scholasticism”, though I suspect that he means something like a tradition-bound exercise in the construction and elaboration of a system and the drawing of distinctions, all of which play no important role in our understanding of reality. If this is (roughly) what he means, then I think the charge is unfair to Kelsen, who was almost as anti-metaphysical a thinker as Hägerström, and who rightly saw himself as being engaged in a serious scientific inquiry into the nature of law.

I do, however, agree with Hägerström that a discussion of legal phenomena, especially questions of legal reasoning, without consideration of the social reality that the norms aim to regulate is not likely to be very fruitful (see the discussion in Section 3 above). But on a more generous interpretation, we might take Kelsen to be saying simply that questions of legal reasoning in courts cannot be handled *scientifically*, since they clearly involve moral and other evaluative considerations. To say this is not to say that judges must not make such choices. That Kelsen took this view is clear from the first edition of *Reine Rechtslehre* (1992, 90–106, esp. 96f; 1992: 77–89, esp. 81f), as well as from his later writings (Kelsen 1960: 346–54, esp. 349f).

### 5. Hägerström’s Theory of Reality

Ontological (or metaphysical) naturalism is a thesis about the nature of what exists. According to John Post (1999: 596f), it is the view that “everything is composed of natural entities … whose properties determine all the properties” of that which exists. I shall assume here that a natural entity or property is an entity or property of the type that is studied by the social or the natural sciences, though I recognize that it is difficult to find a fully satisfying characterization of natural entities
or properties (on this, see Ridge 2008; Copp 2007: chap. 1). On a more fundamental level, we might perhaps say that an entity or a property is a natural entity or property if, and only if, it can be found in the world of time and space, in (what I shall refer to as) the all-encompassing spatio-temporal framework—if a contemplated entity or property, such as God, a natural number, a scientific theory, a legal norm, or binding force, cannot find a place in this framework, it is not a natural entity or property. Thomas Mautner puts it as follows:

In this paper, “naturalism” will primarily be understood as the ontological thesis that every object and every event, indeed all there is, is part of nature. Nature is all-encompassing: There is nothing beyond, above or beneath. It is a system to which we ourselves as psycho-physical beings belong: the world of experience, the spatio-temporal world. Any metaphysics which postulates entities that exist independently of nature, or in any sense separately from it, is rejected. Many philosophical “-isms” are naturalist, among them philosophies known as evolutionism, logical positivism and physicalism (2010: 411).

Hägerström himself did not speak of ontological naturalism, however, though he did advance a theory of reality that implies this thesis (see, e.g., 1929). Unfortunately, his texts on the subject matter are difficult to understand. But following a well-known (in Sweden) interpreter of Hägerström, the Swedish philosopher Konrad Marc-Wogau (1968a; 1968b),11 I shall spell out this theory in three main theses, namely (1) that “reality” means the same thing as “determinacy”, (2) that there is a certain all-encompassing framework in which everything real can be found and which excludes any other framework, and (3) that this framework is the spatio-temporal framework. As should be clear, the combination of theses (2) and (3) implies ontological naturalism, as Mautner conceives it.

The first thesis—that “reality” means the same thing as “determinacy”—is meant to elucidate our common concept of reality and to answer the question, “What does it mean to say that something, X, is real?” Hägerström’s answer, then, is that to say that X is real is to say that X is determinate. As Marc-Wogau points out, this thesis is aimed at theories that hold that reality is in some sense contradictory or
indeterminate (1968b: 114), and it captures an idea that has fairly often been put forward in the history of philosophy (1968a: 91f). But, one wonders, what does it mean to say that X is determinate? Marc-Wogau (1968a: 93) explains that Hägerström’s view is that words like “real” or “determinate”, although they refer, do not have meaning (sense) in the way that words such as “whiteness” do,12 and that this means that the thesis simply makes (more) precise the extension of claims about reality.

The second thesis—that there is a certain framework in which everything real can be found and which excludes any other framework—is, as Marc-Wogau points out (1968b: 114), aimed at so-called two-world theories, such as Plato’s theory of the forms. Marc-Wogau describes the import of this thesis in the following way:

Everything determined or real constitutes one connected whole—“das in toto gegebene Wirkliche”—beside which nothing else is conceivable. This one connected whole contains parts that are consciousnesses, as well as parts that are not consciousnesses. All determined objects “are comprised” in that connected whole, but they are included in it in different ways. Certain objects, such as what I have dreamt or imagined, are included in the connected whole merely as contents of the imagination; other things, such as what I have experienced in the waking state, and even my fantasies as psychic reality are included in the connected whole, not only as imaginative content. If an object A has this characteristic in relation to the conception of A, that it is included in the connected whole of reality “together with” the conception of A, we say that A “exists” (1968a: 101f).13

Hägerström’s idea appears to have been that thesis (2) follows logically from thesis (1). Marc-Wogau (1968a: 95) explains, however, that Hägerström did not mean to say simply that if there were no such all-encompassing framework, then objects and properties could not be determinate. What Hägerström meant, according to Marc-Wogau (1968a: 95), was that if there were no such all-encompassing framework, we could not contemplate and compare distinct objects, as we undoubtedly do. He explains (1968a: 95) that the idea was that if we are to be able to speak of and compare distinct objects, we must be able to conceive of them together in one conception, and this means that they must stand in a determinate relation to one another. But since different worlds—such
as the “world of the ought” and the world of time and space—could not stand in a determinate relation to one another, we could not conceive of them together in one conception. Marc Wogau puts it as follows:

... we can imagine different connected wholes, and we often speak of several possible alternatives for the course of events. What is dreamt and what is experienced in the waking state constitute two different connected wholes; the calculated and actual consequences of an action might also constitute two different connected wholes. We characterize only one of the two connected wholes as “real”. Now it is clear that in these cases we can speak of two different connected wholes only if we compare them with one another. But to be able to compare them we must both have grasped them in one conception and also conceived them as one coherent object. If object A is grasped in one conception and object B in another, they cannot be compared with one another. The comparison can occur first when both objects are present for one and the same conception. Now in order for both objects (or connected wholes, as the case may be) A and B to be conceived as one coherent object, the relation between them must be determined. They must be in a determined relationship to one another; objects that are not connected in a determined way with one another or are not connected at all cannot in a meaningful way be assumed to exist (1968a: 96).14

Hägerström thus appears to assume here that a determinate relation between A and B presupposes that both A and B belong to the world of time and space, though it seems to me that one could object that this is precisely what he needs to prove. Could not a non-naturalist object to Hägerström’s analysis that although he (the non-naturalist) may agree with Hägerström that to exist is to be determinate, there is indeed a determinate relation between Smith’s action, A, and the moral obligatoriness, B, of said action, namely precisely in the sense that the action is morally obligatory? But this rather crude objection is of course not sufficiently developed to carry much weight. For obvious reasons, I shall not go further into this question.

The third thesis, finally—that the framework mentioned in thesis (2) is the spatio-temporal framework—is aimed at theories according to which reality is spiritual, that is, idealist theories. Marc-Wogau explains that Hägerström reasoned as follows (1968a: 105ff). If we conceive of
our own existence, we must think of ourselves as being independent of anyone’s conception of us. Moreover, if we assume, as we do, that some conceptions belong to one person, A, that some other conceptions belong to some other person, B, and that yet other conceptions belong to a third person, C, etc., we must be able to distinguish between these persons, and the only way to do that is to invoke space-time coordinates; and this, of course, is to presuppose that there is a world of time and space.

I must say that, although I find thesis (3) plausible, I find the argument in support of it unconvincing. As far as I can see, the argument amounts to the claim that we could not distinguish between different persons—Hägerström, Olivecrona, Kelsen, Hart, and so on—if we did not also assume a world of time and space where we could locate these persons. But it seems to me that one who took this question seriously would have to provide some reasons for a sceptic to accept that there are indeed different persons. Hägerström appears to simply take this for granted (as I myself do). If, however, one takes this for granted, one might as well take the existence of the world of time and space for granted instead of invoking an argument the premise of which is no more (and no less) credible than its conclusion.

I thus find Hägerström’s theory of reality plausible, especially the view that we cannot allow ourselves to operate with two or more worlds that we cannot conceive together in one conception, and this means that, like Hägerström, I am disinclined to accept the view that law exists in the “world of the ought”. But, one may nevertheless wonder, is not Hägerström’s theory too radical? Can we really accept the view that an entity or property is real only if it can be found in the world of time and space? What about entities such as meanings (Fregean senses), propositions, norms, values, scientific theories, natural numbers, sets, etc.? Do they exist “in time and space”? If they do not, should we really conclude that they do not exist at all?

6. Popper’s World 3

Karl Popper (1979) answers the latter question in the negative, distinguishing as he does three worlds or universes, namely (i) the world of physical objects or states, (ii) the world of mental states or states of consciousness, and (iii) the world of objective contents of thought, such as
scientific and poetic thoughts and works of art (1979: 106). The inhabitants of World 3 are thus neither physical nor mental, but exist independently of physical or mental acts, events, or states of affairs. Among the entities that populate World 3, Popper reckons with theoretical systems, problems and problem situations, critical arguments and the state of a critical argument or discussion, and the contents of books and articles (1979: 107). On this analysis, the present state of physics, say, exists as an objective content of thought, independently of human beings. That is to say, the present state of physics is what it is independently of whether there actually have been or will ever be physicists, who understand this state, or think about it, or argue about it, etc.

To substantiate his claim that there really is such a thing as World 3, Popper asks the reader to imagine a situation in which all our machines and tools and subjective learning are destroyed, though our libraries and our capacity to learn from them survive, and to compare it with a situation in which not only our machines and tools and our subjective learning, but also our libraries and our capacity to learn from them, are destroyed (1979: 107f). His idea is that the crucial difference between the two types of situation is that books and journals contain objective knowledge, which is thus available and can be accessed and comprehended by human beings, as the case may be. As he puts it, “[k]nowledge in this objective sense is totally independent of anybody’s claim to know; it is also independent of anybody’s belief, or disposition to assent; or to assert, or to act. Knowledge in the objective sense is knowledge without a knower; it is knowledge without a knowing subject” (1979: 108f).

I agree, of course, with Popper that one may with good sense distinguish between the act of thinking and the content of one’s thought, between the content of scientific theories and the views of scientists about this content, and between the present state of scientific inquiry, including problem situations and the like, and the views of scientists about this. And I also accept that one must distinguish between sentences and words, on the one hand, and propositions and meanings (Fregean senses), on the other. For example, two words (in the same or in different languages) may have the same meaning, and two sentences (in the same or in different languages) may express the same proposition (or thought). But does this really mean that we must accept the notion that meanings and similar entities exist independently of human beings?
Popper points out (1979: 115) that one of the main reasons why many reject the existence of World 3 is that they mistakenly believe that a book is nothing without a reader who understands it. Having said that a book on logarithms in a library that no one has ever read or will ever read nevertheless contains objective knowledge, and that the same holds for books in general, he explains (1979: 115f) that “it is the possibility or potentiality of being understood, its dispositional character of being understood or misinterpreted, which makes a thing a book. And this potentiality or disposition may exist without ever being actualized or realized”. He thus appears to make the reader’s capacity to comprehend the book’s content both a sufficient and a necessary condition for the independent existence of this content, that is, for the existence of objective knowledge: If the content of the book could in principle be grasped by human beings (or other intelligent creatures), then it would exist in the sense of World 3; if it could not be so grasped, it would not exist. Says Popper: “… I do admit that in order to belong to the third world of objective knowledge, a book should—in principle, or virtually—be capable of being grasped (or deciphered, or understood, or ‘known’) by somebody. But I do not admit more” (1979: 116).

If Popper is right, Hägerström’s theory of reality, including the thesis of ontological naturalism, must be rejected. But is Popper right? While I am by no means convinced that his thought experiments and examples prove that there is such a thing as World 3, I am not convinced that he is wrong either.

I shall simply have to leave this very difficult question undecided and turn instead to consider the outlines of a conventionalist account of the existence of law and legal institutions. For it seems to me that whatever turns out to be the truth about scientific theories, natural numbers and the like, we ought to be able to account for the existence of legal norms and legal institutions by invoking human conventions. To make such a conventionalist account work, we must, however, abandon the strong, non-natural notion of legal validity that Kelsen operates with and focus solely on the existence of legal norms. But this should not be a problem for legal positivists. From the standpoint of legal positivism, Kelsen had no business operating with a notion of legal validity that was so strong as to require the introduction of the theory of the basic norm.
7. Legal Conventionalism

Legal positivists such as Kelsen and Hart maintain that there is a legal system in a certain territory if, and only if, (i) the norms of the system can be derived from a limited number of recognized sources of law that can be handled on the basis of factual considerations (the social thesis), and (ii) the system thus conceived is, on the whole, efficacious (the thesis of social efficacy). This means that legal positivists need to account for the existence of the sources of law. Once they have the sources of law, they can derive all and only legal norms from them and add the requirement of efficacy.

Following Hart (1961: 54–7, 97–107; 1994: 255f), I suggest that we may think of the existence of the sources of law as a matter of convention. If we can find a conventionalist account that works, we will also have provided a naturalistically acceptable account of the ontology of law. Let us consider Eerik Lagerspetz’s (1995: chap. 1) account of the existence of social rules, according to which a social rule, R, exists if the members of the relevant group of people (1a) believe that R exists and (1b) believe that the others in the group believe that R exists, and (2) act accordingly, that is, speak of R as existing and, if occasion arises, treat R as existing, at least partly because they have the beliefs (1a) and (1b).

As Lagerspetz (1995: 6ff) points out, the account is meant to apply to conventional facts and related entities. Whereas some writers speak of institutional facts—such as the fact that a person owns a piece of land, or that he is a Swedish citizen—and maintain that such facts depend for their existence on one or more rules (see, e.g., Searle 1969: 51f; MacCormick and Weinberger 1986: chap. 2), Lagerspetz operates with a broader category of conventional facts, which includes the fact that the rules themselves exist. The basic idea, he explains (1995: 6. Emphasis in the original.), is the following: “There are things which exist and facts which hold only if the relevant individuals believe that they exist or hold and act according to these beliefs.”

As should be clear, the account lays down sufficient, but not necessary, conditions for the existence of conventional facts. The reason, Lagerspetz (1995: 19) explains, is that there may be some rules that are not generally followed by large parts of the population, perhaps because they are not known to the population, but which nevertheless may be
said to exist in the sense that they are part of a system of rules that satisfies the conditions laid down in the account. I agree with Lagerspetz that we should be content with an account that lays down sufficient conditions for the existence of conventional facts, and that the example he gives is good. But my primary reason for resting content with an account in terms of sufficient conditions and for not insisting on an analysis in terms of both sufficient and necessary conditions is not that I worry about the existence of non-conventionalist entities in the middle of a legal system, but that I am concerned with the sources of law, not with conventional facts in general, and that I see no good reason to insist that an alleged legal system would not qualify as a legal system just because the sources of law of the system did not have a conventionalist foundation. On the contrary, I find it easy to imagine a legal system in which judges and other legal officials recognize the sources of law essentially because they fear the sovereign, not because they want to cooperate with other judges and legal officials. I also take it that this view—that the sources of law do not need a conventionalist foundation—is perfectly compatible with the fundamental tenets of legal positivism (on this, see Dahlman 2011).

Since, on a legal positivist analysis, a norm is a legal norm if, and only if, it can be traced back to a source of law, there is no need to apply Lagerspetz’s account to each and every legal norm. Instead, it is enough to apply it either (i) to a fundamental rule that constitutes and identifies the sources of law, such as the rule of recognition, or (ii) immediately to the sources of law without the idea of a fundamental rule functioning as an intermediary. Choosing alternative (ii), we might say that a source of law, SL, exists if the members of the relevant group of people (1a) believe that SL exists and (1b) believe that the others in the group believe that SL exists, and (2) act accordingly, that is, speak of SL as existing and, if occasion arises, treat SL as existing, at least partly because they have the beliefs (1a) and (1b).

One may, however, wonder how we are to determine membership of the relevant group of people. If we assume that the persons in question must be legally qualified in some way, we will encounter a problem of circularity—if the account is meant to explain the foundation of law, how can it without circularity refer to legal properties, such as that of being a judge or a legal official? If, on the other hand, we do not assume
that the persons in question have to be legally qualified, we will run the risk of making the existence of the sources of law dependent on the views of people—the general public—whom we do not want to include in this context. As Hart (1961: 113) makes clear, the existence of the rule of recognition does not depend on the behaviour of the citizens, but on the behaviour of legal officials—the behaviour of the citizens is relevant only to the question of social efficacy. Unfortunately, this means that Hart faces a difficult problem of circularity. Although we need rules of adjudication in order to determine who is a judge, we also need the rule of recognition in order to determine which rules are rules of adjudication (on this, see MacCormick 1981: 108f).

Nevertheless, I believe that although Kelsen might in fact have been quite unwilling to do so, he could in principle have accepted a conventionalist account of the existence of legal norms—via an account of the sources of law—along the lines suggested above. If he had done that, he would have eluded Hägerström’s objection about the lack of a connection between the two worlds. For such a conventionalist account would be compatible with Hägerström’s theory of reality and with the thesis of ontological naturalism. Although he might rightly have objected that a conventionalist account could not account for the strong notion of legal validity that he attributes (indirectly) to the “juristic consciousness,” he should in my view (as I said in Section 6) have abandoned this notion of validity, if and insofar as it necessitates a non-naturalist account of the existence of legal norms.

Notes

* I would like to thank Uta Bindreiter, Jes Bjarup, Åke Frändberg, Thomas Mautner, Patricia Mindus, and Lennart Åqvist for helpful comments on the text and Robert Carroll for checking my English.

1. Kelsen and Hägerström actually met and debated legal-philosophical questions during Kelsen’s visit to Uppsala in the fall of 1933. The Swedish political scientist, Herbert Tingsten, who was present at the debate, lets us know in his autobiography that it was one of the most curious debates he had ever heard, due (he explains) to the almost complete inability of the parties to understand each other. See Tingsten (1962: 265).

2. For a rich account of Ross’s critique of and contribution to the pure theory of law, see Bjarup (2008).

3. Stanley Paulson does mention it in his annotated bibliography of secondary literature in English to Kelsen (1992), calling it an “important review article”. See Kelsen (1992: 146).
4. Kelsen (1984 [1923]: 8) points out that the essential difference between the categories “Is” and “Ought” allows these categories to appear as two separate worlds: “Die prinzipielle Verschiedenheit beider Denkformen läßt Sein und Sollen als zwei getrennte Welten erscheinen.” He also maintains (1984 [1923]: 9–10) that one cannot account for the coming into existence or the ceasing to exist of the “Ought”, unless one moves from the “world of the ought” to the “world of the is”, and that one cannot account for the coming into existence or the ceasing to exist of the “Is”, unless one moves from the “world of the is” to the “world of the ought”. He writes: “Es ist außerordentlich bezeichnend, daß man die Frage nach dem Anfange und dem Ende, der Entstehung und Zerstörung des Soll nur insofern beantworten kann, als man aus der Welt des Soll in die des Seins übergeht; und daß man bei derselben Frage in Bezug auf das Sein in die Welt des Soll gerät.” Thanks to Jes Bjarup for helping me find the passage on pages 9f.

5. For a thorough and illuminating discussion of the theory of the basic norm, see Bindreiter (2002).

6. Translated into English by Robert Carroll. The German original reads as follows: “Sie [the pure theory] beschreibt das positive Recht, das heißt jede im großen und ganzen wirksame Zwangsordnung, als eine objektiv gültige normative Ordnung und stellt fest, daß diese Deutung nur unter der Bedingung möglich ist, daß eine Grundnorm vorausgesetzt wird, derzufolge der subjektive Sinn der rechtsetzenden Akte auch ihr objektiver Sinn ist. Sie kennzeichnet damit diese Deutung als eine mögliche, nicht als eine notwendige, und stellt die objektive Geltung des positiven Rechts nur als bedingt: durch die Voraussetzung der Grundnorm, bedingt, dar. Daß man die Grundnorm einer positiven Rechtsordnung nur voraussetzen kann, nicht voraussetzen muß, besagt, daß man die in Betracht kommen- den zwischen-menschlichen Beziehungen normativ, das heißt als durch objektiv gültige Rechtsnormen konstituierte Pflichten, Ermächtigungen, Rechte, Kompetenzen usw. deuten kann, aber nicht so deuten muß; daß man sie voraussetzunglos, das heißt: ohne die Grundnorm voraussetzen, als Machtbeziehungen, als Beziehungen zwischen befehlenden und gehorchenden oder nicht gehorchenden Menschen, das heißt soziologisch, nicht juris- tisch deuten kann. Da—wie gesagt—die Grundnorm als eine in der Begründung der Geltung des positiven Rechts gedachte Norm nur die transzendenthal-logische Bedingung dieser normativen Deutung ist, leistet sie keine etisch-politische, sondern eine erkenntnistheoretische Funktion”.

7. Strictly speaking, Kelsen is speaking here about the concept of ought, not the property of validity (or bindingness). But I find it natural to assume that what he means is precisely that the property of an action that it ought to be performed (by somebody) is a non-natural and undefinable property.


9. Translated into English by Robert Carroll. The German original reads as follows: “Weil an Stelle der reinen, bloß vorausgesetzten und nicht als Tatbestand gesetzten Norm ein Tatbestand als Grundlage gewählt wird, wird, was nur eine die Einheit der Rechts- oder Staatsordnung begründende hypothetische Annahme ist, zu einem historischen Faktum mißdeutet und verliert durch solche Fiktion seinen ursprünglichen immanenten Sinn”.

10. I must admit that I am not sure what, exactly, Kelsen has in mind when he speaks of the "great mystery". Actually, I am inclined to think that he was concerned rather with the question of how the state can obligate itself.

Petersson (1973) is available only in Swedish. Bjarup (2000: 18–25; 2005: 2ff) also comments on Hägerström’s theory of reality. Pattaro, in particular, offers a penetrating discussion of Hägerström’s theory of reality, arguing among other things that even well-respected commentators, such as Petersson and Marc-Wogau, fail fully to understand Hägerström’s theory. The article is very hard reading, however, and I cannot claim to fully understand it. I do feel, however, that readers who really want to understand Hägerström’s theory of reality need to engage with Pattaro’s article.

12. I find rather strange Hägerström’s view that words like “real” and “determinate” lack meaning (sense), though they refer. First, I do not understand why real—as distinguished from white—objects or properties cannot have their reality as a common characteristic and why this characteristic could not be the meaning of the word “real.” If white objects can be white, why cannot real objects (and properties) be real? Secondly, if these words do not have meaning (sense), how can they refer? Surely Hägerström did not espouse a theory of direct reference.


15. One might perhaps argue that the products of custom, as distinguished from legislative products and court decisions, must conform to the analysis in order to qualify as customary norms, as distinguished from mere habits. The idea would be that whereas the normative aspect of legislative products and court decisions is clear enough, this is not so in the case of custom. I shall, however, leave this an open question in this article.

16. One may wonder how, exactly, one is to understand the belief in Lagerspetz’s account. What, exactly, are the persons involved supposed to believe? I discuss this question in Spaak (forthcoming).
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Chapter 10

Social Tools and Legal Gears: Hägerström on the Nature of Law

Patricia Mindus

Be sand and not oil in the machinery of this world
(Günther Eich)

1. Law as a Machine

One of the most renowned ideas of Scandinavian legal realism (SLR) is that the law is like a machine that mimics the inner mechanical workings of society, a sort of community clockwork. The father of SLR, Axel Hägerström used the legal machinery metaphor on many occasions. The mature formulation can be found in an essay published in the year he died, 1939, entitled On Fundamental Problems in Law, where he suggests that “the legal order is throughout nothing but a social machine in which the cogs are men” (Hägerström 1953: 354; Hägerström 1963: 127; Hägerström 2010: 146). The idea, nonetheless, appears in much earlier work. As far as I know, the first time Hägerström used the image was in the essay Jesus—Analysis of his Character, which was written in 1906 but left unpublished until Martin Fries edited it in 1968. Here, the metaphor was fully developed and referred to Christianity and to the social order as such, not only to law:
“The Christian religion […] could be used by the mighty in society, like oil in the machinery of the social order (samhällsmaskineriet), so that the wheel would spin without too much of a shrill” (Hägerström 1968: 43).

It is a metaphor that Vilhelm Lundstedt also used: He spoke of the legal order as a Rechtsmechanismus. The same basic metaphor can be identified behind Karl Olivecrona’s proposal of independent imperatives. Alf Ross, too, famously claimed, in On Law and Justice, that to sue is like pushing the button that sets the machinery of law in motion.

The thesis suggested by the image is usually said to parallel similar views in other anti-formalistic movements, particularly American realism. Indeed, the use of the metaphor of law as a machine is nothing peculiar to the SLR movement (Summers 1986). Many positivists used it, and some refused it (e.g., Scarpelli 1965). The metaphor was also common in American Legal Realism (ARL): In its broad meaning (not merely the movement of realists that were active during the Roosevelt era) we find it e.g. in Karl Llewellyn and Roscoe Pound (Llewellyn 1950; Pound 1954). However, the meanings conveyed by the figure of speech are context-sensitive and in SLR and ARL they differ radically.

More generally the metaphor is held to be connected with the long-standing tradition of mechanicism or artificialism in political though, as opposed to organicist or holist outlooks in the study of society. It is also often accused of being the loophole through which disenchanted social engineering and twentieth-century illiberalism came crawling onto the scene.

In order to start grasping the wealth of significance the mechanical imagery in law conveys, a word of method on the issue of the nature of metaphors is needed so as to avoid misunderstandings: A metaphor is a case of non-literal speech; it is literally false since it does not hinge on relations of identity but on relations of resemblance (Grice 1975; Davidson 1978; Ortony 1979).

The first problem is thus to see if the machine-metaphor is a cognitive (i.e. conceptual) metaphor (then we must ask if it is a metaphor that grasps features that needs highlighting) or if it is merely a poetic metaphor. What distinguishes conceptual metaphors from literary ornamentations is that “what is at stake is not only the use of metaphorical expressions but really the form in which we grasp what we do” (Narváez
Examples of such metaphors are “the journey of life”, “the battle of argument”, “the mind works like a computer” and so forth. An interesting and problematic aspect of rhetoric is that it sometimes creates or constitutes the very similitude that it sets out to “find.” In other words, “similitudes are products of the existence of conceptual metaphors and not prior presuppositions” (Narváez 2009: 389). Could this risk perhaps be what lures behind the machine metaphor?

In other words, metaphors stress underlying structures of thought and therefore are an interesting vehicle of (ideological) power precisely because of their potentially (mis)leading characters. Cognitive linguistics discovered years ago that an important aspect of metaphors is that they sneak into our language, suggest ways of thinking of which we are often unaware: We do not think we speak metaphorically when we say that our love affair has *come to an end*, we just do. So what Lakoff and Johnson discovered was that literal meaning has no obvious priority over metaphorical meaning—we tend to express ourselves metaphorically, so to speak, in an automatic way. And it is this automatism behind the metaphors we live by that make cognitive metaphors a way of power: The dark side of the moon of metaphors is that they are the fruit of creation—and they could have been different, implying that those who create them or manage them somehow directs our thoughts. As Stephen Winter’s work attests and as Benjamin Cardozo (1870–1938), the great US judge, famously claimed, metaphors in law—or any house of power—need “to be narrowly watched, for starting out as devices to liberate thought, they end often by enslaving it”.

Generally speaking, in all metaphors some features are singled out as being (or held to be) characteristic of a phenomenon; features that our ordinary way of describing the phenomenon does not sufficiently emphasize—that is why we use a metaphor in the first place. This implies that to apply a metaphor always includes making a decision on what aspects to stress, clearly leaving other features in the background. As Narváez states, metaphors are conceptual maps that go from a less abstract or complex source domain (i.e., the machine) to a target domain of increased complexity or abstractness (i.e., the legal system) (Black and Goodman 1954; Kittay 1987; Gibbs 2008). This bridging one domain and another turns the metaphor into a condensed analogy (Lakoff and Johnson 1980).
This turns out to be a problem for the legal machinery metaphor today because the “machines” we are confronted with, notably computers, are of such an increasing complexity that the metaphor might be turned on its head: The technological development that goes hand in hand with the metaphor could perhaps be turning law into the less abstract source domain?

At present, we need to appreciate if the resemblances between source and target domains are relevant in order to better understand the legal machinery metaphor. In fact, the limits of the metaphor are strictly inherent to its meanings. Therefore I shall distinguish, in the first section, various referents in the source domain, namely the different machines, so as to outline a reading that historically makes sense and that does not treat just any tool as a machine. In the second section, I shall list (without claims of exhaustiveness) different meanings of the metaphor in its specific relation to law, the target domain. By looking at both the source and the target domain I shall point out in what terms Hägerström applied the metaphor. My aim is to grasp what features of the legal system the metaphor enables us to highlight.

2. Which Machines?

One interesting aspect of the machine-metaphor that is largely unconsidered is that the very source domain—i.e., the machines—comes in an impressive variety. Classically, they range from mythical antiquities such as the legend of Pygmalion and the mechanical woman, the bronze Giant Colossus from Rhodes that Pindar praised, the talking oracle head that Albertus Magnus made just for his pupil Aquinas to destroy, down to the two very symbols of modern mechanics:

(i) the clockwork—a bit of virtuossismo and a bit of Wunderkammer such as in the case of the astronomical clock in Strasbourg (1354); and

(ii) the automaton—such as Turriano’s lute-playing lady (now at Vienna’s Museum of Art) from early sixteenth century.

Add any device of technological development—down to the latest iPhone app.
The normative connotations have an equally broad range: From the horrifying bronze bull built for executions by Perilaus on the order of the tyrant Phalaris of Acragas in Sicily (sixth century BC) to the cuties of the “automaton craze” (1637–1748) that included the Jaquet-Droz produced woman playing harpsichord with fully articulate fingers that moved in time with the music while simulating breathing (now at the museum of Neuchâtel), the tail-spreading peacock of James Cox’s “museum of curios” from the late 1770s, Jacques de Vaucanson’s shitting duck and Kempelen’s Turk chess-player.

Not only does the source domain include many different kinds of objects, with different connotations, but it has an intrinsically ambiguous and a bit uncanny character. The machine is “a conceptual chameleon […] of a protean nature” (Kang 2011: 5). Its image is as old as philosophy: It has been with us since Hephaestus’ moving tripods in the *Iliad*, Daedalus’ statues that Socrates wanted to tie down (*Meno* 381), the dove of Archytas of Tarentum (fourth century BC) and Heron of Alexandria’s *Automatic Theater* (first century BC) to name but a few. Machinery seems to be co-originated with human reflection on itself being *homo faber*. Minsoo Kang, in a recent study on our imagination of machines showed that “the automaton, as a hybrid entity that traverses the worlds of the living and of the dead, is at the heart of its attractive power” (Kang 2011: 19); therefore the image of the mechanism that has the appearances of life but is constituted of inert matter is “inherently unstable,” like the *doppelgänger* figure: It is a figure that belongs to what anthropologists call “the liminal”, *ein Mischwesen*. Ugo di San Vittore in *Didascalion* reminds us that *mechanicus* comes from *moechus*, the sin of committing adultery (Eco 2004). The image of the machine is worrisome for it mimics the living without being alive. The ambivalence becomes clear in that the automaton simultaneously stands for a *machine* capable of independent motion or behaviour and a *person* incapable of independent emotion or thought. In that it is like a slave: No wonder Karel Čapek coined the word “robot” from *robota*, “drudgery” deriving it from its medieval sense of the unpaid labour a vassal was obliged to perform for his feudal lord.

Therefore it is not surprising that interest for the artificial is articulated in vastly different ways through history (Chapuis and Gélis 1928).
Scandinavian Legal Realism

From being the symbol of the wondrous object of natural magic in the pantheistic world of Hermes Trismegistus, Cornelius Agrippa, Paracelsus, Albertus Magnus and John Dee (just think of the magical speaking head), the automaton—the “self-mover”, the machine *par excellence*—became the Cartesian emblem of the mechanistic cosmos and of the machine-man as an example of God’s workmanship in the worldview that dominated European thought from the second half of the seventeenth century on (De Solla Price 1964). *L’Homme-machine* of La Mettrie (1748) then gave way for vitalism first in medicine, but soon in other realms of knowledge too. Early forms of romanticism set the *revirement*: The “mechanical imbecile” becomes a negative representation of flawed humanity, out of touch with its feelings and lacking freedom through oppression or conformism (e.g., Rousseau, Diderot, d’Holbach, Mercier). Diderot makes the point masterfully in his *Elements of Physiology*: “The animal is a hydraulic machine. What idiotic things can be said following this one supposition [...] Anyone who omits from the calculation of this last kind of motion, sensitiveness, irritability, life, spontaneity does not know what he is doing” (quote from Kang 2011: 152). This turn, nonetheless, implies an important modification in the source domain of the metaphor: When a fool is likened to a machine or a robot, it is his character and behaviour that are targeted, not the physiology of his body. This tradition where the metaphor is mostly directed against *amoral conduct* continues to live on; e.g., Eric Fromm calls blind obedience “automaton conformism” in *Escape from Freedom* from 1941.

Generally, the Romantic Naturphilosophen adopted a vitalist outlook viewing the world as animate (the world soul), dynamic and transformative where matter(s) undergo(es) a temporal process of change and progress. This grounds the grand idealist metaphysical narratives and teleological philosophies of history (that Hägerström fiercely opposed; e.g., Hägerström 1909: 17; 1925: 253). Even though Hägerström rejected the metaphysics of Romanticism (e.g., Hägerström 1929), in particular the dualism between Being and Not-being (Hägerström 1908: 88), he did hold on to the other “vitalist” element, i.e. explanation of progress in history (Hägerström 1946: 266; see also Sigurdson 2000: 77). This explains why his vocabulary is full of the *Lebenskraft*-metaphors that are usually not associated with the Enlightenment mechanistic views of society (e.g., Hägerström 1964: 94; 1963: 12). Hägerström is also
connected to the modernist version of *élan vital* to use Henri Bergson’s words (another author he often read) through his appreciation of evolution (unsurprisingly, during the spring term 1904, Hägerström held a course on “evolutionary ethics”). I shall leave to another scholar to establish if we should perhaps also inscribe into this conceptual setting his reading of Ernst Mach and the latter’s epistemological notion of sensory flux that he seems to use quite recurrently.

At any rate, the variety of “mechanical” objects that I have just mentioned and their historical contexts call for the following question: What kind of machines dominated Hägerström’s lifetime? His formative years, i.e., the second half of the nineteenth century, was appropriately described as the “mechanical age” by Thomas Carlyle in his influential 1829-essay *Signs of the Times* (1899: 59):

> It is the age of machinery, in every outward and inward sense of that word [...]. Nothing is now done directly, or by hand; all is rule and calculated contrivance [...]. On every hand, the living artisan is driven from his workshop, to make room for a speedier, inanimate one.

After decades of rapid industrialization, there was continued anxiety in Europe over the effect of the enormous changes it brought to both society and human identity, reflected in the debates over the question of the dehumanizing effects in European factories. An early interpreter of this phenomenon, Karl Marx, that Hägerström would draw inspiration from (Hägerström 1909, 1922, 1933), described the factory in *Das Kapital* ([*The Capital*] 1867) as “the system of the machinery” and the machines employed in industries as “a mechanical monster whose body fills whole factories.” This stigmatisation is an epochal event and can be found right across the political spectrum. Let us recall for instance that in 1880 the “massive machinery of society” was the object of satire in Henry Adams anonymously published *Democracy—An American Novel*. As Torbjörn Wandel stressed (2005: 255–268), the machines during the industrial revolution and especially during the later modernist era were characterized by this inherently ambivalent attitude towards the present. The steam engine became, with the locomotive, the great symbols of the time. A first observation we can make is that Hägerström does not seem to be interested in the great machines of the industrial
age, the locomotive and the steam engine. His interest stays with the mechanical more than with the thermodynamical.

However, during the burgeoning modernist era, the positive connotations of machinery returned in the cultural responses to the Industrial revolution and flourished in the fin-de-siècle positivism with its “esprit positif” (Heidegren 2006: 43ff.): This period is known as the “golden age of automata” (Bailly 1987), even though the word “automate” had been coined much earlier by Rabelais (1534). It would ultimately lead to the modernist movement as it expressed itself in the futuristic poetry of Alfred Jarry and Filippo Tommaso Marinetti (with roots going back in all likelihood to Nietzsche’s notion of the superman). In relation to this development it should be remarked that Hägerström does not seem to share any of the modernist fascination: He does not, as far as I can see, use any typically modernist examples, such as the phonograph, the light bulb, the bicycle or the airplane to describe legal mechanics.

The First World War, with its impressive use of modern, i.e., technological warfare, set a full stop for the starry-eyed views on high-tech utopia. The years of Weber’s iron cage are also those of Fritz Lang’s Metropolis, Rolland’s La révolte des machines and Karel Čapek’s RUR. Machines are now being presented as irrational entities, a metallic form of madness where the relentless drive toward industrial perfection is pursued no matter the human cost. The two great symbols of this change of mood are, on one hand, the machine-guns introduced during the war and, on the other, the time-and-motion expert, i.e., the application of Frederick Winslow Taylor’s ideas outlined in Principles of Scientific Management—published the very same year Hägerström gave his inaugural lecture—that determined the boost in productivity that the war economy required.

In relation to this technological turn, we should stress that Hägerström explicitly used the shotgun as a metaphor for the legal order: In a lecture series from just after the WWI, published posthumously in the volume Rätten och staten, he wrote in a passage on the nature of law and its relation to human will (Hägerström 1963: 133):

The pulling of the trigger may naturally be caused by the will of the shooter […]. But this is totally irrelevant for the causal chain. […] By pulling the trigger, the explosive is set off, and this in sequence ignites
the gunpowder that sets the bullet in motion. This is exactly equivalent to the impact of a vote on the validity of a proposed bill.

To Hägerström, in other words, a vote in parliament is hence like pulling the trigger of law’s powerful machinery, the ultimate explanation for the complicated web of factors enhancing validity of law. Independently of what the members of Parliament might wish in their hearts, the vote alone sets the “machine” in motion (Hägerström 1963: 134):

The consequence of the bill’s passing is that they [who live in the state] are immediately and passively affected and feel committed to obedience; that those gaining benefits through the bill experience a particular sense of power […]; that the judges feel bound to judge in accordance with it; that the State officials feel obliged to enforce it.

The image suggests the automatic motion of the machine once the trigger is pulled, reflected in the functioning of the bureaucracy of the modern state; the lack of any “will” intervening in the explanation of such procedures, and hence the underlying criticism of will-theories (Hägerström 1916); and the idea that the law is constituted, to a great extent at least, by technical procedures, not arbitrary desires of single officials. But the image also stresses the power or strength of the gun: The very effigy of efficacy. Perhaps this relates to Hägerström’s polemic against the modern State being turned into God and more generally values reified.

However, in interpreting the image chosen by Hägerström we must not lose our historical sense of what the technological referent implied for the meaning of the “shotgun”-metaphor. As Kang clearly explains, the change in cultural climate that occurred following WWI led to a situation where the imaginary of the previous generation of technophiles—to which Hägerström should be included, both on generational and philosophical grounds—were misunderstood. This change of mind is at the heart of the wave of misunderstandings that Hägerström’s philosophy encountered over the next decades.

A great example of such a misunderstanding is Vilhelm Moberg’s The Old Reign (Det gamla riket) that offers an outstanding caricature
of the Uppsala school which is also a raw political satire, where the young protagonist Per Urban Secretessius journeys to the country of *Idyllia* to learn from the famous law professor Adam Haggard about its legal system based on secrecy, censorship and deceit, where individuals enjoy rights “only as cogs in the machinery” (Nordin 2000: 49–52; Mindus 2010).

“As a consequence of these historical developments, there were many expressions of fear and revulsion towards modern industry and machinery in the larger culture of the interwar decades, many of them featuring the theme of the mechanization of humanity and society” (Kang 2011: 272). Let us therefore take a step further and ask: what features of the machine is Hägerström appealing to in his use of the figure of speech?

### 3. What Is Appealing In This Kind of Machines?

The technological referent provides a significant part of the meaning of the metaphor. Hägerström’s references are basically of two types: The classical mechanistic idea of the clockwork or watch (he speaks of cogs, wheels, joints etc.) and industrial mechanisms such as the automobile or the abovementioned shotgun that he, however, did not confer the negative aura they had in European culture after WWI.

So why did clockworks appeal to him? The clockwork represented *the* mechanical construct and *locus perennis* of the “admirers of geometry” ever since Descartes’ *Traité du monde* (1628) and Hobbes’ introduction to the *Leviathan* (1651): It is well-known that the natural philosophers of classical Enlightenment envisioned a universe as a great machine created by an engineer (God) who set it in regular motion according to his rational laws. Legal and political thinkers of the period also described the state as machine-people living in a machine-state in a machine-cosmos, even though the clockwork in politics often came to stand for absolutism in opposition to the image of the “balance of power” (Mayr 1986; Shapin and Schaffer 1985). Hägerström did not revive these old political connotations. Rather, what descended from this tradition to Hägerström was foremost the idea that all that is *mechanical in function has no place for magical forces*. This belief places Hägerström in line with Enlightenment. With the only difference of having eliminated the
divine derivation problem: To say it with the neo-mechanistic mathematician Pierre-Simon Laplace’s comment to Napoléon who asked why he had not brought up God in his demonstration: Je n’ai point eu besoin de cette hypothèse, Sire! Since Hägerström’s criticism of magic in law is very well-known (Mac Cormack 1969; Faralli 1982), I shall focus here on the industrial example. So what did he find appealing about automobiles?

In Är gällande rätt uttryck av vilja? (“Is Positive Law an Expression of Will?”) from 1916—Hägerström’s manifesto against will-theories in legal science—he developed the metaphor of the legal system in terms of motorcars, and he pursued his criticism of voluntarism in the 1917 essay (partially) translated as On the Question of the Notion of Law (Hägerström 1953: 56–256). In explaining how the legal system works we cannot talk of any will of the state as the “will of the legal order” because it “is quite obviously a council of desperation” (Hägerström 1953: 101): If the state is a persona iuridica, there is no way of arguing, at the same time, that law presupposes the state and vice versa without contradiction. Law in force cannot be scientifically described as some form of common will, since the “individual has no adequate knowledge of the rules of law which hold in his society, and therefore cannot demand that they shall be observed” (Hägerström 1953: 21) and “the will of the representative assembly […] is merely legal fiction. Thus it cannot be defined as a real will directed towards the law” (Hägerström 1963: 265). The choice of the mechanical metaphor is thus motivated in Hägerström on the ground of his aversion towards voluntaristic explanations of the functioning of the legal system:

A machine comes into being and is put into functioning by human will. But the enquiry into the composition of the machine is not therefore an enquiry into a determinate human activity, but rather into a specifically circumscribed part of outer nature (Hägerström 1961: 60).¹

In other words, causality, not imputability, needs to be the focus in explaining the law. This is the argument he directs against Hans Kelsen on other occasions (Hägerström 1928). Many scholars have been led astray by this reference to the causal mechanics of law into believing that Hägerström would share the view common to so-called sociological jurisprudence, of which John Austin remains a paradigmatic example,
according to which law can be identified with the will of the *de facto* power holders (Freeman and Mindus 2012). But for Hägerström Austin’s model cannot explain the legal system in any constitutional state or in any system based on the rule of law. If it explains any form of “rule” it must be despotism (*herravälde, Herrschaft*): “It is pure despotism which serves as a model for the theory under discussion. In particular it has been occasioned by the idea (which is not adequately supported by facts) of the Roman emperor as *princeps legibus solutus*. It has been assumed that all law must rest upon such a power not subject to any law” (Hägerström 1953: 35).

Of course the legal system relies on a form of power, “makt” (Hägerström 2010: 146) but that power is not pure physical force as in Weber’s *Gewaltmonopol des Staates*. On the contrary, the power of the State is “a system of laws actually enforced” (Hägerström 1961: 95). What enables enforcement of the legal system is not mere fear of sanctions but rather “a medley of all kinds of heterogeneous factors” (Hägerström 1953: 39), such as “the habit of the people to obey decrees which present themselves with claims to authority, […] popular feeling of justice, class-interest, the general inclination to adapt oneself to circumstances, fear of anarchy, lack of organization among the discontent part of the people, and […] the inherited custom of observing what is called the law of the land” (Hägerström 1953: 38f.). Add to this the suggestive effect of authorities in society, such as schools, parents, churches, media etc., on the internalization of norms. By such sociological, historical and psychological factors “law is maintained without any will intervening” (Hägerström 1953: 39).

We can now appreciate what he intends to signify when likening the legal system to a car (Hägerström 2010: 147):

Nobody actually believes that the will of the driver *as such* has any influence over the car’s motion. It is only specific movements of his, because of the mechanism, that sets it in motion. And the same outcome results whether the driver carries out those movements *with* or *without* will. However, out of the mechanical connection between his movements and the car’s motion, the driver has the *possibility* to decide over the latter through his will. The same thing happens *mutatis mutandis* in the case of the lawmaker.
The element that ultimately confers “validity” to the law seems to be, at its utmost, procedure. “It is so obvious that it needs no notice: A proposal for a new law gains validity through the votes of the majority according to parliamentary regulations, and not through the will of the members of Parliament” (Hägerström 1963: 132). The metaphor indicates that the “mechanism” of law is constituted in such a way that we obey the law because it is prescribed according to its correct forms or procedures (formenligt). In this sense, “we are not the masters of the law but its slaves” (Hägerström 1963: 253) because constitutional and procedural rules have what he calls de facto effectiveness (faktisk ideell kraft) over our conceptions of what is right. The nature of law therefore lies in its rules having ideological power over our mind.

Now that we have spelled out what machines Hägerström was thinking about and what features of them appeal to him, we should place him in the broader context of the arguments that legal theory has presented for and against the use of mechanics in law so as to grasp the commonalities and differences between the SLR employment of the metaphor and uses made by others.

4. Meanings of the Metaphor In Legal Theory

In general, theory of law cognitively employs the machine metaphor in various ways. Most commonly, it frames law as (1) having a specific origin (it is a human artefact); (2) applying a certain method of adjudication (it is predetermined and inflexible); (3) having a definite aim (it is a technique for designing social interaction, therefore it is a meta-technology).

4.1. The legal machinery is a human artefact

The first sense attributed to the legal machinery metaphor refers to the origin of the phenomena it intends to shed light on: (1) Law is the product of man; a human artefact; our common creation, socially recognized, aimed at proving guidance of behaviour. This generally assumed meaning is rarely called into question, even though perhaps it should attract more attention. Those who oppose this idea are classical and modern legal naturalists (or natural lawyers) who state the existence and superiority of non-man-made normativity or “law”. But among the modern thinkers who oppose this view we should list all those that
do not like the equivalence between human origin and intentionality; i.e. those who emphasize the unintentional effects and the spontaneous orders that emerge independently of man’s “will”. For the latter the legal system might be of human (non-divine) origin, but it is still no artefact—rather it is the fruit of natural evolution.

Hägerström’s position is here ambivalent. He insists against the first interpretation that law is man-made (e.g., Hägerström 1927/1941) yet he agrees with the latter group that the legal system is the outcome of evolution (e.g., Hägerström 1913: 95; 1946: 266), not the outcome of anybody’s will: This is the meaning of his claim that “consciousness of law follows the path of social interests, it believes to be independent, but is only a tardy usher” (1963: 237).

4.2. The application of the legal machinery is inflexible and predetermined

The second sense attributed to the metaphor is strictly linked to the application of law, not its making. This circumscribes the metaphor significantly. It is thus claimed that law is similar to a machine because law is rigid, non-flexible, not case-based (contrary to the idea of the legal system showing evolutionary path-dependency and self-learning abilities). To give an even broader reference, when we speak of the machinery of law in relation to judicial interpretation it is usually conceived as the “rule of law” (gubernaculum sub leges) in opposition to the “rule of men”.

In this second general sense, the opposite of the legal machinery are not any extra-judicial activities, but it is rather the epitome of judicial activity: Applying law in a hard case. Perhaps we should even say that the opposite of this second sense of “legal mechanics” is the specific institution of equity or aequitas, ἐπεικεία, i.e., “virtue of justice in the concrete case.” Law, in its broad meaning (legal system) and in its narrow meaning (statutory law) would here be similar to something mechanical because it is accused of lacking context-sensitivity. So if compared to a machine we miss out on the judicial ability to “mitigate the rigor of the law”, allowing courts to use discretion in applying justice.

Hägerström does not employ the metaphor according to this adjudication-focused reading. But as far as I can see he would not have opposed the criticism that follows this metaphorical use. In fact, he criticises contemporary positivists account of the sources of the law for
erroneously transforming the “supposed will of the state [into] a measuring-rod for judging the claims of other sources of law, e.g., custom, the spirit of the law, the nature of the situation, equity etc., to validity, in addition to the law in the strict sense” (Hägerström 1953: 42).

More specifically, we can distinguish a sub-category in this second meaning conveyed by the metaphor and used in reference to adjudication (2’): Here law appears to be a sort of machinery because verdicts have a computable element. Max Weber stresses this in *Wirtschaft und Gesellschaft* where he claimed that the characteristic of legal formalism is that it provides a high level of computability of the consequences thus leaving the individual free to act within the limits of the law (or limiting the risks and the insecurity of individual action). It is this aspect that makes the legal system similar to a “technically rational machine” in his *Sociology of law* (§ 5). On this reading, law’s computability depends on its being based on pre-established norms that (should) have the characteristics of generality and abstractness (i.e. the classic attributes of a statute as opposed to a decree): *Gubernaculum per leges*. Law would thus amount essentially to binary codes (legal/illegal; permitted/prohibited …) and be structured according to *formal rationality*. Law would then amount to a “rational machine” for taking legal decisions. This conception sometimes goes under the label “practical formalism.” The view of judicial interpretation that is implicit in this conception is the notorious “syllogistic interpretation” that is often associated with the Montesquieuan “bouche de la loi”.

It is precisely against the abovementioned “formalistic” view of interpretation that, for example, Roscoe Pound directed his criticism when he opposed *machine-made product* to *hand-made product*. Clearly, a shoe produced by machines is not adapted to the individual foot but blindly applies the blue-print, while the tailor-made article exposes a much higher level of context-sensitivity: “In law some situations call for the product of hands, not of machines, for they involve not repetition, where the general elements are significant, but unique events, in which the special circumstances are significant” (Pound 1954). The same virulence against mechanical adjudication is shown for instance by Jerome Frank who criticized “mechanistic law” in a famous chapter that does not however deal with the overall organization of the legal system but specifically with the problem of “the ideal judge”: What the
machine-metaphor undermines when it comes to adjudication practices is precisely the “wisdom” of the judge. “The law is not a machine and the judges not machine-tenders” because “the judge […] must balance conflicting human interests and determine which of several opposing individual claims the law should favour in order to promote social well-being” (Frank 1936: 120f). The same context reverberates on the meaning of the adjective “mechanical” in Hart when he discusses the *Lochner v. New York* case (1905) and states that “Justice Peckham’s opinion […] may indeed be a wrongheaded piece of conservatism but there is nothing automatic or mechanical about it” (Hart 1958: 611).

This general approach to adjudication in sceptical terms, i.e., following a longstanding tradition in the realm of legal interpretation theory that stigmatises the syllogistic interpretation, is not foreign to SLR. Therefore we should stress that Hägerström would not have been alien to the thought expressed by Roscoe Pound that “we do not base institutions upon deduction from assumed principles of human nature; we require them to exhibit practical utility, and we rest them upon a foundation of policy and established adaptation to human needs” (Pound 1908, 609). The activity of judges cannot be framed in aprioristic and purely deductive terms. Indeed, Hägerström adopted a sceptical interpretation theory grounded in rather elaborate hermeneutical arguments (Mindus 2009: chapter 5). But the SLR movement did not understand the criticism against syllogisms in law in mechanical terms. Here the reference to the mechanical in the ALR should perhaps be framed in terms of a rhetorical device for stigmatising opponents—a goal that was easily met when the normative connotations of machines changed following WWI—rather than a cognitive metaphor that enlightens our understanding of adjudication practices. If we take it to be a cognitive metaphor then we should connect it to the use in Romanticism of the mechanical imbecile to highlight the unresponsive stiffness of human behaviour, deaf to requirements of social harmony.

In order to better clarify what “legal machinery” implies in relation to adjudication, an aspect that is often assumed to constitute a thorn in the side of the figure of speech, I would like to recommend for discussion the idea that equity perhaps can be said to function like an *instrument* within the overall *machinery* of law. Now, the difference between a tool and a machine consists in the difference of reliance on individually
taken decisions: “A decision is required at every moment, the instrument being manipulated in different ways in accordance with the result so far attained. Such decisions may be vested in the instrument itself. If it is, the instrument then attains the status of a machine. If the user makes all the decisions the instrument is only a tool. The distinction between a tool and a machine is primarily that in the former a decision is involved at every moment and in the latter there is an independent functioning which permits the decision to be made by the natural run of the instrument” (Weiss 1941: 295). I shall leave this possible development of the imagery unresolved and instead turn back to Hägerström and SLR to see if they intended interpretation in this meaning of “mechanical”.

It is in relation to judicial interpretation and adjudication that the Americans and the Scandinavians differ in their use of the metaphor. Whereas the Americans rejected the machine-metaphor as misleading talk of “mechanical jurisprudence” (Pound 1908: 605–623)—in perfect continuity with their effort to distance themselves from the previously dominating formalism—for the Scandinavians, the machine-metaphor did not have the pejorative connotations because they did not apply the metaphor to matters of adjudication: Hägerström, as far as I understand, never used the legal machinery metaphor to claim that interpretation of law was “automatic” or purely deductive. He did not think it was: The principle of analogy for instance is “never a purely logical argument” (Hägerström 1953: 80). If there were a Scandinavian legal realist that was inclined to any such parallelisms it was perhaps Alf Ross who developed the “predictive” theory of interpretation (in the second chapter of On Law and Justice), far from Hägerström’s sceptical theory of interpretation.

One last observation should be made concerning this second general meaning of the mechanical metaphor in law: The normative connotations of the figure of speech radically change if it is used for descriptive or prescriptive purposes. Censured and abhorred when used to describe what judges actually do, the mechanical metaphor suddenly becomes object of praise and admiration when employed to prescribe what judges should do. This is exactly the meaning of the much-abused quotation from Montesquieu—le juge est bouche de la loi—and it is just what Beccaria calls for in his masterfully work on the rule of law in criminal matters, Dei delitti e delle pene (1764). Is it not curious after all
that we would like judges to perform exactly what we recognize they cannot do?

What I would like to pinpoint is that many seem to have been blinded by their abhorrence for the mechanical metaphor in relation to adjudication and “judge-made law” to such an extent that they seemed to have missed that there is much more to law than what judges do. And it is to this far broader conception of law—as a legal system—that Hägerström directed his attention.

4.3. The legal machinery as a matter of social design

In its third meaning, the metaphor does not only relate to application of law but also to its formation within the general context of society. The figure de style then stands for the idea that modern law is a machine, while perhaps other pre-modern or non-Western forms of law do not (necessarily) work as machines. Modern Western law would, on this reading, be similar to machinery because it is a particular instance of the more general artificialism that prevails in modern, secularized, Western society and distinguishes its specific form of raison politique (as well as its individualistic philosophical anthropology) from other historical experiences (Mindus 2012).

Here, Hägerström is clear about what he means when he uses the mechanical metaphor: Society is no “psycho-physical organism” (Hägerström 1953: 25). He held organicism to be a somewhat puerile notion: He defined it as “fantasy” (Hägerström 1963: 169) or Dichtung, poetry (Hägerström 1927: 17). “The State is nothing but a plurality of persons that are bound to a certain territory and organised through law […]. The traditional conception of the State as Will is but a modern form of animism” (Hägerström 1964: 73). In Hägerström as in many of his contemporaries, society—Gesellschaft—appeared to be a working mechanism in this sense, i.e., opposed to the organicism expressed in what Ferdinand Tönnies was then calling “communities”, Gemeinschaften. For Hägerström the idea of social machinery was linked to what was later labelled methodological individualism. “For the modern man it is clear that we are not here for the sake of unity of society but, on the contrary, society exists for the individual” (Hägerström 1946: 30).

In terms of “artificialism” the metaphor constitutes a covered river through the landscape of Western political and legal thought
Carl Schmitt remarked it long ago in his famous *Der Staat als Mechanismus bei Hobbes und Descartes* from 1936 (Schmitt 1995). Here the metaphor stands for law being a social technique (or technology, as we more often say today). It is in this specific sense that Hobbes designed his *Artificiall Man* and for instance Bobbio viewed Hobbes as the “first positivist” (Bobbio 1993). In other words, this meaning is the one linked to legal positivism. Here, Hägerström shares the positivist account of the aim of the legal system being a social technique.

By “legal system” Hägerström meant the normative system that effectively coordinates the State’s action. Law is defined as a set of rules for action (*handlingsregler*) that are enforced (*genomförda*) (Hägerström 1925: 91). This way of considering law is, in fact, quite similar to legal positivism. He also stressed, like most positivists, that the legal system is formed out of rules for normative production and rules for the attribution of competence: “Law is warded as follows: 1) Rules of action, really meant for the highest or higher so-called state authorities (*statsorganen*) […]. These are obviously rules for the lower authorities as well. But as the authorities respond on lower levels, the rules of action increasingly become rules for supervising and punishing transgressions […]; 2) the system provides rules for deciding who is to be considered overall as an authority in the state and for deciding the authorities’ power to declare rules included in the system, like for example, rules for deciding who is the judge and rules for deciding his competence” (Hägerström 1963: 212f).

What distinguishes Hägerström from mainstream positivism is that he rejects the claim that (civil) law is an expression of the will of the Sovereign, and so the legal dilemma would ultimately amount to a question of deriving validity of law from entitlement. He therefore stresses the feedback effect of the legal system on the individual’s beliefs and actions (and vice versa), a point that legal positivism hardly ever makes.

Among the negative connotations associated with modern, positive legal mechanics, we find “legal machinery” to pave the way for rationality’s iron cage and the modern man’s experience of state bureaucracy and administrative unaccountability. Itzcovich rightly stressed that “the idea that the law and the state are machines are not so much associated with the names of Lundstedt and Ross, as with Hobbes […], Weber
and Kafka [...] and Kelsen” (Itzcovich 2009: 380). Actually, this idea was common in all “police states” around Europe between the nineteenth and twentieth centuries: Honoré de Balzac described the police informant Poiret in *Le père Goriot*, as “a kind of automate [...], one of the drudges of our great social mill [...], some cog in the machine of public business” (quote in Kang 2011: 4). It is connected both to the mechanistic imagery that suggested autocratic forms of government (Mayr 1986) and to the disenchantment of the world deriving from the causal, non-magical explanations of modern science.

The opposite of what the metaphor conveys under this reading is, on one hand, Natural Law’s emphasis of ahistorical law: Modern Natural Law conceived law (and its duties) to be what had always been (the mythology of the “immemorial” common law is a great example); many die-hard cognitivists also reject the machine metaphor on the basis of the idea that justice is invariable through time. On the other hand, this meaning of the metaphor is opposed to the Historical School’s view of law being an organism that evolves over time, like a community; an idea that today’s is being picked up by the *living tree-metaphor* celebrated by many American constitutionalists.

As I have already mentioned Hägerström violently opposes some of the views of the Historical School as well as the ahistorical reading of the legal system. Yet, he does not use the “mechanical” metaphor anywhere close to the way it appears in relation to Weberian disenchantment. This could be explained, historically, by the fact that Hägerström to a great extent qualifies for the position that Kang defined as classical technophilia: “The optimistic vision of industrial progress and the conception of modern machines as obedient slaves that will free people from work and allow them to enjoy lives of bourgeois leisure” (Kang 2011: 238).

Related to this general third meaning of the metaphor we should state that there are some more articulated instances of it:

More specifically, law is a sort of machinery in the sense that it is an object of design (3’). Many have drawn too far reaching conclusions from this, claiming that the law would then be adapted to just any end. A thought that leads to the (positivist, but not constitutionalist) conclusion than even an “evil” or not well-ordered system is still “legal” in the sense that it has, to use Alexy’s terms, a claim to correctness. Do note, however, that design sticks and it is therefore not very surprising to discover
that, even if we admit that law works like a machine in the sense that it is a social technique, it still does not follow that it can be adapted to just any end. It is precisely against the idea that the legal machinery could be adopted regardless of the overall social aims that stimulated Hart’s famous remark on the minimum content of natural law (Hart 1961, chap. 4, §2). This is, by the way, an argumential tradition that does go back (at least) to Émile Durkheim—according to which the legal machinery would not work if it were not for generally accepted ideas of justice that prevail in society—; an idea that Hägerström never challenges and that, per se, does not in any case render the legal machinery metaphor less persuasive. Indeed, we could sum this up by saying that a machine is defined by its inner mechanics.

Another specific articulation of the third meaning of the metaphor is that law is viewed as a machinery because it impacts on reality and its meaning for us (3’’); much more so than mere “constructions.” As Itzcovich remarks, law is constructed just like a house in which you live, but unlike a house—pace what architects and urban planners sometimes claim—law impacts to a much greater extent on reality than a building in which you are left alone to pursue your goals (Itzcovich 2009: 380). What usually figures as elements of the “modified reality” that the legal system determines are phenomena such as the (i) dominion of technique (or technology); (ii) rationalisation; (iii) loss of meaning, often due to the fact that the single cog in the machinery does not see the whole picture and loses his or her sense of belonging to something meaningful. This de-humanisation of the machine is another fil rouge running through European history of thought: It is an evergreen. Weber is of course one of the great names in this story, as well as the Frankfurt School. This idea has been associated with legal “nihilism” that nevertheless has nothing to do with Hägerström’s axiological nihilism.

5. Concluding Remarks

Our language is full of dead metaphors. What kills them is over-conventionalism: As a metaphor ceases to puzzle it decays from a classical rhetorical figure to mere literal expressions (Stern 2008: 1–43). Is the legal machine a dead metaphor? I would like to suggest that one of the reasons why it is not is that it tends to evolve with technology on one
hand and with greater social movements on the other, as I pointed out in the first part of this essay. Suffice to say that all the ramifications and nested meanings it might deploy in a digital environment are still open to exploration. Therefore we might conclude that the machine is dead, long live the machine!

Moreover, it is often claimed against the metaphor in question that it is not only (i) erroneous or cognitively misleading—because “application of law requires at every step a behaviour on behalf of subjects capable of self-control thus responsibility” (Tuzet 2009: 359)—but also (ii) unwise, i.e., undesirable since it would promote a culture of administrative irresponsibility. The metaphor might be accused of being cognitively misleading only within a quite specific field of law, namely adjudication practices and even more so in controversial cases where the judge enjoys a significant level of discretion, such as in cases of equity or certain forms of judicial review on constitutional matters. Perhaps, we may add, even this circumscribed use of the metaphor might appear not to be misleading in the eyes, say, of the defendant whose vital interests are at stake in a game of procedures of which (s)he understands little or nothing.

I shall not contest this assumption but only point to the fact that Hägerström did not use the metaphor in this meaning. So to accuse SLR and foremost its founder of using such a conceptually debatable metaphor is out of place.

But is it an unwise metaphor? The argument goes that it would occult the fundamental difference between the technical error of a machine (that we do not hold accountable) and the “normative” (moral, political and legal) error (that entails responsibility) (Tuzet 2009: 360), where the demarcation refers to agency or intention (including mens rea). Intentional errors are those that we accuse legal “operators” of committing: Errors due to their weaknesses, their lack of attention and care, bad faith, corruption, stupidity, negligence and narrow-mindedness. Machines, it is claimed, are not fallible in the same way institutions are, even though their designers might be. Occulting this difference makes operators within the legal system and the general public less prone to accept responsibility, both political and legal, for their own actions; ultimately undermining civil coexistence. An exhaustive answer to such a question goes beyond my present purposes, yet a final remark might
be made: An aspect that often passes unnoticed in discussions on legal machinery is that there is more to life than law. Regardless of whether law works like a machine or not, there is not reason enough to conclude that, under the influence of mechanics, we become “less responsible”: Legality, in the sense of rule-abiding behaviour, is not the only criterion for judging legitimacy. As civil disobedience shows, individuals “stuck in the system” are still not deprived of the possibility to break the rules: To say it with Thoreau, let your life be a counter friction to stop the machine.

Notes

1. This is my translation of Hägerström 1961: 60. A different, but in my opinion less clear translation was offered in Hägerström 1953.
2. I am grateful to many of my colleagues for comments on this point I received presenting a previous version of this paper at the Philosophical Association at the Uppsala University on 18 November 2011.

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1. Ought Judgments Presuppose the Idea of Right

When we think of a behaviour as required by duty we conceive it, Hägerström says, as having a particular character (karakter): We think that the behaviour at issue, in the given circumstances, right (rätt) or correct (riktig). Here the word right is to be kept quite distinct from the word just, even if Hägerström does not take enough care to point that out. “Rightness” (rätthet) or “correctness” (riktighet) are not the same as “justice” (rättvisa or rättfärdighet). As far as I know, no commentator on Hägerström has ever underscored the importance of this distinction for an adequate understanding of Hägerström’s thought concerning the idea of duty.

We will have to see if by analysing this character—the character of a behaviour being right, and which regularly comes up in our representations of behaviours as required by duty—we can arrive at anything that will warrant our attributing to certain behaviours the property of being required by duty (pliktegenskap).

The word “right”, when understood to mean «correct» and attributed to a behaviour one of whose properties is assumed to be its being required by duty, means none of the following: (i) “in accordance with
a given will”, (ii) “in accordance with the agent’s autonomy” (själfstän-
dighet), (iii) “suited to avoiding punishment”, (iv) “suited to gaining an
interest”, (v) “suited to realizing a value”, (vi) “suited to maximizing
pleasure”.

The expressions (iii) through (vi), in all of which occurs the term
suited can be considered jointly and can be rejected en bloc as foreign
to the meaning of “right” in the sense of “correct”, that is, when this
word is predicated of a behaviour considered to be required by duty.
Hägerström analyses each of these expressions and provides arguments
why none mean “right” in the sense of “correct”. I will not get into a dis-
cussion of the single arguments, and I will instead go straight to their
gist: The basic reason why Hägerström finds that none of the expressions
(iii) through (vi) can mean “right” (in the sense of “correct”) is that all
such expressions imply an instrumental conception of the rightness or
correctness of a behaviour, a conception whereby such rightness or cor-
correctness depends on the goal or purpose the behaviour in question is
designed to achieve (avoiding punishment, gaining an interest, realizing
a value, or maximizing pleasure). In substance, none of these expres-
sions explain what “right” (in the sense of “correct”) means because all
boil down to the idea of prudential calculus.\(^1\) The expressions (i) and
(ii) deserve instead to be treated singly.

(i) The word “right” applied to a behaviour believed to have the
property of being required by duty does not mean “in accordance with
a given will”, such as the will of the society to which one belongs and
which is assumed to issue commands. The crucial reason why this can-
not be is that the rightness of a behaviour believed to have the property
of being required by duty has to do with behaviour not insofar as it
is commanded but insofar as it constitutes obedience to a command.
Commands in themselves cannot be a source of duty: We may believe
we are bound by duty to obey a certain command just as we may believe
we are bound by duty not to obey the same command, and if we believe
it is our duty to obey a given command, this does not depend on the
command qua command but on the fact that the behaviour consisting
in obeying this command is held to have the property of being required
by duty: A commanded behaviour is right insofar as it can be subsumed
under a type of behaviour that is required by duty. The rightness attrib-
uted to a behaviour regarded as required by duty does not depend on
whether that behaviour conforms to the will of someone issuing a command: The problem is not whether the behaviour in question is the one commanded by someone’s will but whether the behaviour consisting in complying with that will has the property of being right.

In sum, referring to a commanding will cannot inform us about the rightness of the behaviour that consists in obeying, and so it will not help us to account for the idea of the duty to obey.²

(ii) The word “right” applied to a behaviour believed to have the property of being required by duty does not mean “in accordance with the agent’s autonomy (själfständighet)”. According to the meaning of “right” here objected to, a behaviour is right insofar as it strictly belongs to the true self of the acting person carrying out the same behaviour. This conception implies a preliminary distinction between an ideal self—our self as such—and an empirical self, which is our self as given through its actual reality. By having a wrong behaviour, the empirical self would fall short of fulfilling its essence: We behave wrongfully to the extent that something foreign to “our true self” interferes in practical decision, thus preventing us from autonomously giving effect to our true selves.

This way of looking at things, Hägerström observes, is proper to rationalistic philosophies from Kant onward.

To begin with, Hägerström rejects the Kantian assumption that our self is at one with pure reason and, where behaviour is concerned, with pure practical reason. The latter, Hägerström warns us, is a philosophical fiction, no less so than the conception that there exists a pure consciousness independently of any object of consciousness.

At the same time, however, Hägerström has no qualms about conceding that the idea of the self—of the autonomy of moral agents—plays a key role in determining our will whenever it seems to us that our personal autonomy is being threatened: Yet he does rule out that what grounds our representation of a behaviour as right, a representation which goes hand in hand with the sense of duty, is the autonomy of the self. When we say of a certain behaviour that it is proper to human nature—that it conforms with what our essential and autonomous self wills—we cannot mean by this statement that we will want to have and will in fact have such behaviour: What we are saying is that this behaviour ought to be carried out unconditionally.
What follows from this is not that the idea of the autonomy of the self generates the idea of duty but, on the contrary, that the idea of an unconditional duty is presupposed in the conception of the autonomy of the self. And if this is the case, it follows that the word “right” applied to a behaviour believed to have the property of being required by duty does not mean “in accordance with the agent’s autonomy”.

Grounding the rightness of a behaviour in its conformance with the autonomy of the self does not help us to account for the idea of duty (an idea which any representation of a behaviour as right is connected with), and this is so because the idea of the autonomy of the self can itself be reduced to the idea of duty.3

2. How the Idea of Right Develops Within Us

Of all the previously considered meanings of the word “right”, (i) through (vi), applied to a behaviour believed to have the property of being required by duty, none has provided a satisfactory account of the property of being required by duty, a property believed to characterize the behaviour we represent to ourselves in connection with the evaluation-independent conative impulse we have upon experiencing a sense of duty.

Hägerström’s conclusion is that we need to take a different approach if we are to come at a meaning of “rightness” that will shed light on the property of being required by duty which we attribute to certain behaviours: We will have to look at the way the sense of duty is elicited in us. More to the point, we need to focus not on our representation of certain behaviours as right, but on the unmotivated conative impulse (an impulse independent of any evaluation we may make) with which such a representation is associated when we experience a sense of duty.

One of the causes which can cause an unmotivated conative impulse to act is a command. In addition to commands, Hägerström says, we must consider custom (vana).

Where commands are concerned, they do provoke an unmotivated conative impulse to act—indeed it is a purpose which they cause. This they do in virtue of an appropriate relationship (a personal relationship, as Olivecrona would later call it, or a face-to-face situation, as Hart would say forty years hence) between the command-giver and
the command-receiver. A sense of duty, by contrast, is not immediately caused by the command issued by a given person (and in fact a sense of duty drives us to hypostatize duty as an unidentifiable characteristic, that is, as a property of the behaviour we feel we ought to have).

As for custom, it seems that a person accustomed to behave in a certain way does not act from a conative impulse properly so called, and that customary behaviour happens mechanically without mediation, without our will intervening. The analysis that follows will have to account for these first-glance remarks.

Let us start with commands.

We grow up and develop in a world of commands—we are subjected from childhood to a barrage of commands—which come from the family and the people who educate us, from the social environment, and from different authorities. There are laws, and this means that we learn at our own expense that carrying out some actions and failing to carry out others will cause unpleasant reactions for the transgressor. Even God is represented as a power that commands certain behaviours and prohibits others. And private persons, on the basis of what they believe to be their rights, will command “Don’t do this!” “Don’t touch that!” “Keep off my property!” In primitive societies, where the sense of individuality is less developed, all these powers command and assert themselves as one, relying on one another’s backing; but to some extent these powers cooperate even in contemporary society.

Because commands and prohibitions accompany us from childhood, because they are frequently repeated, and because they are aimed at bringing forth some relatively uniform modes of behaviour—no matter what the source of such commands and prohibitions is: family, school, religious power, secular power, the social environment, and so on—our thinking about certain modes of behaviour will bring with it an accompanying perception of an Ought, of a Must, of an “ought to take place” (skall ske!) or a “must necessarily take place” (måste ske!): We perceive an expression of command. Conversely, our thinking of modes of behaviour in contrast to those that ought to, or must, take place will bring with it an accompanying perception of an “ought not to take place” (får icke ske!), which is an expression of prohibition.

Since the same modes of behaviour have always been commanded or prohibited from a variety of sources—from different persons and
authorities—and since we have regularly learned these modes of behaviour by way of commands and prohibitions, we no longer associate these behaviours with the command or the prohibition of this or that person or authority in particular. The sources of commands and prohibitions have lost their individual specificity: What appears before us is just the visual or sound image of an expression of command or prohibition. Still, even though such imperative expressions have been depersonalized, they do maintain, when connected with the behaviours they refer to, a suggestive force that elicits in us an unmotivated conative impulse to have the commanded behaviour or avoid the prohibited one.

All this happens not with a single person but with all those in the community one lives in. The association of behaviours and depersonalised imperative expressions—such as “This ought to take place!” (skall ske!) and “This ought not to take place!” (får icke ske!)—is produced in all or nearly all members of a community, and each member can and does see the association in the way others speak and behave. It is little wonder, then, that people come to make the hypostatisation whereby “ought to take place!” and “ought not to take place!” become objective attributes proper to certain behaviours: They come at the idea of a system of positive and negative modes of behaviour at one with an imperative expression, a system of modes of behaviour that unconditionally “ought to” or “ought not to” take place. The idea of this system of modes of behaviour is the idea of a system of norms.

We can understand the idea of rightness in the sense of “correct” when this attribute is used to qualify a behaviour believed to have the property of being required by duty: When we are about to behave differently from what is required under the system of modes of behaviour (a system we understand to objectively subsist and to be intrinsically connected with an imperative expression: a system of norms; cf. my distinction, in Pattaro [2005: sff], between what is objectively and what is subjectively right), we are confronted with a different behaviour than that we are about to engage in; we see a behaviour that “ought to take place” (skall ske), and this is the right behaviour. The idea of the rightness of a behaviour is closely bound up with the possibility of engaging in a different behaviour than that set out in the system of modes of behaviour we understand to objectively subsist and be connected, by virtue of its own nature (till själva sin natur), with an “ought to take
place” (skall ske!). The idea of right behaviour—the behaviour that ought to take place—comes into being as an inescapable reflex consequent on the representation of a behaviour discordant with the model the social environment creates in us: Against this representation (of a discordant behaviour) there emerges, by reaction and contraposition, a representation of the right behaviour, with all the imperative force that issues from the W-reality of circumstances.4

Let us now consider custom.

Custom determines the behaviour of people in an almost mechanical way, in the sense that certain behaviours, Hägerström argues, are brought into being by force of custom, mostly without any psychical volition on the part of the acting subject. Yet, despite this characteristic way of functioning, there are several other respects in which custom can be viewed as functioning like a system of modes of behaviour which, through the effect of education and the other concurrent factors mentioned earlier, we are led to think of as an objectively subsisting system intrinsically connected with certain imperative expressions (as a system of norms).

When for some reason we do not engage in a customary behaviour, or we behave in an uncustomary way, custom does not thereby lose its hold on us. Rather, it continues to exert its pressure through an incomplete innervation (ofullgången innervation) or an incipient movement (börjande rörelse) in the direction of what is the customary mode of behaviour. When we behave in an uncustomary way, we prevent this innervation or movement from coming to completion. Such self-inhibition causes in us a feeling of uneasiness (känsla af olust) through which the repressed innervation or movement psychically presses on: The correlate of such a feeling of uneasiness is volition, which here takes shape as a conative impulse to act that does not turn into actual purpose (föresats).

It is important to emphasize that, since Hägerström is interpreted by many commentators as reducing duty to the sense of duty, what was just illustrated does not mean that the feeling of uneasiness causes the conative impulse; by contrast, both are caused by the innervation or movement which we are inhibiting and which steers us toward the customary mode of behaviour.

Let me comment thus: The innervation or movement has been introduced in our brain by the social conditioning we have undergone.
What has happened in our brains? What is it that happens at reedu-
cation camps (whether totalitarian or otherwise) that changes our
brains? Here Hägerström puts his finger on the question of “norma-
tivity and the neurosciences”, a question I have dealt with in Pattaro

As in the case of other analyses that Hägerström presents, this,
too, is presented without the support of psychological or neurological
research or experiments. I will hand over to experts in psychology and
the neurosciences an assessment of the merits of Hägerström’s analysis.
I will instead point out that Hägerström draws two conclusions from it.

The first of these is that custom, no less than commands, must
be a cause capable of eliciting an unmotivated conative impulse to act.

The second conclusion is that, like what happens when we behave
in disagreement with a system of modes of behaviour we regard as
objectively subsisting (or what is objectively right, in my words), so
when we behave in disagreement with what custom requires we will
perceive the behaviour we are straying from as the right or correct way
to behave.

Hägerström is essentially arguing that the various powers through
which certain behaviours in society are commanded or prohibited, on
the one hand, and the social custom of behaving in a certain way, in
the other, are two distinct and analytically distinguishable sources of
the sense of duty, which consists in an unmotivated conative impulse
to act, and which is connected with our hypostatizing belief that duty
is a characteristic (or property) objectively inherent in the behaviours
in question. Indeed, as Hägerström points out, custom and the powers
that command and prohibit certain behaviours in society will either
cooporate and bring about a single system of modes of behaviour, or
they will lead to two such systems accepted from different and con-
flicting points of view, and when these two systems are both accepted
by the same person they will lead to an unsolvable conflict of duties.
In primitive societies custom prevails, and political, religious, and
social authorities command in conformance with it. In advanced soci-
eties custom is instead gradually replaced with the system of modes
of behaviour inculcated through political and religious powers and
social forces.⁵
3. What Is Right In the Abstract and In the Concrete (In My Words: What Is Objectively and Subjectively Right)

Right behaviour is the behaviour that ought to, or must, take place (ske): It is the way of acting that we understand to objectively subsist and by its own nature to be intrinsically linked to an imperative expression such as “ought to, or must, take place! (ske)”. The term ske (repeatedly used by Hägerström) needs to be translated as to take place, to happen, or to come about. Broad’s rendition of ske as be done! (using shall be done! for the full expression skall ske!) is misleading. Indeed, there is a difference between saying that a behaviour ought to, or must, take place and saying that it must be carried out by somebody: I submit that it is only by bringing out this difference that we can properly understand the meaning Hägerström attributes to the expression right behaviour.

Here is my argument.

Saying that a behaviour ought to take place does not imply a reference to an actual person who ought to carry out that behaviour. In the presumptive world of the ought, a behaviour’s being consists in its having to take place even if the circumstances should never occur (in the world of the is) under which somebody ought to carry out the behaviour that ought to take place.

By contrast, saying that a behaviour ought to be carried out on the one hand does presuppose that the behaviour which ought to be carried out is the behaviour that ought to take place, on the other hand it does imply a reference to an acting person who ought to carry out that behaviour.

The same idea can also be expressed as follows: The behaviour that ought to be carried out is the behaviour that ought to take place insofar as it episodically pierces through from the world of the ought to the world of the is, from the world of behaviours that ought to take place to the world of those persons who ought to carry out the behaviours that ought to take place.

At work here is the distinction I introduced in Pattaro (2005) between what is objectively right and what is subjectively right.

However involuted Hägerström’s thought may be as to its form of expression, it is quite clear when it comes to comparing the idea of right behaviour (idéen om det rätta handlandet) with the idea of behaviour
required by duty (idéen om handlandet såsom plikt). The idea of right behaviour presupposes the idea of behaviour required by duty, and the idea of behaviour required by duty ultimately presupposes the idea of a system of modes of behaviour whose objective reality is an “ought to take place! (ske)”. To state this conversely, the system of modes of behaviour, namely the idea of behaviour required by duty, sets forth what is right in a concrete case, in the case at hand (i föreliggande fall): It does so because it has preestablished in the abstract what is right in a case like the one at hand (i ett sådant fall). In my own words: A mode of behaviour is a type of behaviour (an abstract type) that ought to take place; the right behaviour in the concrete is an instance of the type that ought to take place in the abstract (ske). An actual person’s duty does not regard a behaviour in general (öfverhufvud) but a behaviour in particular (särskildt) which gets specified in accordance with the idea of what is objectively right in abstracto.

An actual person’s duty concerns not behaviour at large (öfverhufvud) but a specific behaviour (särskildt) specified in accordance with the idea of what is objectively right in abstracto.7

4. The Rightness Versus the Justice of Coercion

4.1. The Rightness of a behaviour and the justice of coercion

A distinction is needed in order to show that Hägerström—once more neglecting to come across clearly to his readers—fails to call attention to it. On one side of this distinction is justice (rättvisa or rättfärdighet) and on the other rightness or correctness (rätthet, riktighet). In Hägerström’s view, coercion under the law is founded on an idea of justice which in many ways is bound up with the idea of rightness, and so with the idea and the sense of duty, but which is also connected with ideas foreign to duty: among these the feeling of vengeance (hämnadkänsla) proper to the primitive idea of justice, under which suffering must be repaid with suffering.

The idea of a behaviour’s rightness or correctness is connected with the idea that it is just (rättvis) for someone who behaves wrongly (orätt) or simply fails to behave rightly (rätt) to be forced to perform an equivalent action (ekvivalent prestation) to the right behaviour not performed.

As anyone can appreciate, right behaviour is the behaviour which ought to take place and which for this reason must be performed. It
is correct or right, for example, that property owners should not be deprived of the property they own; consequently, we must on our part stifle every impulse that may prompt us to appropriate other people’s property. If we fail to behave as required, we will have to perform a behaviour equivalent to the behaviour we were previously required to have. For example, if we take someone else’s property, we will have to return it. If we do not spontaneously carry out the act or performance equivalent to the correct behaviour we failed to have, then it will be just to exact such performance coercively. Thus, it will be just to force a thief to return the stolen property.

So far, with this example, the idea of justice is grounded in the idea of rightness, this by way of the relation set up through the linking idea of an equivalent performance. Indeed, against the background of the two ideas introduced in the example—namely, that thieves must return anything they steal, and that such restitution is justly enforced when not undertaken spontaneously—stands another idea, that of a property owner’s right, of an owner’s claim to other people’s respect for his or her property: The rightness (rätthet) or correctness of returning the property and the justice (rättvisa) of exacting such restitution coercively can be said to rest on the very norm setting out the behaviour required as right to begin with, which in the example considered is the behaviour that has us respect other people’s property.

The linking idea is that of an equivalent performance: It is on the basis of this idea that coercion is made just; it is so insofar as the behaviour forced by coercion is a right behaviour, this being the behaviour which ought to have been performed (it was not performed) or a behaviour equivalent to it. In short, it corresponds to justice to force people to fulfil a duty (to behave rightly), and such coercion is just precisely insofar as it coerces to do our duty.8 I spoke of thieves but not of punishments: I simply referred to the (coerced) return of the stolen property. This is because the idea of the justice of a punishment is only partly founded on the idea of the rightness or correctness of a behaviour: The idea of an equivalent performance—the liaison between the idea of behaving rightly and the idea of justly forcing people to have the behaviour equivalent to the right behaviour they failed to have—is not entirely suited to account for the idea of the justice of punishment.
For clarity I will draw a distinction that in Hägerström is only implicit, and this is the distinction between coercion and the content of coercion. The aim here is to become aware of the (psychological or ideological) foundation underpinning the justice of coercion, which is normally taken for granted and used as a background assumption in common legal consciousness.

The idea of equivalent performance founds the justice of coercion making reference not to coercion as such but to its content, insofar as this content consists in right behaviour (in the behaviour that ought to be performed) or in a behaviour equivalent to it.

A punishment is not strictly speaking equivalent to a right behaviour that was not performed. For example, locking up a thief is not the equivalent of respecting other people’s property, because locking someone up does not return the stolen property to its rightful owner; so, too, imprisoning a murderer is not equivalent to respecting other people’s lives, because it will not give anyone their life back. In a strict sense, only returning stolen property is equivalent to the right behaviour the thief ought to have had; and only bringing the murdered person back to life is equivalent to the right behaviour the murderer ought to have had. And yet it is a commonly held belief that inflicting a punishment for certain (criminal) acts constitutes justice.

The distinction just drawn can prompt the following question: What makes it just to inflict a punishment? Is it the fact of coercion or is it the fact that the content of coercion—the punishment inflicted—causes suffering? This question and the distinction it is based on expand our horizon. I have thus far identified only one possible reason for the justice of coercion; namely, the content of coercion insofar as it brings about a behaviour equivalent to the right behaviour that ought to have been but was not performed. We will now have to consider two other possible reasons for the justice of coercion: the fact of coercion itself and the fact that the specific content of coercion consists in inflicting suffering or punishment.

In Hägerström’s view, the idea that inflicting punishment is just draws on both of these elements: on the idea that coercion is just as such (as coercion) and on the idea that the content of coercion is just insofar as it consists in inflicting suffering. This second element or reason is based on a primitive idea of justice, which originates in a feeling of
vengeance. The first element—the idea that coercion is just as such—can be traced to the idea, partly considered already, of equivalent performance. So let us take a closer look at this idea now.

To explain how coercion itself traces to the idea of a performance equivalent to a right behaviour that ought to have taken place but did not, and so how the justice of coercion as such is founded on the idea of rightness or correctness, Hägerström takes up the case of compensation due when someone’s property is damaged through mere carelessness.

Here the acting subjects neither intend to inflict damage nor realize they are inflicting damage: They simply fail to exercise due care in judging the consequences of their behaviour, and for this reason cannot be said to depart in any strict sense from the model of right behaviour (duty) that consists in respecting other people’s property. But still, it is commonly believed that compensation is owed here, too, by way of a performance equivalent to a right behaviour that was not performed, just as it is owed in the case of intentional damage (I will not consider here the criminal consequences attached to the wilful infliction of damage).

This common opinion, Hägerström submits, can be explained as follows: There is a general or class interest (allmänt eller klassintresse) in protecting property from damage, regardless of how such damage may come about. This interest prompts us to regard a certain degree of care in avoiding damage as a property owner’s right, and so to regard careful and diligent conduct as that conduct which ought to take place (bör ske). This way the diligent conduct becomes a norm of conduct: It becomes the right behaviour that ought to be performed.

Strictly speaking, the equivalent of diligent or careful behaviour should consist not in compensating the damage caused, but rather in undergoing some sort of training or education aimed at instilling the needed diligence; but because the interest the norm originates from is an interest in protecting property, and not an abstract interest in diligent behaviour as such, we are led to believe that compensation is the performance equivalent to the diligence that should have been but was not exercised.

The interest in question acts as a liaison between the idea of right behaviour and the idea of equivalent performance. Once the assumption is accepted that compensation for damage inflicted, whatever the cause,
is equivalent to a right but unperformed behaviour, in such a way that compensation becomes itself a right behaviour (one whose performance is a duty), we will find it just to enforce such compensation should it not come about spontaneously.

Something like this goes on in the case of punishment as well. Punishment does not constitute an equivalent performance engaged in for the benefit of someone who has fallen victim to a criminal act: It is said to be a repayment (godtgörelse) for the damage incurred by some social interests—for example, the interest in law-abidance or the interest in maintaining a general sense of security—and this can be so in view of the ability of punishment to set a strong example for others to ponder.

Most often, however, criminal offenders intend to hurt only the victims they strike, and they do so without considering the harmful consequences they indirectly and unintentionally cause in society at large. Here, too, since from the standpoint of society, right behaviour consists in taking special care not to damage the social interests in question, however indirectly this may happen, the performance equivalent to the right but unperformed behaviour should consist not in undergoing punishment but in taking special courses on the social damage that certain behaviours cause.

Hägerström is not making superficial or irresponsible remarks aimed at abolishing the criminal system. Rather, he is trying to explain the psychological mechanisms that prompt us to think coercion just; in particular, since the principle of a performance equivalent to the right but unperformed behaviour plays a prominent role in our way of understanding the justice of coercion—despite at the same time seeming not to find application in all forms of coercion when looked at more closely—Hägerström sets out to show by what intervening factors this principle gets distorted and yet continues to appear in use.

If our common legal sense rejects the view that taking a course on the social damage inflicted by criminal acts counts as a performance equivalent to the right behaviour the criminal ought to have but did not perform, the reason is that the norm prohibiting criminal acts originates not from an abstract interest in citizens’ being aware of the damage caused by criminal acts, but from the previously mentioned interest in keeping antisocial tendencies in check (this through the exemplary nature of punishment), and maybe also from a social sentiment of
vengeance (en social hämndkänsla), a case in point being the idea of retaliation in kind (vedergällningsidé), whereby justice requires criminals to suffer in the same measure as those they cause to suffer.

Neither the exemplary nature of punishment nor retaliation in kind (the lex talionis: evil repaid with evil) can make punishment a performance equivalent to the right behaviour. Even so, once a norm sets out a punishment in consequence of a failure to have the right behaviour, punishment comes to be perceived by us as equivalent to the right but unperformed behaviour, and on this account we come to think it just to impose punishment by coercion.

Where punishment is concerned, and so also in the case of compensation for unintentional damage, the justice of coercion only apparently has its foundation in the principle of equivalent performance, and this appearance is something we come to have in virtue of a psychological distortion.

The failure to carry out a right behaviour is linked by a norm to coercion whose content consists in satisfying certain general or class interests or a desire for vengeance; this connection makes it so that the satisfaction of these interests or desires appears as the equivalent of the right but unperformed behaviour, and for this reason any coercion that takes this content will seem just by virtue of that fact alone. This way, rather than a behaviour becoming an object of coercion because equivalent to a right but unperformed behaviour, a behaviour becomes equivalent to a right but unperformed behaviour only once it is made an object of coercion.

But if coercion founds equivalence, and equivalence founds the justice of coercion, then coercion finds within itself the foundation of its own justice: Coercion is just as such.

The point of Hägerström’s remarks here is not that there is a general inclination, especially in developed societies, to regard coercion as just regardless of its content, that is, regardless of whether this content is disproportionate to the deed it is matched to, for example, or if it is cruel. And yet, in Hägerström’s view, even restrictions to the content of coercion (examples being limitations on the compensation payable for unintentional damage, or a certain moderation in punishment) are in reality determined by general or class interests or by sentiments contrary to those originally inspiring the various contents of coercion. Thus,
acting contrary to the interest in protecting property, as a counterweight to this interest, is an interest in not bringing everyone’s activity to a standstill—whence the restriction on payment for unintentional damage. Likewise, the interest in law-abidance and in ensuring a general sense of security, which go along with the general feeling of vengeance, are counterbalanced by an interest in limiting a person’s sufferance and by the sense of humanity—whence the possibility of moderation in punishment.

But in any event, the interests and sentiments on either side of this balance—or rather, the results they lead to once they are made into the content of coercion under a norm—wind up being rationalised through the previously described psychological process, which gives the impression that their satisfaction effects a performance equivalent to a right but unperformed behaviour, and for this reason the satisfaction itself is justly made an object of coercion.9

4.2. The justice of coercion and the feeling of vengeance

In Homer’s *Iliad*, Achilles proclaims that Hector and the Trojans will have to pay for Patroclus’ death. From Achilles’ standpoint, Hector did nothing dishonourable in killing Patroclus to defend the homeland. Even so, justice required that Hector should be punished for his actions. This is the vendetta or blood-feud principle.

Note that the murdered person’s family and friends are under a duty (*plikt*) to avenge the murder: By slaying the person who murdered their family member or friend they will perform the behaviour they must perform, the right behaviour.

So, not only is vengeance in accord with justice (because it is just to repay evil with evil), but its performance is required by duty. What follows is that, under the vendetta rationale, inflicting an evil accords with justice for reasons far removed from the principle of exacting a performance equivalent to a right but unperformed behaviour; its justice rather consists, for the most part, in requiting a correct behaviour that was actually carried out. Indeed, vengeance calls for vengeance: Vengeance is the right behaviour that must performed, and yet justice requires that an act of vengeance—the right behaviour which duty enjoins—should be retaliated with another act of vengeance, with punishment.
Only with the need for peace—which requires a powerful legal system arching over the conflicting parties—and with the development of a sense of society does the idea take hold that coercion is just (rättfärdig) to the extent that its content is equivalent to a right (rätt) but unperformed behaviour. This idea is accompanied with others. One is the idea that we must inquire into whether the subjects involved—in general, and especially at the time they behaved wrongly (orätt)—can be considered capable of self-determination, and so their conduct ascribable to their “real practical self” (verkligt praktiskt jag): This is the principle of the imputability (imputabilitet) of behaviour to the acting subject. This principle, once accepted, calls for a further principled distinction, that between two ways in which one might fail to have the right behaviour, that is, deliberately or through mere negligence: The justice of coercion will depend on this distinction, in that the content of coercion will have to constitute an equivalent of the right but unperformed behaviour.

The main consequence to come from the equivalent-performance principle as a standard of justice is measure or restraint in coercion. In fact, acts of vengeance are by their very nature disproportionate: Their motto, “an eye for an eye, a tooth for a tooth”, could very well have been “a head for an eye, a head for a tooth”, says Hägerström.

Still, it seems that the feeling of vengeance crops up in modern law as well, albeit only latently: It can be detected in a number of cases, which look as if they answer to the equivalent-performance principle, but in which this principle is in fact being twisted. If someone can be held to bear the responsibility (ansvarighet) for the consequences of unintentional behaviour, that means that the justice of punishment (straffets rättvisa) is founded on, and measured by, a larger criterion than the failure to have the right behaviour. And if punishment is considered as an equivalent performance because it inflicts on the offender the same suffering he or she inflicted, this can only be explained by reference to the principle of retaliation in kind, which serves as a foundation as well for the justice of vengeance.

Hägerström is not trying to argue here that advanced legal systems still operate under the logic of the blood feud. Rather, as mentioned, he identifies in certain general or class interests (which gain a foothold and so get fixed into certain norms) the factors on account of which we come to regard as equivalent performance certain contents of coercion.
that cannot properly be constructed as equivalent to a right but unperformed behaviour. This is an argument he reiterates even where he takes up the question of how the feeling of vengeance proper to primitive justice has survived to this day. And he uses it as well to explain how private punishment (privatstraff) has been substituted by coercive compensation for loss or injury, and how punishment has come to find its measure in relation to protected social interests: This has happened thanks to the norms through which the interests previously referred to have gained the status of law.

So Hägerström’s point, with respect to the primitive idea of justice grounded in the feeling of vengeance, is to show that a certain lingering presence of this idea is to account in part for our tendency to regard coercion as accordant with justice even when such coercion is not equivalent to any right but unperformed behaviour. In fact, as Hägerström argues, the primitive idea of justice, according to which evil must be repaid with evil, filters into and gets confused with the modern idea of justice and so induces us to mistake for equivalent performance what in reality cannot be described that way: We are led to see equivalent performance where in fact the principle of retribution in kind (vedergällning) has been applied, which principle is closely bound up with the feeling of vengeance.10

4.3. Justice and the obligatoriness of coercion

Hägerström takes up the psychological inquiry he carried out in connection with the idea of duty and applies this same line of inquiry to the factors he believes concur in forming the idea of the obligatoriness or obligation (skyldighet) of coercion. More in particular, he argues that the volitional impulse whose occurrence is independent of the subject’s evaluations and which elicits in us the idea that something “ought to take place” (skall ske) is determined in the case of coercion not only by the powers that command in society or by custom, but also by psychological factors, depending on the kind of coercion in question. Thus, in the case where someone is being coerced into performing an act equivalent to a right but unperformed behaviour, this conative impulse is occasioned by a sort of reflex of the original conative impulse toward the original right behaviour, while in the case where coercion imposes a sufferance—a coerced sufferance expressive of a feeling of
vengeance—the conative impulse is occasioned by the way in which an unconditioned attitude (ovillkorlig) of reaction comes about predisposing us against those who assault us.

I will not go into the detail of this analysis of Hägerström’s. Rather, I will confine myself to extracting the gist of it, which is that the word obligatory, when used in reference to coercion, means what required by duty means with reference to behaviour. The frame of meaning within which these words are to be understood is the same as that considered in the previous sections. If there is a norm—a norm taken up as a model for what “ought to take place”, for what is right in the abstract—then a behaviour ought to be performed in accordance with what is so established as being right: The behaviour in question is required by duty (it is obligatory) for the subjects who find themselves in the concrete circumstances calling for such behaviour. Now, some norms are ones that, through the previously mentioned psychological processes expounded by Hägerström, get taken up as a model for what ought to take place—for what is right in the abstract—when it comes to coercion; thus, coercion, in the concrete circumstances in which coercion ought to take place, will have to be exercised by some people and acquiesced in by others: The former will come under an obligation to subject the latter to coercion; the latter will come under an obligation to submit to such coercion.¹¹

One might ask what difference there is between the obligatoriness and the justice of coercion. Hägerström is not clear on this point: He says that the justice of coercion (tvångets rättvisa) does not primarily (primärt) imply that anybody ought to coerce anybody else; and only secondarily (sekundärt) does this justice carry the idea that one or more persons ought to (skall) exercise coercion: «The justice of coercion means only that coercion rightly takes place [sker], with respect to whoever is coerced, under a norm setting out what ‘ought to take place’ [rätt enligt normen för hvad som ‘skall ske’]”.

At first glance, this last remark suggests two interpretive questions. The first question is this: If “justice of coercion” means that “coercion rightly takes place under a norm setting out what ought to take place”, then why does Hägerström say that the justice of coercion «does not primarily imply» that anybody ought to coerce anybody else? In other words, is the “justice (rättvisa) of coercion” the same as the
“obligatoriness (skyldighet) of coercion” or do we have here two separate meanings. And the second question, of broader scope, is this: Should we or should we not distinguish justice (rättvisa) from rightness (rått- het) and correctness (riktighet)? This second question is prompted by Hägerström’s remark that the “justice (rättvisa) of coercion” means that “coercion rightly [rätt] takes place”.

To unravel the question, I will begin by pointing out that the problems involved are not two but one. In fact, I will argue that, in this part of Hägerström’s thought, rightness (correctness) and obligatoriness substantially mean the same. As we know, “x is right” means that “x ought to (in the abstract) take place”; similarly, “x is obligatory”—like “x is required by duty”—means that “x ought to (concretely) be done (because it ought to take place in the abstract)”. We consequently have only a single problem, and that is whether justice (rättvisa) means the same as rightness (råtthet), or correctness (riktighet). If justice does mean the same as rightness, we will not be able to distinguish it from obligatoriness (skyldighet), either; but if justice does not mean the same as rightness, then should it be distinguished from obligatoriness, too?

It was pointed out from the start that a distinction between justice and rightness (or correctness) is needed because Hägerström’s entire treatment of these questions proceeds on an assumption about the different meanings these two terms have; and Hägerström regards this difference as subsisting in this discussion, too, as can be appreciated from his remark that the «justice of coercion does not primarily imply that anybody ought to (skall) coerce anybody else».

Thus, when Hägerström writes that “the justice of coercion means only that coercion rightly takes place, with respect to whoever is coerced, under a norm setting out what ‘ought to take place’”, he seems to be contradicting his previous assumption, stating that justice means the same as rightness (or correctness). However, I submit that, as happens elsewhere too, while Hägerström may be unclear here, he is not thereby contradicting himself.

To see this, let us interpret the sentence at issue as follows: “The justice of coercion means only that the content of coercion rightly takes place, with respect to whoever is coerced, under a norm setting out what ought to take place”. All contradiction is gone: Having thus distinguished coercion from its content, we obtain a parallel distinction
between rightness, as the content of coercion, and justice, which is made to refer only to the act of coercing. The content of coercion is right; that is, it consists in what ought to take place under a given norm: It consists, for example, in returning stolen property. (Recall: The same norm that sets out what behaviour was right in the first place also makes it right, or required by duty, to spontaneously undertake a performance equivalent to the right but unperformed behaviour.) The act of coercing, on the other hand, is just. This means not that coercion ought to take place—that a norm brings some people under a duty or an obligation to coerce—but that the coercively determined situation is the very situation which ought to take place: It means that coercion will work not against what ought to be but in favour of it (it will favour «what ought to take place», in Hägerström’s words).

Even so, the act of coercing can be, and usually is, obligatory: It is obligatory for certain persons or bodies required under a norm to carry out an act of coercion, and for certain other persons required under the same norm to submit to the same act. Here, coercion is not only just but also right: Not only does coercion in fact work in favour of what ought to be (what ought to take place); it also must work to this effect. That covers the distinction between the obligatoriness and the rightness of coercion.12

4.4. Problems with coercion theories that reduce norms to commands

Having shown that the justice and the obligatoriness of coercion both invoke the idea of duty and that of a norm (they do so insofar as the content of coercion is considered equivalent to a right but unperformed behaviour, and so to an unfulfilled duty, and insofar as coercion itself gains the status of a duty fixed into a norm), Hägerström has much leeway in pointing out that equating a norm (or the idea of it) with a command will make it impossible for us to explain—without making mistakes or resorting to fictitious entities—why coercion is just and obligatory.

The burden of Hägerström’s critique here is that modern legal theory, and legal positivism in particular, cannot be the scientific theory it pretends to be, since the notion of the state’s command, far from giving a coherent and realistic explanation of legal phenomena, fails to account for the reality of the law, and every time the theory is used to
explain a traditional legal concept, it will either inadvertently fall back on nonfactual powers, restraints, or situations (which Hägerström terms mystical, supernatural, or metaphysical) or, if the theory is made to assume an empirical meaning of *command*, it will prove unfit to express what legal practitioners and theorists themselves mean when they use these concepts.

Theories of punishment ground the state’s right to punish in the state’s right to have obedience to its commands: Punishment is justified (rättfärdigat) as the consequence of transgressing (öfverträdelse) a command issued by the state. But how is it possible to transgress a command we are unaware of? There is no such thing as a command that no one receives and so is unaware of; and yet ignorance of the law is not held to exempt us from being subjected to punishment. Clearly, we cannot at the same time, without contradicting ourselves, argue that punishment is founded on transgression of the state’s commands and that punishment should be administered without considering whether the state’s command was actually received or made known to the people who allegedly disobeyed that command.¹³

Something to the same effect holds as well for coercive measures (exekutivt tvång), as in the case of a forced sale or a foreclosure under the provisions of property law. This is another area in which legal-positivistic theories say the use of force is justified (är rättfärdigat) as the consequence of a violation (en kränkning) of the state’s command. If Jack fails to pay off his debts he contravenes the state’s command to pay them off, and for this reason the state will, through its designated organs, take action to disposses Jack of his property, either entirely or in part, so as to sell this property and use the proceeds to satisfy the claims asserted by Jack’s creditors.

This linear way of explaining recourse to execution seems smooth and clear; but in reality execution takes place in situations in which the judgment debtor cannot be reasonably found to have been capable of disobeying someone’s command.

Consider a fully competent subject who signs a promissory note and, before its payment falls due, lapses into insanity and fails to honour the instrument: This person will be made subject to a forced sale, even if he or she cannot be found to have disobeyed a command (the reason being that, even granting command was involved, insanity has in the
meantime intervened to prevent the same person from understanding any such command). Consider, too, the simpler case of an entrepreneur who acts in good faith and yet, through an exceptional and unforesightable set of circumstances, becomes insolvent: This person will be declared bankrupt and his or her property will be sold even though no command can be said to have been disobeyed. Lastly, consider all cases of strict liability, in which people are forced to pay damages for losses caused neither with intent nor through negligence: Here it would be hard to explain what command has been disobeyed.14

What necessarily reemerges in these cases is an idea of duty that frustrates all attempts at reducing duty to the concept of “what is commanded” and rests instead on the idea of a norm, understood as that which ought to take place and which has an objective reality of its own, independent of the subjective situations of those who have to comply with the norm. We can have a duty and be unaware of it, and we can fail to fulfill a duty we are unaware of. By contrast, there is no such thing as a command without someone to whom the command is issued, and accordingly, we cannot disobey a command we have no notice of.

The legal positivist has two options here: He can reason in terms of what ought to be, but then this concept of ought will defy the canons of a scientific framework, and the legal positivist will have no ground on which basis to assert the superiority of his theory with respect to a natural-law conception proper; or, if he forsakes the scientificity of his theory, the legal positivist will be forced to disregard the reality of facts and to reason as if these facts stood in an arrangement convenient to his own larger design, in such a way that his legal constructions, despite their fine architecture, will not fall apart.15

Notes

* I very much thank Uta Bindreiter, who kindly discussed with me some of my critical observations on C.D. Broad’s translation of Hägerström. Of course, I alone am responsible for these critical observations.

1. A distinction must be made between the idea of prudential calculus and the idea of duty: In the latter case, a behaviour is found to be right (in the sense of its being “correct”) because required by duty (in the strict sense of the word duty); not so in the former case, where a prudential calculus is at play.

2. It looks as though Hägerström is skilfully avoiding the “naturalistic fallacy” into which some have fallen, as Moritz Schlick (1882–1936) does, for example, in holding that the
sentence “I must do so” means no more than “Someone wants me to do so”. See Hägerström 1917: 74 (for an English version, see Hägerström 1953: 144); Hägerström 1963: 8. The view that duty cannot be reduced to a command is corroborated by Hägerström with the following argument, which he couches in his characteristically hermetic style, but which reveals deep insight into language about duty: «There is no doubt that a superordinate power can command that the commands of a subordinate power be obeyed; and there is no doubt that someone can be commanded to obey one’s past or future commands; but it is impossible for a command to command its own obedience». The reason why this argument relates to the impossibility of equating duty with commands is that, as I see the matter, the argument makes reference to the connection between duty and norms, a connection which Hägerström brings to light and which I have treated elsewhere. Indeed, according to a widespread belief, a norm is found to be more than a prescription—it is found to be a true norm, one capable of obligating or “creating a duty”—only insofar as it is justified by another norm; that is, only insofar as obedience to it is prescribed by another norm. Compare this to Kelsen’s Stufenbau, in which a norm does not have any binding force in itself but rather derives this binding force from another norm (here, a higher-order norm) that prescribes compliance with the lower norm. Of course, Hägerström does not believe that there is such a thing as a “binding force” of norms, in the meaning that Kelsen attributes to this expression. He does, however, through the argument just quoted, take up a likely logical assumption involved in the kinds of reasoning similar to those found in Kelsen’s conception, and this assumption is that a prescription to behave in a certain way cannot contain a prescription to obey the prescription itself. By way of a confirmation, see Kelsen 1960: 4f, where Kelsen argues against the view that the sentence “Someone must do something” means “Someone else wants something”. See also Kelsen 1960: 7f, where the “objectivity” of duty is connected to a higher-order norm that makes the lower norm valid or “binding”. Schlick’s view above is set out in Schlick 1962: 110. Scarpelli (1924–1993) points out the reduction involved in Schlick’s argument and ascribes a similar reduction to Hägerström for equating assertions about duty with empirical assertions about the existence of a feeling of duty in Scarpelli 1959: 141f. Scarpelli’s thesis cannot be accepted. He uncritically subscribes to a widespread misinterpretation of Hägerström’s thought, a misinterpretation that must be rejected for two reasons: The first is that Hägerström distinguishes judgments about duty from judgments about the sense of duty, and the second is that despite Hägerström’s argument that there are no objective duties or objectively valid norms, he expressly connects the idea of duty, as referred to in everyday language, with the idea of norms.

3. See Hägerström 1917: 78–81; Hägerström 1953: 148–52. Here I translated själfständighet to autonomy; similar terms, like independence, would have been used incorrectly in this context. In fact, unlike independence, autonomy has the etymological meaning of norm built into it, and this can make it seem as though Hägerström is using some obvious arguments to show that autonomy presupposes the idea of duty: For this reason, I think it useful to point out Hägerström’s use of the word själfständighet instead of autonomi.

4. See Hägerström 1917: 82–4 (for an English version, see Hägerström 1953: 152, 153ff. On 1964: 154 (83 in the Swedish text), Broad translates skall ske! to “shall be done!”: On the same page he translates skall to “must”, and on the following page (84 in the Swedish text) he translates skall så vara! (meaning “ought to be so”) to “must be done”, with which he also translates måste ske! And får icke ske! he translates to “must not be done!” on some occasions and “may not be done” on others. Now, leaving aside Broad’s shifting translation of skall, he misleadingly translates ske as “be done” (it instead means “to happen” or “to take place”); and the reason why this is misleading, as will be seen shortly, is that in Hägerström’s analysis, it is fundamental in defining right behaviour to characterize it as that which “ought to take place”: A person’s duty to have a behaviour that “ought to take place” (the duty to have the right behaviour) is not identical with an “ought to take place” of a behaviour—or with the behaviour’s rightness—but is rather a consequence of such rightness (cf. my distinction, in
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Pattaro 2005, 5ff), between what is objectively and what is subjectively right). Later on, Broad instead translates bö ske to “ought to happen” (on 198 and 205) and skall ske and skola ske to “should happen” and “shall happen” (on 200 and 206); but then, on p. 201, he again translates böra ske as “ought to be done” (see the Swedish text on 119, 125, 121, 126, 122).

7. See Hägerström 1917: 82, 84f (for an English version, see Hägerström 1953: 152f, 155f).
8. Hägerström 1917: 100f (for an English version of these passages, see Hägerström 1953: 174f). Broad translates ekvivalent prestation to equivalent reparation and ersättning to compensation. In what follows, I will also refer to two articles by Hägerström titled “Naturrätt i straffrättsvetenskapen?” and “En straffrättslig principundersökning” (Hägerström 1920 and 1939 respectively).
9. See Hägerström 1917: 101–4 (for an English version, see Hägerström 1953: 175–9). The example of education and training as equivalent to a correct but unperformed behaviour is adduced by Hägerström only with respect to criminal acts: Its extension to unintentional damage is mine. Similarly, some concepts that Hägerström mentions only in passing and some arguments he does not carry through completely have been elaborated on and made explicit: How much of an extension this is can be assessed by referring to Hägerström’s text directly, and also to Broad’s translation of it, which on the whole is faithful here, even though the finer points are not always accurately rendered. Thus, for example, Broad, as mentioned, translates ekvivalent prestation to equivalent reparation (equivalent performance would have been more accurate: Broad uses this expression on p. 232 to render the Swedish motsvarande prestation, 148), and for ersättning he uses compensation, but then he takes to translating the same ersättning to reparation and skadeersättning to reparation for damage. I find that Broad correctly translates ersättning to reparation, but then his translation of ekvivalent prestation to equivalent reparation (177 in the English version; 102–3 in the Swedish original) in the same context proves misleading. Further along, Broad translates ekvivalent prestation to compensatory reaction and to requital (203 in the English version; 123 in the Swedish text). In Naturrätt i straffrättsvetenskapen? (1920: 322), Hägerström likewise makes reference to the principle of equivalent performance but calls it instead likvärdig prestation (literally, “performance of equal value”); in a discussion of the theories of K.L.L. Binding and the Swedish scholars J. Hagströmer and J.C.W. Thyrén (ibid., 324ff), Hägerström takes up the question of the forces that keep the common legal conscience on a leash (föra i ledband: ibid.: 334) and identifies these forces in the social interests that determine punishment in fact. In En straffrättslig principundersökning (Hägerström 1939: 183, 192); for an English version, see Hägerström (1953: 175–9). Hägerström argues that a certain behaviour comes to be regarded as intrinsically bad (ont) when coercion is regularly observed to follow as a consequence of its occurrence; by the same token, the unpleasant consequences that are made to follow appear to us as connected with such behaviour intrinsically.
10. See Hägerström (1917: 104–8) (for an English version, see Hägerström 1953: 179–83). On this occasion (106 in the Swedish text; 181 in the English version) Broad translates rättfärdig to righteous and “idé om rättvisa” to “idea that it is right”; he does so when he had hitherto consistently and correctly been maintaining the distinction betweenrightness (for rätthet and riktighet) and justice (for rättvisa and rättfärdighet): This gives the impression of a translation done by different hands. Cf. Naturrätt i straffrättsvetenskapen? (Hägerström 1920: 328ff), where Hägerström criticises Thyrén’s theory, which tends to justify coercion as something like a state’s right to legitimate defence (nödvärnsrätt); and En straffrättslig principundersökning (Hägerström 1939: 196–8; for an English version, see Hägerström 1953: 364–6) on the principle of retaliation in kind (vedergällning): Here Broad uses retribution for vedergällning, which has instead been rendered with retaliation throughout his translation of Hägerström 1917 (see 102, 103, and 106 in the Swedish text; 176, 178, and 182 in the English version).
11. See Hägerström 1917: 102–4, 109–15, 121f, 176–9, 187–92; cf. Hägerström 1953: 200–1. Chapter 5 of this work is devoted to the idea of duty (pliktidé), and here Hägerström takes up under separate headings (marked as F and G) the question of the obligatoriness or obligation (skyldighet) of coercion, distinguishing (as discussed) two different ways in which one may speak of the justice (rättvisa) of coercion, that is: This justice can be traced to an equivalent content (coercion being just when its content is equivalent to a right but unperformed behaviour) or it can be traced to the vengeance principle, under which evil is avenged with evil, returning like for like (return in kind). The reason why Hägerström discusses the question in different sections (F and G) is that different ideas of justice are involved, and that he thinks it necessary to distinguish the psychological processes whereby the obligatoriness of coercion (what "ought to take place") gets hypostatized into a norm, depending on whether such obligatoriness is traced to an equivalent behaviour (or what is presumed to be such) or to an act of sufferance. But in either case (in sections F and G alike), Hägerström discusses the obligatoriness or obligation of coercion using the same phrase, namely,.skyldighet till en tvångsunderkastelse, meaning an "obligation to submit to coercion". Where coercion is treated by Hägerström as the performance of actions equivalent to a right but unperformed behaviour, Broad translates Hägerström's expression to "obligation to submit to compulsion"; by contrast, when Hägerström uses the same expression with reference to coercion as infliction of an evil (or sufferance), Broad switches to "liability to be subjected to punishment". There is a clear discrepancy between these two versions of the same phrase. What is misleading here, aside from the difference introduced with compulsion versus punishment ("to submit to compulsion" versus "to be subjected to punishment", emphasis added), is the difference introduced with obligation versus liability. What it suggests is that Hägerström uses skyldighet to discuss different issues, namely, the obligatoriness of coercion when the word is used in connection with the coerced performance of actions equivalent to a right but unperformed behaviour, and the notion of liability (or responsibility) when the same word is used in connection with coerced subjection to an evil (to a sufferance). Black's Law Dictionary (1951) cautions that the word liability is «a broad legal term». But here we might say, with a lighthearted pun: It is "a legal term of Broad’s", for it fails to convey Hägerström’s thought. See Black’s Law Dictionary (1951), s.v. “liability” and “liable”. Then, too, Broad’s translation of Hägerström’s entire treatment of vengeance (109–15 in the Swedish text; 187–92 in the English version) is regrettably beset by interpretive and even material mistakes. Thus, on the interpretive side, where Hägerström speaks of an unconditioned, immediate, uncalculated (ovillkorlig) reaction to an aggression, Broad translates ovillkorlig to involuntary: but this leads him to translate Hägerström’s ovillkorlig viljeimpuls (an unconditioned volitional impulse) as involuntary conative impulse. Hägerström also discusses what he terms lifskänsla, translated by Broad to a suspect vital feeling; but there is also one case (112 in the Swedish text; 189 in the English version) in which Broad makes the material mistake of translating känsla af viljeimpuls (the feeling of a volitional, or conative, impulse) to “feeling of vital impulse” (emphasis added). Hägerström is abstruse enough as he is, and these translational "mishaps" certainly do not help make his thinking any clearer.

12. See Hägerström 1917: 103f (for an English version, see Hägerström 1953: 178f). My understanding of what “justice of coercion” means in Hägerström seems borne out by a passage in this work (109ff in the Swedish text; 187ff in the English version) where Hägerström finds it necessary to show how it comes about that, acting on an idea of vengeance, we come to think it obligatory (or required by duty) to inflict sufferance regardless of anybody’s prior failure to have the right behaviour. When the content of coercion is (or appears to be) equivalent to a right but unperformed behaviour, there are grounds already for claiming that coercion intervenes to bring about what ought to take place, and that this is what makes coercion just. But when the content of coercion is simply a sufferance—as happens in the case of vengeance, where sufferance is not the equivalent of a right but unperformed behaviour but rather, under the logic of feuds and vendettas, is most often an answer to a right and actually performed
behaviour, to a previous act of vengeance—in these cases the justice of vengeance (or rather, of coercion exercised through vengeance) cannot be argued to be just except by showing sufferance to be in itself what is right (showing that sufferance ought to take place as such, or that it is inherently obligatory). And that is precisely the demonstration that Hägerström offers.

I noted earlier, in elaborating on some remarks by Hägerström, that there are cases (such as liability for unintentional injury, for example, and punishment) in which the content of coercion appears to us as equivalent to a right but unperformed behaviour because a norm sets out coercion as a consequence for failing to have the right behaviour (and this would be the reason why we consequently understand this content as justly imposed by force). My point, stated otherwise, was that sometimes the mere obligatoriness of coercion is itself enough to convince us of its justice. But clearly, the fact that such a psychological process takes place does nothing to detract from the distinction between the justice and the obligatoriness of coercion. The connection established by a norm that makes coercion obligatory leads us to regard as an equivalent performance what in fact cannot be regarded that way. Still, even if in this case the idea of an equivalent performance bears no correspondence to reality and is elicited in us only by the norm that makes coercion obligatory, what induces us to think coercion just is not the idea that the act of coercion is obligatory but the idea that the content of coercion constitutes a performance equivalent to a right but unperformed behaviour.


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Hägerström, A. (1917) Till frågan om den objektiva rättens begrepp, I. Viljeteorien. Uppsala-Leipzig: Akademiska Bokhandeln. The original title of this work has gone through a peculiar turn of events in non-Scandinavian countries, where it is sometimes quoted as “Till frågan om den gällande rättens begrepp. I. 1917” (where gällande means “valid” or “in force”, while objektiva means “objective”). What happened is that in Hägerström (1953)—at point III, on page V, under the heading “Original titles of the essays included in this volume”—evidently on account of an oversight, Broad lists Hägerström (1917) under the aforementioned misquoted title (and in this same volume, in any event, on account of a conceptual difficulty, the title is translated elliptically, and with a noteworthy loss of meaning, as “On the Question of the Notion of Law”). This turn of events, aside from its having channeled inaccurate information, could be considered inconsequential were it not that Hägerström did actually write a work titled “Till frågan om begreppet gällande rätt” Hägerström (1931), which is a review of Ross (1929). The misinformation so channeled through the non-Scandinavian scholars thus also gives rise to significant confusion. This mistake is, by contrast, not something that Broad fell back into, since he was very well acquainted with Hägerström (1917). Indeed, for example, Broad (1964, 26), when he treats Hägerström (1917), correctly cites the original Swedish title.

Scandinavian Legal Realism

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Chapter 12

Comments on Mindus and Pattaro

Jes Bjarup

Comment on “Social Tools and Legal Gears: Hägerström on the Nature of Law” by Patricia Mindus

Patricia Mindus has written a most interesting paper on Hägerström, and provided an impressive bibliography of writings on metaphor and machines. In what follows I shall offer some comments. Section 1 presents the Cartesian view of the world and relates it to Hägerström, section 2 Hägerström’s criticism of the will-theory, section 3 deals with the application of the law, and section 4 considers Hägerström’s understanding of the law.

1. Hägerström and the Cartesian View of the World

In her short discussion of the nature of metaphor, Mindus uses the term as a cognitive or conceptual term that can be used to illuminate various aspects of the world. Thus she refers to “the Cartesian emblem of the mechanistic cosmos and of the machine-man as an example of God’s workmanship in the worldview that dominated European thought from the second half of the seventeenth century on” (262). To be sure, Descartes replaces the Aristotelian view of nature as an intelligent
organism with the modern view of nature as a machine, but it is noteworthy that this view is based upon the theological view that the world is created by the will of God to operate according to “certain laws which God has so established in nature, and of which he has implanted such notions in our minds, that after adequate reflection we cannot doubt that they are exactly observed in everything which exists or occurs in the world” (Descartes 1988: 40). Thus it is Descartes who introduces the concept of laws of nature in terms of God’s commands and in his letter to Marin Mersenne of 15th April 1630 he admonishes:

please do not hesitate to assert and proclaim everywhere that it is God who has laid down these laws in nature just as a king lays down laws in his kingdom. There is no single one that we cannot understand if our mind turns to consider it. They are all inborn in our minds just as a king would imprint his laws on the hearts of all his subjects if he had enough power to do so. The greatness of God, on the other hand, is something we cannot comprehend, even though we know it. But the very fact that we judge it incomprehensible makes us esteem it the more greatly; just as a king has more majesty where he is less familiar known by his subjects, provided of course that they do not get the idea that they have no king—they must know him enough to be in no doubt about that (Descartes 1970: 11).

With respect to nature, The wisdom of Solomon states that God has “ordered all things in measure and number and weight” (Ch. 11, 20). This fits with the Cartesian view that extension in length, breadth and depth is the defining characteristics of matter or natural bodies and this implies that nature is conceptualised as a machine in terms of a clockwork working in accordance with certain immutable laws (266). For Descartes, there is no difference between natural bodies and human artefacts and this implies that the received Aristotelian distinctions between “animate” and “inanimate” nature or between natural and man-made phenomena must be rejected as arbitrary since the same kinds of operations are at work in all cases. Thus animals are mechanical automata and human bodies are machines “which made by the hand of God are better ordered than any machine that can be devised by man”. But in contrast to animals, human beings are thinking machines having consciousness which implies the use of language. Human beings are also
endowed with a rational soul which is important for the epistemological view that man is born in God’s image and therefore has the innate and God-given cognitive and volitional capacity to discover the structure of those laws that govern the physical world. This the Cartesian approach exemplifies the transition from the Aristotelian view providing qualitative descriptions stating the essential form and matter of bodies to the modern view of quantitative analysis of the structure of matter based upon the sensible qualities of motion, size, shape that rules out any reference to values. It is also the case that the will of God in the sense of his purpose with making his laws is inscrutable for human beings and this implies that there is no cognitive access to God’s purpose with his creation of laws. The corollary is that there is no scientific room for any purposive or teleological explanations in terms of final causes. Since nature is conceptualized as a machine working according to certain laws then the scientific task is to discover these laws and to provide scientific explanations and they can only be mechanical explanations in terms of efficient causes and their inevitable effects that can be put in mathematical terms. For Descartes, the pursuit of scientific knowledge has a practical aspect because human beings have the capacity to “make ourselves, as it were, the lords and masters of nature” (Descartes 1988: 47).

It seems to me that this is also Hägerström’s view since he also uses the machine-metaphor as a cognitive or conceptual metaphor to reject any need to posit occult powers and forces to account for natural phenomena (ibid.). But he rejects the Cartesian view that God has created the world and that man is born in God’s image to subscribe to Hume’s view that man is an intelligent animal that only differs from other animals within the world by the use of language that enable human beings to tell stories in order to understand the world. In this respect Hägerström’s philosophy provides the rational foundation for the scientific study of the world in terms of a naturalistic approach based upon experience and the use of the inductive method. There is but one world, the natural world in time and space where laws of nature cannot be conceptualized in terms of God’s commands but are statements about the causal arrangements of matter in motion or necessary relations between events. Thus Hägerström subscribes to materialism, and it is noteworthy that Hägerström writes, that “it is to be noticed that if, from the point of view the understanding, materialism is actually the
only possible world-view, then no power in the world can in the long run prevent its victorious progress. The human race cannot suppress the pursuit of knowledge, as long as it desires to live. The pursuit of knowledge has grown up out of the original struggle of the race to raise itself up over the level of the beasts. It is only through his more highly developed brains and thus through his greater capacity for knowledge that man can make himself the master of all living beings and thereby procure the conditions for the satisfaction of his needs” (Hägerström 1920: 299). Mindus notices that Hägerström follows the Enlightenment idea to stress the pursuit of knowledge at the expense of theology (ibid.). But it is of some interest to notice that he makes room for religious feelings, writing that «there is only one way to rescue religion from the collapse, and this is to tear it loose entirely from the question of truth» (1920: 273). In a similar way, Hägerström saves morality by tearing it entirely loose from the question of truth. This is the result of his philosophical analysis which demonstrates that reality is devoid of any values and this implies that there is no moral knowledge and this is tantamount to moral nihilism and moral scepticism (see Bjarup 2000).

2. Hägerström’s Criticism of the Will-Theory

Turning to the law, Hägerström holds that “the law is undeniable a condition of culture itself. Without it, as the Sophist Protagoras already saw, we should never have been able to win the lordship over other species” (Hägerström 1928: 262). If so, this raises the question how to understand the law where Mindus refers to Hägerström’s criticism of the will-theories that regard the «law as an actual reality as being the content of a certain will, endowed with power and active in society» (Hägerström 1916: 17). He also stresses that the question is not how the law is brought into existence in society but the question is “about positive law as such, no matter how it may have arisen. Is it, as it now exists and as legal science analyses it, the content of will in the sense suggested? To determine the conditions of its origin settles nothing about its essential nature” (Hägerström 1916: 18). Hägerström suggests that the content of positive law may embody the will of God and this is a natural law view which he otherwise rejects in favour of that law can only be positive law. And it is true that the truth of beliefs is independent
of their origin, if that is what Hägerström means by his claim that the
origin of something does not settle anything about its nature. He sup-
ports his claim by writing, “a machine comes into existence and brought
into function by a human will. But the investigation of the machine’s
structure and mode of operation is not, for that reason, an investigation
of a certain human activity. It is concerned with a certain limited part
of external nature, which works in a certain way in accordance with
the laws of that nature”, cited by Mindus to claim that “causality, not
imputability, needs to be the focus in explaining the law” (267). To be
sure, machines and positive law share a common element that they are
human constructions brought about by human will and intelligence and
exist independently of human beings. Machines and positive law share
another common feature since the parts of a machine have appointed
functions just as the law has appointed functions in terms of executive,
legislative and judicial powers conferred by the constitution on different
persons and bodies that are subject to scientific investigations. Thus the
scientific account of machines offers a description of its structure and its
working according to causal laws that do not express the will of God or
human beings. Human beings also behave according to causal laws that
are the concern of psychology and sociology to discover and present a
scientific account without appeal to any will. But human beings have
also the capacity to act according to laws of their own making in terms
of normative requirements that is related to the investigation of a certain
human activity and this is what jurisprudence is about to present an
account of the rules that are used to create valid legal rules. It seems to
me that Hägerström overlooks that there is a crucial difference between
the mechanical account of the working of machines independently of
any human will and the jurisprudential account of the making of posi-
tive law based upon human will.

This is disputed by Hägerström since he is committed to determin-
ism, and Mindus quotes his view that “nobody actually believes that the
will of the driver as such has any influence over the car’s motion” (1939:
355). I wonder if Hägerström had a car. I for one believe that my will as
driver has an influence upon the movement of the car, since it implies
that I control its movement. Mindus provides another quotation from
a lecture held in 1921 where Hägerström considers the situation where
someone fires a loaded gun by pulling the trigger to claim “the pulling
of the trigger *may* naturally be caused by the will of the shooter … But this is totally irrelevant for the causal chain … By pulling the trigger, the explosive is set off, and this in sequence ignites the gunpowder that sets the bullet in motion. This is exactly equivalent to the impact of a vote on the validity of a proposed bill” (264f; Hägerström’s italics). I think that Hägerström owes us an explanation why the human will is totally irrelevant. After all, if the shooter does not pull the trigger there is no shooting and if there is no vote then a bill will not be transformed into valid law. It seems to me that Hägerström is mistaken since he overlooks the distinction between mechanical movement and the intentional activity of human beings as members of Parliament following the procedures that turn rules into valid legal rules. And Hägerström also overlooks that it is not required that the members of Parliament need to know the content of the rules they vote for, it suffices that they know what they are doing, that is to say following the procedures that turn rules into valid legal rules.

Hägerström continues to claim that “the consequences of the bill’s passing is that they (who live in the state) are immediately and passively affected and feel committed to obedience; that those gaining benefices through the bill experience a particular sense of power … that the judges feel bound to judge in accordance with it, that the State officials feel obliged to enforce it” (265). But this claim has nothing to do with the question concerning the validity of legal rules but is rather concerned with the question of efficiency of a valid legal rule. The former question is a jurisprudential question whereas the latter is a sociological or psychological question. It seems to me that Hägerström confuses these questions.

Mindus refers to that Hägerström holds that the legal system relies upon a form of power, but the power is not “pure physical force as in Weber’s *Gewaltmonopol des Staates*” but on the contrary “a system of laws actually enforced” (1916: 54). The rejoinder is that the actual enforcement of the law depends upon the monopoly of force. And Hägerström overlooks that the concept of power also may be used to refer to the political authority creating the positive law to provide reasons for belief and action for the members of a society.

In his account of the will-theories, Hägerström rejects John Austin’s theory because “it is pure despotism which serves as a model for the
theory” (Hägerström 1916: 35). The rejoinder is that Hägerström relies upon Henry Maine’s criticism of Austin, and this criticism is mistaken, so Hägerström’s criticism is misplaced as well (see Bjarup 2013). But it is interesting to notice that Hägerström’s judgement is a value judgement which lacks any scientific merit if we follow Hägerström’s moral philosophy. But Hägerström has another argument against Austin’s theory since the authority of the sovereign depends upon the law (Hägerström 1916: 55). This is Kelsen’s criticism which Hägerström rejects as circular (1916: 19).

Hägerström’s rejection of the will-theories raises the question what his own theory is. He suggests that the positive law is an expression of various interests (1916: 41). If so, this is also the view put forward by Austin and Kelsen, so the question remains what is Hägerström’s theory of law? I shall return to this in section 5.

3. The Application of the Law

The metaphor of machine has also been applied to the application of the law to suggest the uniform application of the law by legal officials to the exclusion of their personal feelings of justice, where Mindus refers to Weber’s view of the legal system as a “technically rational machine” (271). And Weber was keenly aware of the danger of this view. As he puts it, “the complete elimination of the administration of justice has forced to set aims and objectives for its perfection in a specific type of legal development and legal administration; herein, the necessity that human beings rather than machines occupy the judge’s chair appears actually as an unfortunate imperfection. The ideal of this concept would be the transformation of the judge into a ‘paragraph and precedent machine’ into which one would insert the facts and the costs, from above, in order to have it spit out below the sentence and the rational for it” (Weber 1895).

Weber’s view is further developed by the German Free Law Movement, for example by Herman Kantorowicz (Gnaeus Flavius) in Der Kampf um die Rechtswissenschaft, 1906, where he attacks the view of judges as thinking machines in favour of the view that judges are creative when deciding cases. This has already been stressed by John Austin in his Lectures on Jurisprudence as Alf Ross points out (Ross
Mindus suggests that Ross is in favour of a purely deductive or mechanical interpretation of the law (Ross 1958: Ch. 2). This is false and tantamount to ignore that Ross holds that judges are creative and that “it is a mistake to accept the technical arguments as the true reasons. The true reasons must be sought in the legal consciousness of the judge or the interests defended by counsel” (Ross 1958: 153).

Mindus mentions Roscoe Pound and Jerome Frank (49). But she fails to mention that Pound has studied Kantorowicz and other German scholars within the German Free Law movement which is the source of American Legal Realism (see Herget and Wallace 1987). Mindus also fails to mention that Frank refers approvingly to Karl Wurzel’s Das juristische Denken and so does Hägerström (1917: 75f, 85, 95, 104). Thus Hägerström is familiar with the German Free Law Movement and he also holds that the judge “is not a mere calculating-machine. His subjective convictions as to the objective law, which act as an intermediary, may be tinged with all kinds of contingent factors. But one must not conclude from this that the content of the law which is determined by the rulings of the judges is to be regarded as the content of the judge’s will expressed in a certain way” (1917: 91; cf. 81). It is hard to understand why the decision cannot be regarded as the content of the will of the judge, especially since Hägerström argues that there is no positive law prior to the decisions made by judges (1963: 216). So it seems to me that Mindus is wrong when she claims that “it is in relation to judicial interpretation and adjudication that the Americans and the Scandinavians differ in their use of the metaphor” (273; cf. 265).

Considering that judges are creative when deciding cases, the German free law movement made a plea for a change in legal education to include the study of political science, economics, psychology, and philosophy. A similar plea was made by the American legal realists. But what is the position of the Scandinavian realists? In this respect Hägerström’s philosophy rules out that legal science is a science properly speaking and this implies that there is no room for a rational discussion of the various values that enter into legal decision-making. To be sure, Lundstedt makes a plea for his method of social welfare but this is not consistent with Hägerström’s philosophy. Now Mindus recommends the idea of equity within the legal system (50). And this raises the question if this implies a change in legal education?
4. Hägerström’s Understanding of the Law

Considering Hägerström’s understanding of law, Mindus refers to that “law is defined as a set of rules for action (handlingsregler) that are enforced (genomförda)” (Hägerström 1925: 91). The reference is to Hägerström’s account of his philosophy of law which runs as follows: “positive law is not a declaration of will from the side of the state, which itself has no will, nor is it an authoritative prescription of each person’s rights and duties. It is only a system of rules for the so-called organs of the state—theirse themselves defined in the rules—a system of rules which is actually carried out” (1925: 316). Mindus claims that Hägerström’s “way of considering law is, in fact, quite similar to legal positivism” (275). This may be questioned, at least if legal positivism is used in the sense that the law is commands expressing the will of the sovereign or state, since this is expressly ruled out by Hägerström. It is also worth noticing that he rejects the normative view of legal rules as authoritative prescriptions making a claim to be obeyed. For Hägerström, there is no duty to obey the law and this implies that the law lacks binding force.

This raises the question what Hägerström has in mind when talking of “a system of rules which is actually carried out” and his answer seems to be that the rules do not refer to rules in the sense of normative requirements but rather to rules in the sense of causal regularities. This fits with his view that the legal machinery works by a complex of feelings which leads to his inquiry into the causes that maintain the law. Considering the will, it seems to me that Mindus fails to notice that Hägerström has changed the subject (271). His starting point is the will in relation to the validity of legal rules and his inquiry demonstrates to his own satisfaction that this is meaningless since the state has no will. What is left is the use of the legal vocabulary and this leads to his inquiry into the efficiency of legal rules in relation to “the ‘will of the state’ as an anthropomorphisation of the various forces which maintain the legal system” (1916: 37; cf. 39). Mindus refers to Hägerström’s remark that “the legal order is throughout nothing but a social machine, in which the cogs are men” (1939: 354). Hägerström’s concern is “if we investigate the real cause of the maintenance of the rules of coercion, we discover only all kinds of co-operating imponderabilia, which together bring about this result, and which it is meaningless to describe as a will” (1939: 349).
Interestingly, Hägerström has changed his mind abandoning the use of the term “will” in favour of that there are “three conditions which are always necessary for the maintenance of a legal order, viz., social instinct, a positive moral disposition, and fear of external coercion. But of these three the social instinct is presupposed by the other two” (1939: 352). Again it is interesting to notice that in his lectures in 1924 he also refers to the social instinct only to claim that this implies that we have arrived at the end of an explanation (1963: 250). The appeal to a social instinct is found within natural law theories which Hägerström rejects. By the way, Mindus refers to H.L.A. Hart’s “famous remark on the minimum content of natural law … (which) is an argumentative tradition that does go back (at least) to Émile Durkheim” (277). It can be traced further back to Hobbes and Hume.

Again, the appeal to a social instinct can be related to mechanical principles of behaviour to explain the maintenance of legal rules which leads to Hägerström’s claim that “we are not the lords but the slaves of the law” (1963: 253). What Hägerström has in mind is, perhaps, that human beings are slaves of the law in the sense that the law impels them to pursue ends which cannot satisfy them. But then the remedy is to change the law as Mindus suggests (279). This fits also with Hägerström’s view that human beings have used the law to win the lordship over other species, see above.

Hägerström’s understanding of legal rules as “rules of coercion” fits with his view that the legal order is a social machine where human beings are cogs. The implication is that human beings are conceptualized as human instruments determined to move according to various causes as opposed to being conceptualized as human agents having the capacity to act for reasons. As I see it, Hägerström endorses the former view, and so does Lundstedt, replacing the traditional vocabulary of “law” and “legal order” with the term “legal machinery” to refer to the psychological and sociological facts that determine human behaviour in relation to the use of the legal vocabulary. For Olivecrona, legal rules are conceptualized as independent imperatives about the use of force and Ross follows suit, but preferring to use the term “directives” as technical term for the view that legal rules are devoid of any conceptual meaning but used with the intent to regulate human behaviour, in the end by means of force. If we take the machine metaphor seriously, the
machine must be operated by men, and in this respect there is a crucial distinction between human beings as “knowing instruments” having the knowledge to operate the legal machinery by means of independent imperatives or directives and human beings as “mere instruments” lacking this knowledge. This raises the question to which group the Scandinavian realists belong and as I see it the answer is the former. This raises a challenge that requires a rebuttal which I have tried to present elsewhere (see Bjarup 2005).

* * *

Comment on “Hägerström’s Philosophy of Right” by Enrico Pattaro

I find Enrico Pattaro’s paper most interesting although in the end I disagree with his understanding of Hägerström, and shall offer some comments. Sec. 1 is about C.D. Broad’s translation. Sec. 2 deals with G.E. Moore and Hägerström, sec. 3 with the concept of duty and norm, sec. 4 with the rightness of actions, sec. 5 considers justice and coercion and sec. 6 Pattaro’s distinction between what is objectively and subjectively right.

1.

Although Pattaro and I disagree we do agree that it is difficult to understand Hägerström’s writings, translated into English by C.D. Broad, and also that it matters since Hägerström challenges the ordinary understanding of law, for example his claim that there are no moral duties, hence there is no duty to obey the law which implies that the law lacks binding force. Pattaro offers some criticism of Broad’s translation which I shall not discuss only offer a comment concerning the translation of the title of Hägerström’s article, “Till frågan om den objektiva rättens begrepp” (Hägerström 1917). Pattaro mentions that the Swedish title is wrongly stated in Inquiries as “Till frågan om den gällande rättens begrepp” which has caused “significant confusion” concerning the use of the term “gällande” which Pattaro translates as “valid” or “in force” (309). Pattaro fails to notice that Hägerström uses the term
“gällande rätt” in his article from 1916, translated by Broad as “Is Positive Law an Expression of Will” (Hägerström 1916). Pattaro has no objection to this translation, which is correct since Broad follows German scholarly usage where the term “geltendes Recht” is used synonymously with the term “positives Recht” (Bergbohm 1892: 49). In this article, Hägerström considers the will-theory of positive law in terms of commands expressing the will of the state only to reject it since it is impossible to indicate any will such that legal rules can be considered to be its commands or declarations. The next article from 1917 is also concerned with positive law and Pattaro claims that Broad’s translation of the title “Till frågan om den objektiva rättens begrepp” into “On the Question of the Notion of Law” is misleading and rather should be rendered “On the Question of the Notion of the Right” (ibid.). I am not sure if this is the proper translation because Hägerström is not concerned with the concept of right but with the concept of law in relation to the concept of duty in terms of right conduct. The result of Hägerström’s analysis is that the will-theory is based upon a confusion “identifying the property of being commanded with the property of obligatoriness inherent in the commanded act”, which he substantiates by an elaborate account of “the supporters of the imperative-theory in jurisprudence” (Hägerström 1917: 206, cf. 206–250).

2.

Considering the analysis of the concept of duty, Pattaro claims that Hägerström “is skilfully avoiding the ‘naturalistic fallacy’ into which some have fallen, as Moritz Schlick (1882–1936) does” (305f, n. 2). This expression is introduced by G.E. Moore to claim that it is a fallacy to identify moral concepts with natural concepts (Moore 1903: 10). Moore is concerned with the conceptual analysis of the concept of good based upon “what is actually before his mind” in terms of “that object […] which the word is generally used to stand for” to arrive at the claim “that ‘good’ denotes a simple and indefinable quality” (Moore 1903: 16; cf. 6). Hägerström does not refer to Moore, or to Schlick, but Moore is also known for his refutation of idealism, and so is Hägerström in Sweden. The Swedish scholar Konrad Marc-Wogau has demonstrated that Hägerström cannot have had access to Moore’s famous article, The
Refutation of Idealism, in Mind from 1903. But his does not rule out that Hägerström was influenced by Moore as I have argued (Bjarup 2000). Thus Hägerström may be familiar with Principia Ethica and perhaps also Moore’s article, Jahresbericht über “Philosophy in the United Kingdom for 1902” in Archiv für systematische Philosophie from 1904 since the journal is known to Hägerström. To be sure, Hägerström claims that he has not “been significantly influenced by contemporary philosophy, on account of what is, in my opinion, its uncritical point of departure” (1929: 38).

But Hägerström’s critical point of departure subscribes to Moore’s view that conceptual analysis is concerned with what actually is before one’s mind when asking what is good and what is right. For Moore, it is a fallacy to identity moral or ethical concepts with natural concepts, and the fallacy is also exemplified by Kant “supposing that ‘this ought to be’ means ‘this is commanded’. He conceives the moral law to be an imperative. And this is a very common mistake” (Moore 1903: 128). Moore traces the confusion to the view that the concept of good must be defined in terms of will whereas the truth is that the concept of good is indefinable. And this implies that it is not possible to reduce ethics to any natural or social science.

Like Moore, Hägerström rejects ethical naturalism but he also rejects Moore’s appeal to non-natural properties to arrive at the view that moral terms like “good” and normative terms like “duty” and “right” do not refer to something real in the sensible world. Hägerström considers the sentences: this action is a duty and this thing has value which raises the question what do the words “duty” and “value” refer to? Hägerström’s answer is “that the words ‘duty’ and ‘value’ lack all concreteness in regard to ‘value’ or ‘duty’, as the case may be, considered as predicates. That is to say, with these words one has before one’s mind only the idea of a property in the abstract, a certain something regarded as present in the thing or the action of which one is thinking, without being able to form any idea of what that property is” (1953: 141). This implies that the words are not used to express concepts in terms of thoughts or beliefs what is right conduct but are suggestive words that are used to express conative feelings concerning the rightness of actions in relation to the idea of duty. Considering the idea of duty, Hägerström claims that “what is thought of is merely something unrepresentable, which is connected with the expression ‘duty’, ‘obligation’, etc. and
which cannot be distinguished except by reference to just that expression” (1953: 143). However, thinking presupposes that something is representable in the sense that it can be seen or touched and this implies that what is left is only the reference to the expression. As he puts it,

to the sentence ‘this action is a duty’ is attached the idea of this action as having a certain property which answers to the name of ‘duty’. It should be noted that in this latter idea the action is not conceived as real in the same sense as it was in the original idea of the action, i.e., it is not conceived as belonging to the context of reality whose elements are concrete and perceptible. It is conceived as real only as having that essentially imperceptible quality which is ‘duty’. It exists in the world of ‘duty’, not in ‘our’ world. If it also belongs to the context of sensible reality, i.e., if it actually happens, this has nothing to do with its reality as a duty (1953: 143).

Thus obligation or duty cannot function as cognized concepts in the context of sensible reality but belongs to the super-sensible reality. In contrast to Moore, the result of Hägerström’s conceptual analysis is moral nihilism that there are no moral and normative facts which is related to his moral scepticism that there can be no moral knowledge. As he puts it the concluding remark in his inaugural lecture “moral science may not be a teaching in morals, but only a teaching about morality” (1911: 96). In his Selbstdarstellung he goes even further to claim that “all that is called Geisteswissenschaft—whether it concerns the I, society, the state, morality, or religion—is only an intellectual play with expressions of feeling, as if something real were designated thereby” (1929: 74).

3.

Pattaro refers to Hägerström’s view that there are no objective duties or objectively valid norms but he also claims that Hägerström “expressly connects the idea of duty, as referred to in everyday language, with the idea of norms” (306 n). This raises the question what is meant by the term “norm” and Pattaro’s answer is that “the idea of norm (is) understood as that which ought to take place and which has an objective reality of its own, independent of the subjective situations of those who
have to comply with the norm” (305). Thus moral norms are normative requirements concerned with reasons for action in the sense what ought to happen or that one ought to act in a certain way (Hägerström 1917: 208). But he also denies that moral sentences express moral norms when he claims that “it is certainly plain that such a notion (i.e., the moral norm as a system of conduct) must be completely devoid of truth” (1953: 159 cf. 208). So I submit that Pattaro is wrong to claim that Hägerström subscribes to the concept of norm in the sense of normative requirement since the concept cannot be found within the sensible world of is in time and space but must be located in the super-sensible world of ought.

Turning to the law, Pattaro claims that “commands in themselves cannot be a source of duty” (284). I beg to differ since this overlooks that there is a distinction between violent and legitimate commands, to use Broad’s terminology (Broad 1971: 364) Violent commands are issued “by a powerful will that orders me to rob and plunder”, to use Hägerström’s words (1953: 208), and cannot be the source of any obligations whereas this is the case with legitimate commands since they presuppose the concept of right and duty. This is the case with positive law that can be conceptualized as commands or authoritative expressions stating the duties and rights of persons in relation to their conduct, as Hägerström mentions (1953: 117; cf. 198). Thus the authority to create legal rules as commands is correlative with the claim that persons have a duty to obey a command. For Hägerström, “the power of the state authority to command to which everything ought to be reduced if duty consists in being commanded, obviously cannot consist in the state’s right to command” (1953: 216). The rejoinder is that duty does not consist in being commanded but in reasons for belief and action. Hägerström holds that “the primary question which always arises when confronted with a will which issues a command is: ‘Is it right to obey?’” (1917: 144). Pattaro refers to Hägerström’s view that “it is impossible in a command to order obedience to that command itself” (306). I agree but that does not settle the question: Is it right to obey? The question can be understood as a normative question concerning the proper conduct in relation to a law which is a matter of reasons for belief and action. Pattaro refers to that the state’s right to punish is grounded “in the state’s right to have obedience to its commands: Punishment is justified as the consequence of transgressing a
command issued by the state” (304). Thus legal rules make a claim to be obeyed which raises the question whether there is a moral duty to obey a law. But Pattaro does not address this question but the question “how is it possible to transgress a command we are unaware of?”. The answer is that this is not possible but this does settle the question whether there is a moral duty to obey a law, although this seems to be Pattaro’s view following Hägerström. And his view is that there are no moral duties, hence there cannot be a moral duty to obey the law. This is a radical view but Hägerström is at pains to argue that this does not lead to dissolution of morality since it is possible to use the moral vocabulary to regulate human behaviour. This is social conditioning since the word “duty” as “a suggestive idea of coercion with an imperative sign as the content” (1934: 63). This leads him to hold that “judged by common social ends, a person, who is not subject to the force of the ideas of coercion bred by social life, is mentally ill. And he is also really abnormal, since he lacks the susceptibility for social suggestion which in general characterizes human beings as social animals”. Hägerström claims that his moral philosophy does not undermine morality (1929: 71). This may be questioned, but this is beyond the scope of this comment.

For Hägerström, the question, “is it right to obey?” is not a normative but a psychological question concerning the use of “the concrete and sensible form of the expression” of the word “duty” “producing a feeling of duty bound up with a determinate action” (1953: 160; cf. 164). In this way the expressions are located within the sensible reality and can be used to cause people to follow the accepted norms of conduct that determine what is right and wrong as the effect. However, this is to use the concept of norm in the sense of behavioural regularities as the result of the use of the moral vocabulary to cause the appropriate behaviour as the effect. This use of the concept fits with Hägerström’s view of moral science as an empirical science based upon observations and the inductive method. It also fits his analysis of the concept of duty in relation to the concept of command in order to “illuminate the psychological facts” (1917: 56). This raises the psychological question: what are the factors which, in our experience, are capable of producing a conative impulse independently of all valuation and his answer is that “we find that there are two, viz. command and habit, which are specially relevant in explaining the idea of the rightness of action” (1953: 152).
This is also Pattaro’s approach and he takes issue with commentators that hold that Hägerström reduces duty to the sense of duty (286f). To be sure, Pattaro is right that Hägerström writes that “it is obvious that we sharply distinguish between duty and feeling of duty” (1917: 133). However, it is also the case that he writes that “duty cannot function as a cognized term in the context of reality. But this is exactly what is peculiar to a feeling-content as such” (1917: 135). As I see it, this implies that Hägerström reduces duty to be a conative impulse in relation to right action which Pattaro also considers.

4.

His starting point is Hägerström’s claim that behaviour required by duty has particular character in terms of being right or correct which raises the question what is meant by the terms “right” and “correct”? In order to elucidate Hägerström’s answer, Pattaro introduces a distinction between the rightness or correctness of an action on the one hand and the justice of an action on the other which he claims has been overlooked by Hägerström’s commentators since they have failed to notice that the term “right” must be kept apart from the term “justice”, adding “even if Hägerström does not take enough care to point that out” (283). If so, commentators may be excused. Considering the rightness of actions, Pattaro follows Hägerström in considering whether rightness can be considered as a property of actions to arrive at the result that this is not the case. But both Hägerström and Pattaro are on the wrong track since we cannot see the rightness of an action by inspecting the action in itself. The proper way is rather to see the action in relation to the rational person who does the action. This is the Kantian view based upon the autonomous will of a person that gives himself the moral law. Pattaro follows Hägerström to reject the Kantian view of autonomy although Pattaro does not enter into any detailed discussion and neither he nor Hägerström mention Kant’s important distinction between being the author of the obligation and the legislator or author of the law. The autonomous person is the author of the obligation to act in accordance with the moral law but does not act as legislator or author of the law deciding the form and content of the moral law. Persons cannot decide what the content of the moral law is but they can decide whether or not
to accept it. Despite the critique of Kant, Hägerström makes room for the idea of autonomy but Pattaro does not elaborate what this means for the account of the rightness of actions.

5.

Pattaro’s distinction between the rightness of actions and the justice of actions is related to another distinction which he makes between the rightness of behaviour and the justice of coercion which he claims that Hägerström also neglects (293). It seems to me that the relation between the idea of justice and the idea of rightness needs clarification since Pattaro on the one hand claims that “the idea of justice is grounded in the idea of rightness, this by way of the relation set up through the linking idea of an equivalent performance” and on the other that “the idea of the justice of a punishment is only partly founded on the idea of rightness or correctness of a behaviour” because “the idea of equivalent performance is not entirely equipped to account for the idea of the justice of punishment” (294). He continues to write “for clarity I will draw a distinction that in Hägerström is only implicit, and this is the distinction between coercion and the content of coercion. The aim here is to become aware of the (psychological or ideological) foundation underpinning the justice of coercion, which justice is normally taken for granted and used as background assumption in common legal consciousness”. Coercion is a normative concept that involves a moral and legal evaluation of coercive acts and institutions as unjustified and therefore need a justification But as I understand Pattaro, his distinction is not concerned with the conceptual clarification of the concept of coercion making a distinction between “coercion” in the sense of constraint by means of threats of evil and “the content of coercion” in terms of various kinds of evil such as the deprivation of life, liberty and property. Thus coercion is a fundamental form of wrong-doing to persons that requires a moral justification but as I understand Pattaro this is not what his distinction is about although it leads him to ask “the following question: what makes it just to inflict a punishment? Is it the fact of coercion or is it the fact that the content of coercion—the punishment inflicted—causes sufferance?” (ibid.). It seems to me that the answer is neither since it is the facts of punishment and its content
that require a moral and legal justification. It also makes sense to ask the normative question if the coercive sanctions set out in the criminal law are just or unjust, but this is ruled out if we follow Hägerström’s philosophy. His philosophy is concerned with the psychological question what makes people believe that coercion is just which is traced to a feeling of vengeance. However, Pattaro misquotes Hägerström when he writes “in fact, acts of vengeance are by their very nature disproportionate: Their motto, ‘an eye for an eye, a tooth for a tooth’ could very well have been ‘a head for an eye, a head for a tooth’, says Hägerström” (299). What Hägerström says is: “But revenge is, of its very nature, measureless. Its motto is certainly not an eye for an eye and a tooth for a tooth, but a head for an eye and a head for a tooth.” (1953: 182).

6.

For Hägerström, punishment in modern societies is “not regulated from the standpoint of revenge, but from that of interests which determine the norm underlying the right” (1953: 183). The norm underlying the right is concerned with right behaviour where Pattaro introduces a distinction between what is objectively right and what is subjectively right, claiming that it is only by means of this distinction “that we can properly understand the meaning Hägerström attributes to the expression right behaviour” (291). As I understand the distinction is a distinction between behaviour that ought or must take place without any reference to persons and behaviour that does refer to persons. I am not sure if the distinction clarifies Hägerström’s way of thinking since what is rightful behaviour is always related to persons.

And the distinction between what is objectively and subjectively right is also used in relation to the moral question, what shall I do?, where what is subjectively right refers to what a person believes is right and what is objectively right refers to what is right. But this distinction only makes sense with respect to the retrospective question whether the person did the right thing as opposed to the prospective question where the person believes he is doing the right thing and acts upon this belief. And this raises the question what is basic, the person’s character or the person’s actions, which again can be expressed in terms of the distinction between what is subjectively right and what is objectively right.
I wonder if these distinctions illuminate Hägerström’s way of thinking since it is not a normative inquiry into what is the right conduct in terms of reasons for belief and action but a psychological inquiry into the causes that produce rightful behaviour as the effect in terms of commands and custom. Surely, the psychological inquiry is important but the normative inquiry is also important and cannot be reduced to the psychological inquiry which Hägerström—and Pattaro—invite us to believe.

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Hägerström was a prophet with many apostles, in particular within jurisprudence. Yet many were foes of his radical anti-metaphysics who were passionate in refuting his semantic and ontological value-nihilism. To Dag Hammarskjöld and Anders Nygren, Hägerström was a sounding board. His mark on Swedish political culture in the twentieth century with its distinctive character is significant: his impact is well documented on social engineers such as Myrdal and on Scandinavian legal realists such as Lundstedt, Olivecrona and Ross. He influenced the methodology of social sciences and left his mark on the problem of demarcation between faith and science. He had an imprint on Swedish social democracy. Today he seems relevant for post-Modern themes, both as a source of inspiration and a sparring partner. For him, society cannot shun norms as a set of shared rules. Beyond doubt he belonged to the Enlightenment tradition: supernatural explanations are banned from science; the burden of proof falls on those who claim the opposite. Notwithstanding their differences, Hägerström, like Machiavelli, Hobbes and Schmitt, continues to provoke rejoinders and stimulate debate—a thinker whose legacy is hard to ignore.
or a long time, the most common critique of Axel Hägerström was moral and political rather than philosophical. He seemed to deny the possibility of authority in moral and ideological issues. The great dispute was not about the meaning of words like “good” and “evil”. Hägerström rejected religion and many traditional convictions; his philosophy was seen as an attack on everything of a higher order.

As a student of political science and philosophy in the 1950s, I was taught to say the Uppsala School instead of nihilism. Our greatest teacher was Ingemar Hedenius, who had brought Hägerström’s theory of values closer to common sense and made it easier to understand. Sweden’s foremost scholar on political ideas was Herbert Tingsten, professor of political science and from 1946 chief editor of liberal *Dagens Nyheter*. We read his editorials in the morning and his books about the futility of ideologies in the evening. Hedenius and Tingsten reinforced impulses from great thinkers as Bertrand Russell and Karl Popper. The highest intellectual virtue was to be reasonable (*rimlig*), and the most efficient way to dismiss an idea was to call it metaphysical. Philosophical systems of the nineteenth century were seen as utterly irrelevant. Popper’s remark, for instance, that Friedrich Hegel was “supreme only
in his outstanding lack of originality” was gladly accepted by students who could have no opinion of their own (Popper 1962: 32).

We were told that moral and political issues must be separated from academic studies. It would have been a breach of etiquette to raise a political question in a seminar, and nobody did. Ideologies were assumed to be dead.

In Tingsten’s memoirs nihilism is a recurring theme. As a student of philosophy he had found “all systems and constructions unreasonable” (Tingsten 1964: 330). He describes himself as a young man as a nihilist, free from “morality in the ordinary sense” and tending to mix up “Hägerström’s theory about the subjectivity of morals with amorality” (Tingsten 1963: 50). He confesses to have felt contempt for ideas. He quotes a letter he wrote in 1924, where he said that he knew that all moral ideas, also his own ideas, were as irrational as the belief in the virginity of Holy Mary. Of the great novelists he understood best those who were nihilists (Tingsten 161: 302). When he wrote books about political ideologies he tended, in his own words, not to be impressed by the ideas but “to reveal the hollowness of the constructions and the mess in the details” (Tingsten 1964: 331). Later, in Dagens Nyheter, he saw political ideologies as mere Sunday preaching and empty watchwords.

**Legal Positivism vs Law of Nature**

The Uppsala School, and analytical philosophy in general, inspired legal positivism. One of the targets was the Enlightenment philosophy of the law of nature as the basis of human rights. To oppose this view, according to some, is to say that “justice is nothing else than the interest of the stronger” (Alschuler 2000: 8). But such sweeping statements are not based on a real understanding of the natural rights doctrine. The tradition of John Locke is characterized by psychological egoism and a deterministic view of man, which makes its “natural law” rather empty from a moral point of view; it is hardly more than a defence for the individual’s right to lock after his own interests. And there was an important element of utilitarianism, pleasure and pain-philosophy, among Locke’s followers. The fundamental difference between the Uppsala School and the Enlightenment natural law philosophy does not hide the kinship between them. Both believe that rights and justice are matters of truth.
and facts. Legal positivism tends to derive “right” from utility. Hedenius, among others, was a utilitarian (Nordin 2004: 221–226). He could hardly have given a good answer to John Rawls argument: Utilitarianism allows you to assert that slavery is unjust because the benefits of the slave owner do not outweigh the disadvantages of the slaves and of society at large; a fair principle of justice excludes any consideration of the benefits of the slaveholder (Rawls 1989: 45). Rawls saw the weakness of utilitarianism as a philosophical basis of justice.

The law of nature school of thought and legal positivism disagreed on important political issues, such as judicial review. Legal positivists tended to be opposed. A famous example is the legendary Justice Oliver Wendell Holmes in America, who wrote about forty dissents from the Supreme Court’s invalidation of legislation regulating working conditions. The same judicial restraint made him accept southern state laws prescribing racial discrimination. His moral relativism was explicit: “The duty to keep a contract at common law means a prediction that you must pay damages if you do not keep it—and nothing else” (Alschuler 2000: 62, 133).

The Swedish constitution was changed recently to encourage the courts to a more frank judicial review. Was this decision simply a matter of utility and pragmatism, or was it guided by some half-forgotten eighteenth-century philosophy of right that nobody is ready to defend in a serious discussion? In any case, legal positivism is a system in decline in Sweden.

A Philosophy to Discourage Philosophy

The Uppsala School, and analytical philosophy in general, introduced an intellectual discipline that did much good, but there were side-effects. A narrow, restrictive idea about the role of philosophy was promoted: philosophers’ true mission was to clarify words and concepts; language and logics, not ideas, were the subject. Questions that had been asked in philosophy from Thomas Hobbes to Immanuel Kant and Karl Marx were thought to be caused by deficiencies in the language and should be eliminated rather than answered. Ludwig Wittgenstein wrote that philosophy is about the logical form of scientific statements. He said that Bertrand Russell was a traitor to “the gospel of exactitude” and
that none of Russell’s books about ethical issues deserved to be read (Fredriksson 1993: 54, 68).

Philosophers should no longer analyse overall problems in the real world. This attitude discouraged a serious and systematic treatment of important problems, and it tended to strangle the flow of ethical, political and social ideas among people who were in a good position to contribute.

Isaiah Berlin wrote in 1962 that “[n]o commanding work of political theory has appeared in the twentieth century” (Quoted from Kukathas and Pettit 1998: 1). That was only a few years before John Rawls published *A Theory of Justice*, which won great approval and legitimized a more generous definition of philosophy. Since then globalization and tensions between nations and cultures have increased the need for a systematic, detached, disinterested treatment of overall moral and political problems.

A modern democratic society is dependent on a continuous supply of ideas related to the great challenges governments meet. The traditional sources of political ideas seem to be dried up. Much fewer people than before are active in the political process as members of parties and political youth organizations. Decline in quantity is also a decline in quality. The politicians get less inspiration and advice, based on understanding of the problems of society, from those who elected them. To compensate they take advice from people they have appointed themselves and from various organizations and think tanks, which tend to be faithful to well-established ideas rather than innovative.

In modern democracies the universities often serve as public service think-tanks without ties to special interests. They have grown immensely since 1945 and become much more important for the intellectual renewal of public life; researchers have time to read and to think; counter-intuitive ideas about society are discussed in seminars and scientific journals before they appear in the public media. But the universities could do more.

**The Role of Social Science in a Democracy**

John Dewey was an important intellectual in the twentieth century. Historian Henry S. Commager said that Dewey was for a generation
“the guide, the mentor, and the conscience of the American people; it is scarcely an exaggeration to say that for a generation no issue was clarified until Dewey had spoken”. But in the early 1950s professional philosophy in America, as in Sweden, had changed. The tradition of “the philosopher as sage” was outmoded. Dewey’s biographer Alan Ryan says that his reputation collapsed after his death in 1952 (Ryan 1995: 22).

In the 1920s there was a great disillusion about democracy in America. Politics was dominated by large companies and political machines in the big cities. Many intellectuals, such as Walter Lippmann, thought that the idea of popular government was no more than an illusion. In 1927 Dewey asked: How can a Great Society, such as America, also become a Great Community? German philosophers distinguished between Gesellschaft and Gemeinschaft. In Sweden the Social Democratic leader Per Albin Hansson wanted to see society as “the people’s home” (folkhem). The idea was that citizens in a modern democratic society should be kept together in brotherhood and mutual respect. The core of communitarianism is that human beings have emotional needs of common beliefs and values. An important means to shape a true people’s home was thought to be social justice and equality.

Dewey’s idea was different. He wrote that the main difficulty in a modern democracy is to take in and to understand the complicated chains of causes and effects in society. Where important changes look haphazard, inexplicable and threatening to ordinary people, the Great Society will not be a true Community, an including, in brotherhood united public. To him community was something intellectual, not only emotional, and he regarded social science as a part of the solution. Research can bring people together in a common understanding of the causes of the problems in society and the ways to handle them. (Dewey 1927: 21, 163–172; Nycander 2009: 334–7; Ryan 1995: 216ff). In 1927, this belief must have seemed utopian, because the social sciences were then in their infancy. Dewey’s biographer Alan Ryan thinks that Dewey’s idea of democracy was unrealistic (Ryan 1995: 219f).

But Dewey was right. The social sciences can make our images of various institutions and processes more alike and more rational. They can improve our understanding of politics, business, labour relations, immigration, education, environment, administration of justice and so on, and that will cure misconceptions and more or less paranoid beliefs.
In Sweden, for example, we can see this happen every day. The media have understood that there is a public demand for research, for answers based on scientific knowledge, about almost every problem in society.

What do we expect from philosophy in Sweden today in this respect? I think that we could get more. University education in philosophy, including knowledge of historical innovations in social and political thought, is important. Axel Hägerström himself is an example. It is possible to be an important thinker in more than one discipline. Dewey was an educationalist and also regarded as a philosopher in the traditional sense, but he never had a chair in philosophy. Many great thinkers have combined philosophy and law. The universities should encourage students and researchers to widen the present boundaries of the discipline.

References


Introduction

One may recall that the distinction between the modernist and post-modernist projects is hardly sharp and crystal clear. A few major European scholars—like Max Weber, Michel Foucault and also Axel Hägerström—made lasting contributions to the modernisation of beliefs and secularisation, while they also anticipated post-modernist developments, displaying how attitudes and values are socially constructed.

When reconsidering Axel Hägerström’s scholarship one hundred years after he launched his critique of the idea of objective moral values, one may wish to start from the notion of philosophy as the “ontology of the present” with French radical Michel Foucault. Philosophy may be orientated towards eternal questions concerning, for example, true knowledge and reality as opposed to appearance, or it may analyse the foundations of society today. Foucault argued in favour of the latter approach as being even more relevant than the former. Major philosophers have either concentrated upon the first (Wittgenstein) or the second task (Frankfurt School), with the exception of those few
Hägerström was a contested figure both during his life time and after. The criticism of his philosophy has almost exclusively targeted his general ontology—his concept of reality, but neglected his cultural critique and social philosophy, where he displayed a strong interest in social reform in accordance with several of the ideas of the emerging Arbeiterbewegung. He lectured on Marxism and socialism as well as published in well-known left-wing journals.

The purpose of this paper is to argue that Hägerström’s cultural criticism and concrete social thought were more original and also better founded than his general and abstract ontology and epistemology.

**Turning Hägerström Upside Down**

In Swedish philosophy, there has been a protracted debate concerning the way Hägerström presented his own philosophy in an article, called “Selbstdarstellung”, in a 1929 German publication. This publication contained a number of presentations by major philosophers at that time. In this overview of his own philosophical contributions, Hägerström chose the surprising strategy of underlining the continuity in the various positions launched by him since 20 years back, arguing that he had basically had the same ontology and epistemology since the early twentieth century when he abandoned German idealism and Kantianism.

His colleagues within the well-known Uppsala School of philosophy questioned whether this self-presentation was in matter of fact correct, which resulted in a long and not very fertile debate between the pro-Hägerström group and the anti-Hägerström group among these Uppsala School philosophers (Fries 1944; Wedberg 1945). Stunningly, Hägerström mentioned little about his cultural and social philosophy in this “Selbstdarstellung”, which created the image that his philosophy should be judged on the basis of his general epistemology and ontology already presented by 1908.

Now, in Swedish philosophy, work is organised according to the Kantian separation between theoretical philosophy (understanding, explanation) on the one hand and practical philosophy (action, reason) on the other hand. Hägerström held the chair in practical philosophy...
and taught correspondingly mostly on morals, jurisprudence and religion (Mindus 2009). However, he also published a few things in theoretical philosophy at the same as the chair in theoretical philosophy at Uppsala University was held by Adolf Phalén. The group around Phalén claimed against the group around Hägerström that Hägerström’s contributions to theoretical philosophy were neither consistent over time nor as original as Hägerström claimed in his “Selbstdarstellung” 1929 (Oxenstierna 1938; Strang 2010). Thus, for instance they argued that Hägerström’s epistemology—mainly the so-called rejection of subjectivism—owed much to Phalén (Marc-Wogau 1968).

Now, there is in general no logical link between arguments or theories in theoretical and practical philosophy. Hägerström’s radical and highly original cultural and social philosophy is one thing and his abstract and perhaps abstruse philosophy of science is another thing. The former should not be judged in terms of a critique of for instance his abstract concept of reality. But this was the outcome of his “Selbtsdarstellung”: either one accepts all of Hägerström’s philosophy or one rejects it on the basis of his general ontology.

Here I will focus upon Hägerström’s practical philosophy and argue that it was not only highly original but also very encompassing as a cultural critique—“ontology of the present” with Foucault. It has not been rendered the position it deserves in European social thought. And it should be divorced from his general epistemology and abstract ontology, which is not necessary for formulating his revolutionary practical philosophy. Similar ideas in social philosophy were simultaneously or later launched by other major European thinkers from an entirely different basis, like Nietzsche, Weber and Foucault. At the end of this paper I will shortly outline Hägerström’s theory of reality and indicate a few of its weaknesses.

**Hägerström’s Research Paradigm and Programme**

If we speak with Lakatos (1970), we could say that Hägerström pursued from 1910 to the very end of his life in 1939 a comprehensive research project stemming from one basic model or conceptual paradigm. Holding the chair in practical philosophy, Hägerström concentrated upon meta-ethics, suggesting a most encompassing model, covering
all forms of practical reasoning, according to the Kantian separation between “pure reason” (understanding) and “practical reason” (action).

Basically, Hägerström suggested in his famous inaugural lecture in 1911 on “The Truth of Moral Ideas” that objective values are in reality nothing but subjective valuations, or:

Objective values = Subjective valuations (HT)

This thesis could be applied to all fields of practical reason: morals, aesthetics, religion and law, which is exactly what he did for some thirty years in numerous publications as well as in his teachings.

The thesis has been designated as “axiological nihilism” and Hägerström is considered as the first philosopher to formulate an explicit non-cognitivist approach to ethics (Cassirer, 1939; Petersson, 1973), which became one of the main frameworks for meta-ethics in the twentieth century.

One may debate at great length whether Hägerström’s version of non-cognitivism is correct. Most philosophers in the Uppsala School endorsed it, calling it “value nihilism” to separate this position from the two major schools in meta-ethics: value objectivism and value subjectivism. However, with so many aspects of meta-ethics unsettled, it would be misleading to concentrate upon whether non-cognitivism or emotivism is an adequate theory or not. It was the application of his thesis that was revolutionary in European social thought, Hägerström engaging in deconstruction of established beliefs on a large scale.

It should be emphasised that when Hägerström put forward his 1911 thesis he only denied the possibility of a science of objective moral values. It was not until around 1917 that he launched a non-cognitivist theory about moral language in order to buttress his 1911 position. He suggested two forms of non-cognitivism, namely emotivism and prescriptivism, accounting for the use of words like “good”, “bad”, “beautiful”, “ugly”, “right” and “wrong” as well as “just” (Hägerström 1952).

Yet, it should be pointed out that non-cognitivism is basically a theory in semantics, theorising the use of words in various contexts. As such, it may be criticised as focussing on some contexts to the exclusion of other (Urmson 1969; Hare 1991). An alternative to non-cognitivism is the simple error theory, suggesting that people mistakenly believe that
moral attributes are properties inherent in the external world. As underlined by Moritz (1967), a theory about the possibility or impossibility of objective moral values is not logically tied to a semantic theory of the usage of moral terms. If the language of morals is more persuasive than descriptive in ordinary usage, then other terms could be introduced for objective values.

**Hägerström, Nietzsche, and Weber**

Once the scholars in the Uppsala School started to employ the term “value nihilism” denoting a) denial of existence of objective values, and b) some form of non-cognitivism (emotivism, prescriptivism) about the semantics of moral language, they were accused of propagating the annihilation of morals in favour of pure egoism. All of them, whether protagonists or antagonists of Hägerström, defended “value nihilism”, stating that it was merely a scientific theory. It did not entail any commitment to whatever position in ethics—it was merely a meta-ethical theory.

Yet, the word “value nihilism” as a descriptor of Hägerström’s thesis has, as a matter of fact, proved to be more confusing than clarifying. Time and again it had to be emphasised that whatever nihilism was incorporated into this concept, it was merely theoretical and definitely not practical. The Uppsala School philosophers distanced themselves from any form of Nietzschean nihilism (Hedenius 1965; Marc-Wogau 1968).

Yet, the use of this expression resulted in focussing Hägerström’s work upon irrelevant questions about whether he advocated authoritarianism, state socialism and the irrelevance of law and order. In reality, Hägerström strongly embraced humanitarian values with a leaning towards the Arbeiterbewegung.

Hägerström was in no way a precursor of post-modernist thoughts, like Nietzsche happened to be. Hägerström was a modernist philosopher, who set out to demystify the established morals of his time in a search for the reality behind appearances. He may best be compared with Max Weber.

It should be pointed out that in his analysis of religion Hägerström was as negative as Nietzsche, regarding all forms of religion—primitive,
Christian, Asian—as basically nothing but superstition. He wrote a lot about religious phenomena, almost using post-modernist images of how men and women can go to great length in constructing intricate concepts and beliefs that have strong social impact, yet lacking any reality foundation. But he never advocated any realist morals in the Nietzschean sense of physical strength and power. Hägerström, it was said, was a “good nihilist.”

Now, his first statement of his research project in the 1911 inaugural lecture should be compared with Weber’s famous article from 1904: “Die ‘Objektivität’ sozialwissenschaftlicher und sozialpolitischer Erkenntnis”, where he launched his modernist program. Weber took the same position as Hägerström a few years later, namely that science and ethics must be separated, both using the well-known Humean separation between Is and Ought. Neither of them presented a non-cognitivist theory backing up the distinction between science and morals. Only in 1917 did Hägerström launch emotivism and prescriptivism in his lectures on value and valuations (Hägerström 1952). Weber, to my knowledge, never published anything remotely similar to a meta-ethical argument.

Like Nietzsche and Weber, Hägerström wanted to disclose beliefs that camouflaged social realities, i.e., inequalities in terms of power and wealth. Thus, he regarded any attempt to establish and maintain objective values as merely mystification. And his research program involved a painstaking critique of each and every attempt to do so, whether in morals, religion or law.

**The Research Project and Its Paradigm for Social Thought**

In 1909 Hägerström published a small book on Marxism, focussing upon what he called “social teleology”. The style of writing is completely different from his work from 1908 in the philosophy of science: accessible, clear, simple and highly intelligible. It starts a long row of publications in cultural analysis and social thought, all written in the same reader-friendly style.

In this booklet—“Social Teleology in Marxism”—Hägerström anticipates the critique of Popper in his *Poverty of Historicism* (1957) focussing upon historical inevitability, although Hägerström displayed
strong sympathy for the objectives that had been transformed into the impersonal goals of historical development, or determinism. What Hägerström took from Marxism was the emphasis upon Unterbau-Überbau in human civilisations, combining this distinction with his basic research paradigm:

Objective values = Subjective valuations (HT)

The combination of Marxian ideology critique with his own meta-ethical thesis (HT) allowed him to undertake encompassing studies into how in various domains of culture valuations had been constructed into an objective reality of values. Hägerström was the great “deconstructor” of established beliefs in religion, law and morals, always underling the concrete interests that beliefs in objective values served, namely legitimating the power positions of the subordinating classes against those subordinated.

Morals

Hägerström in 1911 argued that:

Just as the science of religion cannot be founded upon religious consciousness, the science of morals cannot be based upon moral consciousness. In both cases it is a question about subjective thinking, emotional thinking, which in itself can be researched but which does not constitute any knowledge (Hägerström 1939: 63).

This is his basic starting point for his research program. Turning first to ethics, he employed HT in two ways:

1) Social critique: The established moral orders in society must crumble when it is realised that there are no objective values or OUGHT: “All open or hidden beliefs about our highest values having a cosmic and thus objective meaning crumble”. (Hägerström 1939: 60).

This is the foundation for modernist social critique. The given moral beliefs in society “having social and cultural impact” have no objective
Hägerström’s Legacy

validation. Thus, they can be rejected. “The morals of ordinary people linked with religion as well as philosophical systems of morals connected with it are like huge domes where objective values have found their protection” (Hägerström: 1939: 61).

2) Human liberation: Abandoning the erroneous belief in objective moral values does not entail moral nihilism. On the contrary: “When we have taken the last step and abandon all open or secret belief in our cosmos and thus objective values, morals will not die away, considering everything.” (Hägerström 1939: 62). Realising that values are nothing but valuations would be conducive to a more “softer judgment upon human conduct”, free from all forms of fanaticism.

As Hägerström continued his research program dispelling “social superstitious beliefs” (Hägerström: 1939: 95–120), it became obvious that he looked upon future social change as linked with the emergence of new values with no claim to objective foundation but linked with the true interests of the majority of ordinary people, i.e. the working classes.

In an article published in left-wing journal Tiden 1913, Hägerström expressed a strong attachment to socialist values:

Only where social activities are carried out within the framework of class differences, where a large part of the population feel more or less the tools of the rest, is there really a need for … superstitious legal ideas … in order to prevent everything from going to pieces. … But if we contemplate a society where the overwhelming masses feel an interest of solidarity in the maintenance of the social order, then such protection mechanisms must be superfluous (Hägerström 1939: 119).

Hägerström looked upon morals, including religion and law from a basically Marxist perspective. Morals had been objectified, placed in cosmos out there, to protect the interests of classes, their power and wealth. This had to be critiqued. However, realising that morals consist of valuations would liberate mankind from superstitution, especially when class distinctions were removed. At the same time, he rejected any claim of Marxism to deliver a scientific plan of action.
I another article in another left-wing journal—Spektrum 1931—did Hägerström acknowledge his deep commitment to the idea of “social justice”, resulting from “the rise of a hitherto subjected class to becoming a power factor in society” (Hägerström 1939: 140).

Religion

Hägerström devoted considerable effort at analysing religious beliefs. He was fascinated by the complexity of religious thought, which he though rejected as superstition. Basically, religion stemmed from emotions, the force of which led to the creation of religious beliefs that had no foundation in reality. Hägerström often entered into lengthy analyses of complicated theological notions, which at the end of the day he regarded as basically camouflage for material interests, i.e., power and wealth.

Employing his thesis, Hägerström argued that religious values have no objective existence. He was an atheist to the same extent as Nietzsche, although he refrained from ridiculing Christianity. Yet, his rejection of religious beliefs as superstition cannot be doubted. Thus, he begins an article on “social superstitions” from 1913 with the following declaration:

In the belief in the magical force of baptising there is pure superstition. The same is true of “Immaculate Conception” as well as the belief in the power of prayer to elicit holy powers, as also in the dogma about the divine nature of Jesus (Hägerström 1939: 95).

This amounts to a very strong rejection of religion, which he followed up in studies of Roman religion, medieval mysticism and Protestantism (Hägerström 1964). The perspective is basically a modernist one, as the philosopher must attempt to demystify religious myths. However, it is also Marxist, as religious superstition “form part of religious world views having obvious social consequences” (Hägerström 1939: 95), namely legitimating structures of domination, whether political or economic.

Hägerström became internationally renowned for his studies on especially Roman culture, where he wanted to show that Roman mythology was employed for the legitimation of Roman law, especially its basic concept of obligation, for instance in contractual matters or with regard to the duty towards the state, its officials and res publica.
The notion of objective values is to be found not only in ethics or aesthetics, but also in law. The theory of legal theory involves a number of moral concepts, such as justice, rights and duties. And they have been regarded as objective values, not only by the state but also in jurisprudence. It was not long after his rejection of morals and religious beliefs that Hägerström turned to an examination of basic concepts in legal theory, using again his basic HT paradigm. He pursued the inquiry into law and jurisprudence in two directions:

(a) Developing his own theory of law, Hägerström founded the school of Scandinavian realism, as an alternative to natural law and legal positivism.
(b) Examining a large number of contemporary approaches in legal theory, Hägerström came to the conclusion that jurisprudence as an academic discipline was seriously contaminated by implicit assumptions about objective values.

As basic legal concepts comprise values with a claim of being objectively valid, they have to be demystified, or deconstructed. From where comes this validity claim of legal concepts: obligation, just and right? Hägerström of course employed his basic HT paradigm and suggested that the origin of legal rights and duties are to be found with valuations, i.e. emotions. He focussed in particular upon the concept of duty, which is nothing but the attachment of a subjective OUGHT attitude to a particular action.

As a modernist theoretician, Hägerström searched for the reality behind the manifestations of law in formal concepts or written rules or statutes and he found it in the decisions of the judges and officials—this is the gist of legal realism. The implication is that legal validity is only legal efficiency, meaning that what is lawful, contrary to law, just and duty is what the judges happen to decide. His position is close to legal pragmatism, as expounded today by for instance R. Posner (1993, 1996, 1999), with its typical scepticism towards a high-powered moral approach to law (Dworkin 1986).
Starting from this approach to law, Hägerström could engage in a painstaking critique of jurisprudence as it was taught at that time, focussing upon its efforts to find a solid foundation for normativity, or the binding nature of legal concepts and rules. Any such attempt, he claimed, was or would be abortive.

Legal validity as for instance with obligation in private law or duties under public law can be derived from reason as with natural law theory or Kantian ethics. It can also be derived from a command, as with legal positivism. Hägerström wrote much rejecting both legal theories. Interestingly, he took a stand early in 1926 on Kelsen’s version of legal positivism, pointing out that Kelsen employed the metaphor of law as a closed system of norms (Hägerström 1953). Hägerström never looked upon law as logically coherent, instead emphasising change, inconsistency and contingency.

The practical implications of Hägerström’s critique of contemporary legal theories amounted to a radical cultural criticism, including:

(1) Rights and duties are endogenous to the legal system;
(2) No one is guilty unless convicted, i.e. established by a court;
(3) Abandoning the idea of objective legal values opens up for a more humanitarian approach to punishment and crime;
(4) Any validity of legal norms derives exclusively from the actual enforcement of from norms.

In fact, Hägerström developed early an interest in legal philosophy and political science, especially the combination of the two that was characteristic of German “Staatswissenschaft”. In a publication from 1904 Stat och Rätt (State and law), he questioned the concept of validity of legal norms, analysing two widely used legitimation theories, namely the contractarian approach and the historical school. He returned to legal philosophy time and again, analysing contemporary theories of law, such as for instance with Jellinek and Kelsen. It has been suggested that the 1904 book was strongly influenced by German idealism (Marc-Wogau 1968), but this is a questionable criticism. It is true though that the gist of his legal theories is to be found in the lectures from around 1917 (Hägerström 1961, 1963).
(1) Endogeneity of rights
This principle is a key implication from Hägerström’s approach. Outside of the legal order, rights and duties are moral valuations. They do not exist independently of a legal order.

Hägerström’s argument about rights has been much debated among protagonists and antagonists. He claimed that rights like for instance property rights do not exist (Sempe 2006). This position became a hallmark of legal realism, reiterated by adherents like Olivecrona (1966) and Ross (1934, 1966), but rejected by adversaries like Hedenius.

One may employ the philosophical distinction between connotation and denotation to clarify this issue. Hägerström claimed that the definition of “rights” in natural law and legal positivism was defect, comprising conceptual elements like valuations. Yet, he never denied that “rights” had a denotation, standing for positions in what he called the “legal machinery”.

By “rights”, legal scholars mean either a legally protected interest or a legally established capacity or will (Kramer, Simmons and Steiner 2000; Simmons 2008). The gist of Hägerström’s argument was not to deny the existence of legal rights, but to claim that legal scholars often argued that rights can be delineated without reference to the legal order in question. Thus, rights as interests were modelled as some form of natural properties of human beings or it was argued that rights as capacities stemmed from some form of command by a legislator, recognising such exogenous properties, from the point of the legal order. Once the exogenous connotation of “rights” is abandoned following Hägerström’s critique, it makes no sense to deny the existence of the denotation of the concept, which is also the position with reasonable adherents of the so-called “Scandinavian legal realism” (Eckhoff 1974, 1976).

(2) Guilt can only be established by court decision
Basic concepts like obligation and guilt, or the failure to respect a duty, are based upon valuations. Different valuations deliver various obligations. No one is naturally guilty of crimes unless a court decides so.

(3) Towards a humanitarian approach to punishment
When legal norms are looked upon as valuations, then they lose some of their aura of veneration, aloofness and sanctity, which opens up for a
democratic decision-making process about the pros and costs of alternative framing of laws, like for instance criminal law.

(4) Legal validity = enforcement
Typical of legal realism as well as legal pragmatism is that it tends to deny objective normativity. Legal norms are not inherently valid due to either reason or on account of any form of command, will or basic norm. Since legal norms are basically valuations, they are either enforced or not. Whatever validity they may enjoy depends upon the valuations of the people involved in the social system where these norms apply, i.e., are respected or violated with probable consequences.

Hägerström’s legal philosophy is a critique of both the natural law approaches and various forms of legal positivism. The practical implication is that legal concepts such as obligation, guilt and rights are demystified, opening up for the possibility of legal reforms, suitable for a democratic society with a humanitarian set of attitudes towards crime and punishment.

The Critique of Hägerström

It is no surprise that Hägerström became a controversial professor already during his life time, given the social radicalism of his popular writings, often in left-wing journals. One may distinguish between three different kinds of critique against Hägerström:

1. Nihilism: Denying the objectivity of values, Hägerström would be a forerunner to the totalitarian ideology;
2. Academic I—his theoretical philosophy: Expounding his epistemology and ontology on two different occasions involving a long time span—1908 and 1929—Hägerström did not arrive at a consistent philosophy of science:
3. Academic II—his practical philosophy: Attacking contemporary jurisprudence somewhat violently, Hägerström would have actually made a simple conceptual mistake, not separating between a norm sentence and a proposition about this norm sentence.
The basic message in relation to points (2) and (3) above in this article is that there is no logical relationships between the key ideas that Hägerström expounded, like axiological nihilism and legal realism on the one hand and general epistemology/ontology on the other hand. Thus, his cultural critique and social philosophy is not founded upon his concept of reality, as it is always maintained. As a matter of fact, this theory of reality that Hägerström has become well-known for, inviting valid objections it seems, was not launched until 1929, i.e. long after he engaged upon his cultural critique in 1911.

Concerning the point (1) above, it is completely unfounded, as Hägerström early expressed reservations concerning what was going on in Germany in the 1930s.

Hägerström devoted much effort to make his so-called value nihilism clear. One may make two quotations from 1917 in order to clarify what axiological nihilism entails: The first principle in value nihilism is stated as follows:

(H1) A moral idea is an idea about what should be … It is not at all an idea about the actual structure of reality … (Hägerström 1963: 2).

Thus, moral values are not objective, as they do neither exist in time-space nor are to be found in reason. At the same time, value nihilism does not imply that moral values are merely nothing:

(H1) Our moral ideas go back to certain emotions, by which we take a subjective attitude to various phenomena. (Hägerström 1963: 3).

In fact, Hägerström devoted much time to document these moralvaluations, which had played a major role in human history, for instance in religion. He was a great deconstructor of ideologies, religious or secular, searching for the interests these moral ideas provided legitimat-ion of.

(A) His ontology
Hägerström published in theoretical philosophy on a few occasions, although the total size of these publications does not even nearly match his voluminous set of books and articles in practical philosophy. Yet,
his theory of reality caused a major debate in Swedish philosophy. Two arguments were launched against Hägerström’s theoretical philosophy:

(a) His epistemology—the rejection of subjectivism—was not original, as his colleagues at Uppsala contributed a lot (Oxenstierna 1938).
(b) His ontology—reality as logical coherence (1908) or space-time continuity (1929)—was attacked as flawed, on the one hand because the 1908 position is not the same as the 1929 position, and on the hand because it involves contradictory notions (Marc-Wogau 1968; Wedberg 1966).

As Hägerström’s cultural philosophy cannot be derived from his theoretical philosophy, any deficiency in his epistemology or ontology does not reduce the intellectual and practical force of his social and political philosophy. However, one should point out a few things concerning his ontology:

(i) Hägerström’s own attempts to argue that his concept of reality formulated in 1929 (“Selbstdarstellung”) had already been contained in his 1908 publication on ontology and epistemology (“Das Prinzip des Wissenschaft”) were not well thought through. On this point, the antagonists of Hägerström were more correct than the protagonists of him (Fries 1945; Wedberg 1944). Yet, as emphasised, this criticism however justified does not reduce the value of Hägerström’s practical philosophy.
(ii) One may certainly discuss whether Hägerström’s formulation in 1929 of his concept of reality is either coherent or plausible. This is interesting even if one accepts the argument that his position 1908 (Das Prinzip des Wissenschaft) is different from that of 1929. In general, it holds that Hägerström’s publications in the philosophy of science—the German 1908 book as well as the 1910 book in Swedish “Botanisten och filosofen” (Hägerström 1957) have a style of writing that is completely different from the publications in social and legal philosophy, namely being abstruse.

Hägerström in 1929 rendered the following formulations of his theory of reality (Hägerström 1964: 42–60):
(T1) “The law of contradiction as the law of reality”

T1 is also to be found in the publications from 1908 and 1910. It states the rationalist approach to reality, typical of for instance Descartes and Spinoza. Something is real if it is not contradictory, i.e., self-evident meaning logical necessity or mathematic truth.

(T2) “Self-identity and determinateness”

T2 may be linked with T1, as also the law of identity belongs to the rationalist framework besides the law of contradiction. However, T2 is also related to T3 below, because something determinate may be some object or property or event found in experience and not reason.

(T3) “Space-and-time as the only conceivable continuum for the real”

T3 is based upon a realist or empiricist approach to reality, as with e.g., Berkeley (esse est percipi) and Hume. Real objects or properties exist in space-time just as events occur in space-time, but they are not necessary, logically speaking.

It is not difficult to show that these theories of reality—T1, T2 and T3—cannot be harmonised into a super theory. Instead one must underline that these theories harbour mutually exclusive concepts. It makes no sense to try to amalgamate them or attempt to find a common core. The term “reality” is an essentially contested notion, where the procedure of explication can only produce alternative conceptions: rationalist or empiricist. One should separate between logical necessity (a priori) on the one hand and empirical lawlikeness or mere contingency, probabilities and randomness (a posteriori) on the other hand (Pap 1966; Kripke 1972).

Hägerström’s concept(s) of reality have been much debated among protagonists and antagonists (Fries 1944; Marc Wogau 1968), but the important point to insist upon here is that his theory(ies) has no relationship to his social philosophy. It could have been launched on the basis of other ontological commitments like Cambridge (except a few like for instance Moore) or Oxford philosophy, logical positivism.
or American pragmatism. Actually, Hägerström’s approach to the concept(s) of reality is little original.

He had a basically static framework for analysing issues in the philosophy of science. Thus, he searched for criteria of “absolute knowledge” and “true reality”. Theorising knowledge and reality, it was never clear whether Hägerström spoke about the truth of propositions or sentences on the one hand or the existence of objects and properties as well as the occurrence of events on the other hand. His so-called “Copernican revolution in epistemology”, meaning that consciousness can directly grasp reality, removing the antimony of Kant between consciousness and “das Ding an sich”, excluded any phenomenological approach, as with his contemporary Husserl (Bengtsson 1991) or phenomenalism, as with the Vienna School. Yet, philosophy of science is fundamentally a set of arguments about the dynamic growth of human knowledge, how to find evidence for and against hypotheses as well as integrate various hypotheses into a coherent structure for a provisional theory (Quine and Ullian: 1978).

One may point out that Hägerström was NOT well read on contemporary European theoretical philosophy, especially developments after the Great War. Thus, he does not analyse at any length the emerging phenomenological school (Bengtsson 1991), Wittgenstein or the Vienna School (Nordin 1984). It has been claimed that Uppsala School philosophy was “logical analysis” (Wedberg) or close to “logical positivism” (Marc-Wogau). This is hardly correct, as the School did not engage in philosophical logic at all, as in the Frege-Russell tradition, or structured its ideas in terms of a separation between theoretical and observational language on the one hand or between object language and meta-language on the other (Strang 2010).

(B) His legal philosophy
The attack upon Hägerström’s legal theory by Uppsala colleague I. Hedenius in 1941 is far more serious, as it challenges his originality in an important part of his social thought. When Hedenius suggested the so-called “Hägerström-Lundstedt mistake”, he did not intend to reject legal realism. On the contrary, he aimed at improving the legal argument of the Uppsala School by removing excesses, committed especially
by Lundstedt as professor of law at Uppsala (Hedenius 1966). Hedenius himself defended axiological nihilism in principle and his criticism of Hägerström’s legal theory has nothing in common with objections against it coming from natural law or legal positivist scholars (Geiger 1946).

Legal philosophy is a discipline with on-lingering unresolved issues, which makes Hägerström’s many publications interesting and relevant. Legal theory faces several difficult conceptual problems, including:

(i) What is law: statutes, rulings, reasonable principles, norms as directives or imperatives, values or valuations?
(ii) What makes law binding: reason, command, a basic norm, rules of recognition, courts and the police?
(iii) Is jurisprudence a science or a technique, art or craft?

Hägerström wanted to make a strong contribution to legal philosophy, which led him to follow the European scientific debate on legal theory closely for many years, starting around 1900. He rejected the main theories at that time, with the argument that they were based upon natural law thinking or sprung out of positivist notions of a fundamental command or will. Did he go too far in criticising contemporary jurisprudence?

Speaking generally, one may approach law as ordered couples of norms and their enforcement where legal positivists like Kelsen and Hare focus upon the structure of norms, while legal realists and pragmatists emphasise the enforcement of norms by courts and state officials. Hägerström of course underlined the latter part of this ordered couple.

Now, Hedenius argues that Hägerström and Lundstedt confused two different norm sentences:

(i) “‘Proper’ norm sentences”: A sentence that states what should be done, or must be done, unconditionally or conditionally;
(ii) “‘Improper’ norm sentences”: A proposition that states which real norms above (i) exist where and when, meaning belong to the established legal order of a country.
This distinction between norm sentences on the one hand and norm propositions about norm sentences would explain how Hägerström and Lundstedt could maintain that most if not all of jurisprudence has a problem with scientific objectivity or harbours unwarranted normative presuppositions. They had simply failed to understand that jurisprudence does not advocate the norms that it scrutinises when analysing law as an empirically given order.

This critique seems almost too plausible to be adequate. How could such a mistake be done? Legal norms, however they are expressed, have an inherent claim to normativity, obligating people or binding them. Yet, propositions about legal norms are not themselves exercises in normativity.

What Hägerström focussed upon was not the occurrence of legal norms, whether in statute law or case law. He examined the theoretical arguments in jurisprudence, explaining what law is and how come that it is obeyed with a certain probability. He claimed that he found what he always called “metaphysical assumptions” in these legal theories, with natural law scholars or legal positivists. This focus upon theories explaining law is hardly the same what the Hedenius’ distinction targets, as Hägerström did not much analyse his so-called “proper norms”, at least not in his publications on legal theory.

I do not wish to argue that Hägerström was basically correct in his painstaking criticism of various legal theories, especially from German scholars. Even less would I wish to commit myself to defending the virulent critique of many legal scholars by Lundstedt (1932, 1936), ending up in his pronouncement of the “Unwissenschaftlichkeit” of jurisprudence. Yet, neither Hägerström nor Lundstedt can be rebutted simply by means of the confusion of the two legs in the Hedenius’ distinction.

Interestingly, Kelsen, who definitely did not endorse any form of legal realism, rejected the relevance of Hedenius’ distinction. It is worth quoting him at some length:

(A) Wedberg insiste … sur ce qu’il appelle le ‘fondament factuel de la science du droit …, entendant pas “fondament factuel’: ‘Certain oral or written utterances to which a specific legal authority is accorded. Such utterances are codified in law or statutes, court decisions, formal
contracts … customs or practice, which likewise are recognized as possessing a specific legal authority’ (Kelsen 1979: 247–8).

Kelsen refers to an article by Wedberg from 1951 that parallels Hedenius’ distinction above. Kelsen (1979) comments upon the distinction between i) proper norm sentence and ii) propositions about the norm sentence:

Wedberg qualify ces actes, par lesquels sont posées des normes juridiques générales ou individuelles, de ‘fondament factuel’ (factual basis) de la science du droit. Au sujet des propositions de la science du droit énonçant que certain normes sont valides (these rules are in force), il écrit qu’elles sont ‘une référence au fondament factuel de la science du droit’ (1979: 260).

And he rejects the Hedenius’ distinction with the following argument: “Mais l’énoncé selon lequel une norme est valide ne se réfère pas à l’acte qui la pose. Celui-ci est une condition de la validité, mais il n’est pas la validité” (Kelsen 1979: 463f).

Hedenius argued that jurisprudence is an empirical science investigating whether a norm of behaviour is in force, which means:

The validity of one single rule of law is the same as the existence of a matter of fact regularity in a certain human behaviour. Thus, it is always a question of activity conducted by the so-called authorities (Hedenius 1965: 78f).

Jurisprudence is not a social science, as it does not make surveys of people’s behaviour, establishing statistical means and standard deviations. It establishes what is considered valid law on the basis of legislation and court decisions. The Hedenius’ distinction is itself questionable as explication of what jurisprudence is all about.

**Hägerström and European Philosophy and Social Thought**

By distinguishing clearly between Hägerström’s theoretical and practical philosophy, one arrives at a better appreciation of his originality
as philosopher. Lecturing and publishing in practical philosophy, Hägerström’s work can be designated as “ontology of the present”, in accordance with Foucault.

The present in Hägerström’s cultural ontology was nothing less than the bourgeois society at its Weberian peak: Protestant capitalism around 1900. The key message is that its structures of domination—economic and political—cannot be given legitimation by means of objective values—a direct implication of his base thesis.

Swedish society around 1900 was undergoing rapid social change from an agrarian hierarchical structure, dominated by wealthy farmers and laissez faire liberals, together with the Church, the nobility and the King, to an urban industrial structure with a growing working class, inspired by German Marxism and demanding social reforms as well as parliamentary democracy. The new industrialist class of entrepreneurs and bankers, like the Wallenberg family, the Kempes and the Nobel brothers created huge fortunes as the Swedish economy became part of global capitalism in certain industries. In reality, Hägerström’s Sweden adhered to the logic of development in both Unterbau and Überbau portrayed in Weber’s model of capitalist ethics from 1904 (Weber 2010).

Capitalist domination rests upon a moral and legal order that legitimates the virtues of the “Geist des Kapitalismus”. The values of the capitalist economy—property, thrift, risk, wealth accumulation, investment, rational calculation, duty—are regarded as objective, to be respected ultimately by natural reason and obligation in conscience, if not by religion. Hägerström crushed entirely this Weberian legitimation basis for the virtues of modern capitalism in religion, morals and law.

At the time when Hägerström started his radical cultural critique Sweden did not harbour a democratic regime, its Riksdag being dominated by the nobility and the wealthy farmers—what writer August Strindberg called “Det Nya Riket” (The new regime). There was little of labour legislation and virtually no regulation of industrial life and employment conditions. Education was in the hand of the Church, teaching duty endlessly in order to inculcate the Protestantic virtues into conscience. Family matters were handled on the basis of Lutheran precepts. Established morals were guaranteed by the King and the Church, supported by the large class of independent peasants, dominating Swedish politics together with noblemen and wealthy capitalists.
Hägerström’s Legacy

until the arrival of the *Arbeiterbewegung*. Hägerström’s attack on the established order started a cultural evolution ending with the world famous movies of Ingmar Bergman, crushing the notion of obligation in a *bourgeois* society as the inner voice of conscience—the voice of God in man and woman. Hägerström’s modernism opened up for the coming of a most post-modernist society in Sweden after the Second World War where the ethics of the *bourgeoisie* no longer rules people.

The attack on the *bourgeois legitimation* of state and society spread out in numerous publications of Hägerström was, when taken together, as virulent as the Foucault critique of bourgeois values after the Second World War (Foucault 1977). Hägerström targeted the essential elements in the established normativity and rebutted its core beliefs:

a) “Religion is superstition”
b) “Morals is nothing but valuations”
c) “The duty in conscience is merely a feeling of obligation”
d) “Crime only exists in court decisions”
e) “Property rights do not exist”
f) “Religion and official duties always serve as myths for the legitimation of domination—political or economic.”

Concerning Hägerström’s social and political philosophy, it may be argued that it was almost exclusively negative—a *deconstruction* long before Derrida. He seems to have held the perhaps somewhat naïve belief that moral issues could be resolved on the basis of humanitarian valuations, once the mystique of the established order had been unrav-elled. Once his research project—HT—had been applied to various domains, it came to an end, as no new ideas were added.

*Conclusion*

Foucault made a lasting contribution to European continental philosophy by making cultural critique a central field in philosophy. Arguing convincingly that the “ontology of the present” must be rendered the same status within philosophy as general ontology and epistemology, he showed that several philosophers had made lasting contribution to
the de-mystification of legitimation beliefs and values of the society in which they were active, like especially Max Weber.

Hägerström’s many publications and constant lecturing at Uppsala University for more than 30 years should be seen in the light of the “ontology of the present.” His social and political writings all add up to a most forceful, intellectually speaking, rejection of the ethos of the Bourgeoisie in capitalist society. They have a strong post-modernist appeal in deconstructing the legitimating ideology of the ruling classes, displaying a set of myths.

References

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It obviously appears as puzzling to especially American scholars that Myrdal combined radical anti-metaphysics with being a compassionate world-improver and do-gooder, two positions not in obvious harmony. Myrdal combines many disparate influences, only to mention Enlightenment Utopianism (e.g., Fourier), J S Mill’s “moral science”, and jurisprudence, which was Myrdal’s first academic field of study and evidently a methodologically formative one, which is explicit in several of the interviews with him kept at ARAB (the archives and library of the Swedish labour movement) in Stockholm.

Axel Hägerström, despite being the main representative of the “Nihilist” Uppsala school in philosophy, did not really found a school of devoted pupils in his own discipline (see Hedenius 1980 and Nordin 1984). He was a dominant figure, influential in both Swedish political and cultural life. Even those who strongly opposed his views were still defining their identities with Hägerström as “sparring partner”. This goes for Gunnar Hägglöf, the Swedish senior diplomat, who was in charge of much of our foreign trade during WW2, and for Dag Hammarskjöld, both Christian believers. There are many similar cases.
However, especially in jurisprudence Hägerström had his school, of Scandinavian legal realism, with representatives such as Karl Olivecrona and Vilhelm Lundstedt.

Gunnar Hägglöf converted to Catholicism and could not accept that Hägerström’s views that value statements reflect emotions and not facts seemingly did not allow for moral judgements, for instance against Fascist ideologies. That is, by means of science, what Arnold Brecht spoke of as the seamy side of scientific value relativism, or “Alternativism”, as synonymous in Brecht’s words (Brecht 1959).4

Law had no morally binding force but was an empirical matter of calculability, action and consequences. Law was more basic than “justice”. Law is not an “independent variable”. An orthodox Scandinavian legal realist does not write about rights as something real but his formulation is “rights”, with quotation marks, or adding a qualifier, “the realities this concept is supposed to cover”. Also Myrdal and the Dane Alf Ross belonged to this school. There are very many letters between Myrdal and Ross over decades, documenting also their allegiance to Hägerström. Ross and Myrdal even together made a “pilgrimage” to Uppsala in fall 1935 to get the blessing of their prophet, which they did receive (Strang 2003). Much earlier—in their student days in the mid-20s—Gunnar had in a letter to his life companion Alva told her about the encounter with Hägerström’s thinking, evidently a revelation.5

The young Myrdal—the megalomaniac egocentric—almost sounds like a shy school-boy when he writes to Hägerström and asks for his portrait, “a not too small one”. The tone is quite different from Myrdal’s normal self-reliant attitudes. In old age, when he lived in Gamla Stan (Old town in Sthlm) he makes Randgloßen in Margit Waller’s biography of her father Axel Hägerström indicating precisely those strong anti-metaphysic elements which we associate with Hägerström’s combination of negative value ontology and non-cognitivist value sentence theory. Myrdal’s marginal notations are made by a hand marked by Parkinson’s disease and a note about Janken (Grandson, oldest child of Jan Myrdal) dropping by to help him in a domestic matter indicates the time and place.

Myrdal late in life also writes a letter to Margit Waller in which his reverence for Hägerström as a lasting intellectual inspiration is very explicit: “Although I have only read Axel Hägerström’s popular books
but of course been indirectly influenced in the same way as my whole generation he has meant incredibly much to me which is evident in *Vetenskap och Politik i Nationalekonomi* (1930 [1929]) which is now translated into several languages, in English as “The Political Element in the Development of Economic Theory” (1953, trans. Paul Streeten and 1990, Transaction edition with a long and very good introduction by Richard Swedberg), adding “I of course met him later in life. I in particular recall when we were like of one mind that the continuation of his thoughts had a bearing in the social sciences, especially in the virgin fields of sociology of knowledge”. In a postscript he asked for another photo of Hägerström. (My translation of letter of 18 April 1968, UUB. Signum Hägerström 38).

The strong and consequent allegiance to Hägerström throughout his life is very well documented—beyond reasonable doubt—although it raises questions about the coherence in Myrdal’s thinking. The many letters between Gunnar Myrdal and Alf Ross are also very informative for the role of Hägerström in Scandinavian academia in the mid-war period and it is a source material as yet not really utilized. There is a vast correspondence over decades.

There is, however, a development in Myrdal’s thinking in value-philosophical matters, from 1929 to 1970. How to avoid uncontrolled value intrusion in social science is a main concern for Myrdal and he returns to this topic. The attention he paid to this problem is also clear from his concern with the methodological appendices in *An American Dilemma* (1944), where explicit value-premises are put to work.

It is otherwise more opaque what made Myrdal into Myrdal; in the many interviews Myrdal gave, for instance for Stellan Andersson at ARAB, he has a tendency to say different things at different times. One has to keep in mind that he likes to refer to himself and also that Rudolf Kjellén, Franz Boas, perhaps also Herbert Hoover (sic!) provided influences to various parts of his work. It is however clear that he was not much under the spell of Karl Marx, although there are affinities, if we consider them as political economists of the historical institutionalist school. Despite Myrdal’s many antinomian stands and elements of Modernity he is basically imprinted by Enlightenment reason, in this sense typical nineteenth century thinker. Modernity, however, started half a Millennium ago.
The inspiration from Hägerström also meant a remedy against Marxian impulses: “Through his deep sceptical attitude to metaphysics of all kinds and his unrelenting insistence on clarity in the concepts used for social analysis, he contributed to saving the post-war generation of intellectuals in Sweden from becoming Marxists”, Myrdal writes (1971: 278, here quoted from Mindus 2009: 185, her translation).

Myrdal’s relation to Max Weber is an issue. Myrdal is “translating” the legacy of Max Weber and Axel Hägerström into policy making. He is a pragmatic extension of the Weber-Rickert solution to the value-incommensurability problem in post-Enlightenment. The notion of Gunnar Myrdal as a more radical Weberian than Weber himself calls for further investigation of “Science, Values, and Politics in Gunnar Myrdal’s methodology”. As so often in Myrdal’s case there are inconsistencies and antinomian stands. Myrdal repeatedly confirms his deep allegiance to Hägerström’s radical anti-metaphysics, but actually denies Weberian influences on his way to apply explicit value premises, as a vehicle to avoid uncontrolled value intrusion in policy analyses, despite obvious affinities. He admits having read PESC (The Protestant Ethic and the Spirit of Capitalism) and it is commonly assumed that he is influenced by Weber’s Objectivity essay (1904). Myrdal writes to his German friend and translator Gerhard Mackenroth: “thank you for the book on Weber, please keep me updated if you see more”. I do not know which book is referred to, but time for various publications indicate that it could perhaps be Pfister’s book on the ideal-type (1928), which then would provide a good prototype. Pfister is much aware of Carl Menger’s importance for Weber’s methodology.

Myrdal, however, insists that he had himself invented the use of explicit values as point of departures, in order to avoid bias in rationalizing instrumental value-hierarchies. The only influence he willingly admits is Hägerström’s philosophy, according to which values are either always false or in a slightly weaker interpretation neither false nor true.

The predicament of anxiety of choice is still with us, accentuated in post-Modernity. Evaluative judgements cannot be verified or rejected by the means of science. The use of significant social movements as norm-senders provides a pragmatic way out of the norm-sender problem, even if it remains unresolved philosophically, since the top-value
when rationalizing value-hierarchies cannot be proven. Explicit value-premises is the solution Myrdal advocates. One might say that after Rickert, Weber, and I would like to add Hägerström and Myrdal, the burden of proof has shifted in value philosophy (see Blegvad in 1991). Value-objectivism and natural law thinking has a credibility problem. In general attempts to bridge the is-ought gulf often have the character of Aristotelian re-foundations or biologism—or become more tentative and modest, like in communitarian notions of Lokalvernunft. Habermas in recent works replaces truth with “validity”, which has a scent of persuasive definition, escaping Hägerström’s position without really challenging it. Scholars such as Edvard Westermarck and Hans Kelsen carry straws to the same stack, even if they disagree on select points, or rather misunderstand each other. It is an old story: Hume (“is” vs “ought”), Bentham (jus vs lex, referring to his vehement anti natural law standpoint) and to some extent also Kant had anticipated the demise of natural law and value objectivism. Historicism (Troeltsch) is characterized by ambiguity, since many historicist scholars do adhere to belief in eternal values—even Rickert, “the father of historical relativism”—while the methodological core of historicism is the denial of eternally valid norms or laws.

Hägerström was well familiar with Kant. He wrote a thesis on *Kants Ethik* (Kant’s ethics) 1902; a work of more than 800 pages (see Mautner’s bibliography for full bibliographical details). There is no need here to dwell upon influences on Hägerström, who is a pioneering mind and in his own view—right or wrong—was intended to represent a Copernican revolution in philosophy.

In a secularized world we cannot unite upon any true values. We might at the best establish some working “community of assumption” in order to enjoy a civilized order (or “polished” society, to employ the Scottish Enlightenment philosopher Adam Ferguson’s term), and perhaps in the spirit of Bentham and Kant discuss various tentative highest values, such as “the pursuit of happiness”. “Public welfare” also popular in post-Jacobine Enlightenment; also in fact a substitute for the lacking ultimate value for Hägerström’s followers as well (Lundstedt). The dignity of the human individual as a cultural being is probably an alternative close to both Kant and Weber. But the “Archimedean point” has to be postulated.
“Values are not inherent in the course of history; human beings impose their own more or less decent values in a more or less intelligent way. Engaged students of society have the task of perceiving correctly the needs of the present, framing the right political issues, and devising solutions that are both technically sound and politically appealing”, as Timothy Tilton characterizes Myrdal’s predicament (1992: 19).

In his “Preface” to the Swedish edition of Vår onda värld (never published in full in English but published in Danish) Myrdal writes: “It goes against the general attitude of this author to suggest that the world is evil. The Human beings are not evil, but weak, opportunistic, shunning the truth, fighting to keep our protective walls of illusions. And then it happens as it happens, events that could have been avoided go out of control” (my translation). And later on page: “behind the masque they carry in the roles they play in life all human beings are on a fundamental level all very equal. And they all think they are good. They wish to be rational and fair. And they all refer to their conscience and that they had good intentions also when everything went wrong.” (Myrdal 1964: 7f.). One cannot say that Myrdal has a dark anthropology, not the reverse either. He is rather a realist.

In letter to Alva written during his long train trip through Siberia back to the USA in 1941 he actually writes that he thinks that all human beings are good. He might have been imbibing, socializing with “fellow travellers” on board. He has, however, a natural science approach and tends to see human beings as live machines: if there is a hang-up, just find the right screw to twist around to mend the error, is one apocryphal statement by Myrdal (according to his son Jan, who is perhaps not impartial witness).

That Myrdal is so strongly influenced by Hägerström is interesting also because it illustrates that there is no necessary contradiction between being a value-nihilist and a compassionate world-improver; or at least that Myrdal did not see any inconsistency in this. He is a programmatic Hägerströmian and yet claims that he follows up on J.S. Mill’s “moral science”, which might be coherent if we admit that we have to take personal responsibility for our value allegiances.

While influences from Hägerström are explicit the influences from Weber are, again, more problematic. But Myrdal offers an extension of Weber/Rickert on value-relation (Wertbeziehung) and his alternative
for finding significant values to use as top-values simply is more instrumental, than the “cultural twist” for professors of Weber’s generation (Eliaeson 2012).

Myrdal actually claims that he formulated his method of explicit value departures for policy analysis independent of Weber. There are some reasons for scepticism. There is an exchange of letters between Myrdal and Herman Wold in Uppsala on this, and Myrdal also wrote an appendix on his relation to Weber. Stellan Andersson has published this, in his article on the value of personal archives, for Nordeuropaforum, 1999. In his letter exchange with Wold, there is an appendix “Max Weber and Myrdal”.

The text that best offers indications of similarities and differences between Weber/Rickert and Myrdal/Hägerström is probably “Das Zweck-Mittel-Denken in der Nationalökonomie”, in Zeitschrift für Nationalökonomie, 1933.

Even if Weber and Hägerström often are lumped together under the common label “scientific value-relativism” there is a difference, with respect to their modalities of value-incommensurability. In the case of Rickert and Weber we don’t know if values are “true” or “false”. We can’t tell by scientific means. Hägerström’s nihilism is more radical. To him values are always false, or perhaps neither false nor true; they simply lack any cognitive content and are to be compared with interjections, coughs or sneezes.

Myrdal’s criticism of Weber has the character of empathetic and sympathetic attempt at an improvement, to purge Weber’s lingering natural law elements. This also appears as coherent with his later remarks on what he found wrong with Weber, that he found out that Weber was not alien to “transcendental” systems of values, opening for “backdoor-normativism”. This remark is unusual as a criticism of Weber but makes some sense, regarding Weber’s ambiguity regarding Rickert’s lingering normativism. Certainly Weber is less anti-metaphysics than Hägerström, since it is left open how the frontiers between faith and intersubjective knowledge might be in the future (neo-Kantian infinite regress).

In the appendix to Wold, in which he admits having read Weber’s PESC (Protestant Ethic and the Spirit of Capitalism) and what Weber had to say on Marxism Myrdal seems to believe himself that his way of solving the norm-sender problem was not influenced by Weber but only
by Hägerström; he also mentions his contacts with Karl Mannheim, influences that might well have substituted for Weber. It seems clear that Myrdal’s application of Weber/Rickert “Wertbeziehung” (value-relation) is a step forward in scientific policy formation, although Weber applied the same strategy already in Freiburger Antrittsrede (1895).

Wold writes that he was pleased to see the reference in An American Dilemma on p. 1057 “to Louis Wirth, where footnote (a) brings us back to Karl Mannheim and Max Weber’s groundbreaking ideas about the explicit specification of value premises in the social sciences. Then Gunnar’s Appendix brought an avalanche of new ideas” (Letter from Wold to Myrdal on 12 March 1974, here quoted from Andersson 1999: 24). Myrdal takes this as an accusation having learned more from Weber than he had admitted, and says he is touchy on this score, “Whatever personal faults I might have, in this regard I have been scrupulous” (Letter 21 March, quoted from Ibid.).

Wold writes (letter of 18 April): “as far as I can understand it is a commonly-held opinion that it is Max Weber who is the originator to the following theses: ‘Social sciences can be made objective if value premises are explicitly introduced among the premises of the analysis.’ It is a very interesting question for the history of science if this thesis can be supported in Max Weber.”

Myrdal on 29 April asks: “I am a little worried by the sentence you put within quotation marks. Whom are you quoting? I almost believed that I was the first man to introduce the term ‘value premise’.” The discussion goes on, Stellan Andersson remarks.

An American Dilemma is an exemplary application, with its extensive appendices on value premises. Myrdal was very influential in American public life and was quoted in the Supreme Court’s decision in Brown vs Board of education 1954 (see Lyman 1998). His value philosophy and relation to Weber has in contrast hardly been on the agenda. In the Carnegie oral history archives Guion Johnson provides a narrative on her and Myrdal’s exchange over value premises.

Asian Drama also applies scientific value relativism, as indicated in the introduction: “The Beam in our Eyes” (a biblical reference; cf. Matthew 7: 1–2).

Although Myrdal is all the time influenced by Hägerström his positions on the methodological consequences are not the same
over time, that’s why he wrestles with the problem over decades. His Hägerströmianism is consequent. But when working on *The Political Element* … in the late 1920s Myrdal is probably more naïve empiricist a la Viennese empiricist philosophy, still believing in value-free science, while he later on engages in the problem of science and politics in social policy research. Myrdal had to, since avoiding uncontrolled value intrusion when applying explicit value premises was a genuine problem in his research designs. He had to do what Weber talked about on the meta-level in his polemical essays.

The Uppsala school of philosophy has universal significance and it is, moreover, remarkable that very similar thoughts emerged simultaneously in different places. Edvard Westermarck, Axel Hägerström, Max Weber and Hans Kelsen knew about each other but just barely, no real exchange took place between them. Hägerström was influenced from strands in England and Austria. His own influence abroad is mainly through the works of Myrdal, Olivecrona, Ross and Lundstedt, disciples of Scandinavian legal realism.

Myrdal (1944) is Hägerström—and Weber—applied.

Notes

1. ARAB=Arbetarrörelsens arkiv och bibliotek (The archives and library of the labour movement). Saint-Simonian Jacobism could be a label for Myrdal. However, his daughter Kaj Fölster says that there was no trace of Saint-Simon in Gunnar’s Geneva library, in which she had plenty of time to browse around when she grew up. Hirdman refers to Fourier as an Utopian with high affinity with Myrdal. He was more Utopian than Enlightenment though.

2. Hägerström and Adolf Phalén were by no means enemies but they had very different habitus and attracted different students.

3. Hägglöf writes: “I went to listen to the then leading philosopher in Sweden, Mr Hägerström, whose severe and deeply lined face greatly impressed me. He was not easy to understand. My almost exact contemporary, Dag Hammarskjöld, tried sometimes to explain the great philosopher’s complicated theories and argument to me. I can’t say that Dag had a gift for making a problem easier to understand; rather the reverse. However, we enjoyed these dialectic exercises as we walked from the University to the castle, where Dag lived with his father, the Governor of Uppsala.” (Hagglöf 1971: 15). Hägerström actually also inspired theology in Lund (Anders Nygren), abridging the fronts between faith and science.

4. There are several parts of Brecht’s magisterial book being of highest relevance, only to mention “Value Relativism, The seamy side of scientific method”, “Birth of Scientific Value Relativism. The Fathers”, including ten pages on Max Weber”, and the whole of ”Part Four. At the Borderline of Metaphysics”. There is also a whole chapter (VIII) on the “Icarian” flights for finding the “highest value”.

5. On the intellectual level there is a hint of “Pygmalion” here: Gunnar sent useful books to Alva, during their student years: "Hereby I give you, my beloved one whom I am so proud of, a small book … It is remarkable in some ways—and I shall talk to you about it when
we see each other. My little girl, don't you know: I like your wisdom” (here translated from
Hederberg 2004: 41). The Hägerström text was the famous inaugural lecture from 1911, “On
the Truth of Moral Ideas”. See also Ibid.: 166, when Alva more than two decades later (1945)
asks Gunnar not to wake her up, since she will go to bed at 9 pm so she can read Hägerström
between 5 and 7 am next morning.

6. In the letters to his teacher Gustav Cassel from America during the Rockefeller stipend
year 1929–30 Gunnar writes about President Hoover’s anti-cyclical and in a way “Keynesian”
programme avant la lettre program. Hoover was a social engineer and a planner—but also a
liberal, which set limits to his “clout” in policy formation, restricting him to urge big capital to
invest and be expansive. The huge federal programs such as TVA came during the Roosevelt
administration which took over Expertize from Hoover. Even the Hoover dam came too late
to impinge on the national economy and employment.

7. Jan Olof Nilsson (1994: 145f). Nilsson has no secure documentation but there are indi-
cations that Gunnar had encountered Weber’s methodological work already in Leipzig 1926.
Nilsson adds that in particular Weber’s Objectivity-essay from 1904 and “Wissenschaft als
Beruf” (1919 [1917]) have an impact on Weber, to judge from clear affinities. Nilsson also
refers to Staffan Källström (1984 and 1986) who has a whole chapter on Hägerström-Myrdal-
nexus in his dissertation from 1984.

9. The note (a) mentions Louis Wirth’s “Preface” to Mannheim’s Ideology and Utopia (1936)
and lists some exemplary sociological works “which are free of implicit value premises”, as
Myrdal writes.
10. My scrutiny of the material available at ARAB, indicates however that not much of
“value added” comes out of the further exchange.
11. Available interviews from Myrdal’s Carnegie project, at Columbia Rare Books and
Manuscripts Department, oral history archives, An American Dilemma.
12. Ragnar Björk in Uppsala drew my attention to this, in an e-mail of 19 July 1997.

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Culture, and Society 14(3), Spring. (This item builds on the session on “The Myrdals and
modernity”, which I coordinated at the ISA-congress in Montreal 1998. Lyman and I
were guest editors for a thematic issue of IJPCS).


Hägerström's Legacy


In this text I shall examine Axel Hägerström’s incommensurability thesis, as put forth in his famous inaugural lecture delivered when he was installed as a professor of philosophy at the Uppsala University in 1911. The incommensurability thesis has it that our moral views, everyday as well as philosophically reconstructed and refined, comprise elements that are in mutual competition in a manner that resists rational resolution: There is no way of ranking them, nor any method for making reasoned compromises between them such that the competing concerns would be partly accommodated. Next, I shall compare this thesis with similar, later developments in an entirely different philosophical field, viz. the philosophy of science. Both views are embedded in larger philosophical arguments that are quite radical and revisionary with respect both to classical philosophical conceptions and to deeply ingrained, taken for granted assumptions in our culture. Finally, I shall examine how philosophy and our broader societal ways of thinking have gradually come to accommodate these views, both of which at the outset created so much unease in their respective spheres.
Hägerström’s position within moral philosophy comprises several strands, of which his incommensurability thesis has been somewhat overlooked in the literature; an oversight I want to redress. Much more attention has been devoted to Hägerström’s celebrated non-cognitivism, to the point of overshadowing the incommensurability thesis. Indeed, on a radical reading of Hägerström’s position, his non-cognitivism would even hardly leave room for incommensurability. Hägerström’s non-cognitivism is the position that ethical statements do not possess a truth value, for lack of an appropriate reality for them to correspond to. In the heated debates that followed Hägerström’s presentation of this position in his inaugural lecture of 1911, his view came to be branded as “nihilism”, a term with a strongly negative ring that grossly misrepresents Hägerström’s position. A position deserving the name “nihilism” would be the claim that there is no morality, hence we should abandon our moral practices altogether, maybe in favour of an unfettered egoism. This is definitely not Hägerström’s view. He is quite explicit that from the recognition that there is no truth in ethics, and that there could hence be no such thing as a scientific ethics, it does not follow that we should abandon ethics. To argue in this way would not in itself be a scientific inference, indeed, it would be a blatantly ethical argument, and hence its conclusion would be no more and no less objectively grounded that any other ethical position (Hägerström 1964: 96; 1987: 50).

This makes it easier to appreciate the importance of the element in Hägerström’s thought that is my special focus in this text, i.e., his incommensurability thesis. For if Hägerström had rejected moral thought altogether, incommensurability would be a rather uninteresting or at least purely academic issue. It would be a problem intrinsic to a practice that we were already compelled to reject, for other and more fundamental reasons—like trying to make philosophical sense of the Christian doctrine of The Holy Trinity after we have decided to reject theistic thought altogether because of other, even more fundamental problems. But, as we have seen, such rejection was not on Hägerström’s agenda. Rather, incommensurability is an ineliminable part of a practice that Hägerström embraces.
Let me now provide a more precise statement of what I refer to as the “incommensurability” thesis in Hägerström. First, about the term itself: Hägerström does not use the very term in his inaugural lecture, but only in a lecture series on the same topic delivered shortly afterwards (and for which the manuscripts are published along with the inaugural lecture in Hägerström 1987). The lecture series provides a careful, systematic and highly detailed presentation of the basic premises of the argument given in the inaugural lecture. Hägerström makes the observation that nowhere in our philosophical thinking is there such a wealth of rivalling and *mutually incommensurable* notions as in practical philosophy (1987: 84). He uses this expression again later (1987: 130), in a slightly different context. The lecture series provided a painstaking dissection and demonstration of this incommensurability with respect to the chief elements of Western moral philosophy. It manifests itself on two levels: On the level of metaphysics and method (i.e., meta-ethics, in a later terminology), and at the level of normative ethics where ethical positions are shown to comprise elements—typically, values—that are incommensurable.

Hägerström never articulated in a systematic manner his reasons for picking this term, in preference to such terms as “conflicting”, “rivaling”, “contrary” or the like, or to describing the situation as that of a “moral dilemma”. But we may glean the point from the story with which he chose to open his inaugural lecture: In Herodotus, Hägerström tells us, we read that the Persian king, Darius, once asked of Greek emissaries to his court: “For what price would you be willing to eat the corpses of your fathers?” The Greeks answered, “There is no price at which we would do that”. Next Darius turned to emissaries from an Indian tribe who happened to be present at his court at the same time, and who practiced as a matter of course the conduct that the Greek emissaries had just rejected in horror, asking of them, “At what price would you burn the corpses of your fathers?” He received a similar shocked and dismissive response (Hägerström 1964: 77; 1987: 27).

Now Hägerström, like Herodotus, evidently uses this tale to illustrate the ethical disagreements that may occur across cultures: a practice that would be considered quite proper and pious among the Greeks, i.e., cremating corpses, would be considered an abomination by the Indians,
and *vice versa*. But the story also illustrates a kind of *incommensurability* that may prevail inside one and the same cultural tradition. To the Greeks, the abomination involved in eating the flesh of one’s fathers is of such a magnitude as to be incommensurable with any sum of money. The Indians had a similar attitude to the action of burning one’s fathers. Thus, the value of money—*any* sum of money—is incommensurable with the value of filial piety in both cultures.

Let us examine the situation a little more closely. Notice that the conclusion that ensues is precisely that the values attached to the two alternatives are *incommensurable*, not that the value of the pious action is *larger than* any sum of money. For if there were *any* place on an (infinite) monetary scale where the value of the pious course of conduct could be placed, there would of necessity be *some* amount of money that would exceed it, on that same scale; such as, say, the monetary value of that conduct + 100 monetary units. We are forced to conclude that the value of the pious conduct is not located on the same scale as monetary value at all but is somehow orthogonal to it; hence it is precisely *incommensurable* with respect to monetary value.

Yet the example does not capture the full complexity and gravity of the problem that faces us in ethical decision-making, as Hägerström sees it. For while the value of filial piety may be incommensurable with monetary value, we understand from the story that to Greeks and Indians alike, the former takes priority to the latter: We clearly understand that both groups would put filial duty above money. Thus neither group faces an ethical stalemate, since both feel obligated to choose the course of piety.

Modern decision theorists have devised a model to capture this kind of situation, viz. that of “lexicographic preferences” (i.e., a lexicographic ordering of action outcomes). Lexicographic preferences are ranked in the way words are ordered in a dictionary according to the alphabet. A word that features an earlier letter of the alphabet in the *n*’th position precedes any word with a later letter in the same position, even though the latter word may have earlier letters in subsequent positions: Thus, “azzzzz” comes before “zaaaaa” in the dictionary. No amount of subsequent “a”s in a word with an initial “z” will move it in front of a word beginning with an “a”. In the same way, the value of an act of filial obligation, even a minor one as such duties go, will outrank
any monetary value—although the dutiful act may be exceeded by other, higher valued ones within the same dimension. Thus, we may assume that to the Greeks, the abomination of murdering your father would be even greater than that of eating his corpse. Still, even the lesser act of impiety possesses a disvalue that no monetary sum can equal.

According to Hägerström, however, the predicament we are typically faced with in ethics is even graver than that with which Darius confronted the emissaries. Not only are there different and incommensurable dimensions of value involved in most ethical decisions; there is even no (lexicographic) ranking of these dimensions that would allow a resolution of the situation after all. Our predicament thus goes beyond that illustrated by Herodotus’s tale: In many ethical dilemmas, we face conflicting values that are not only incommensurable but belong to dimensions that cannot even be ranked among themselves.

**Intercultural and intracultural conflicts**

Notice that we are not merely talking about intercultural relativity here, a phenomenon that had recently been highlighted by some of Hägerström’s contemporaries, such as Lucien Lévy-Bruhl and Edvard Westermarck, and that attracted considerable attention within academic circles. Hägerström knew Westermarck’s work well and clearly was influenced by it (cf. Hägerström 1987: 34). But Hägerström went further and stressed that conflicting but incommensurable elements were found even *within* cultures and ethical traditions, indeed, within *all* ethical traditions. In his inaugural lecture, he documents this with examples culled from the history of Western philosophy, as well as from reflection on the standard ethical views within contemporary culture (and he repeated it in great detail in his lecture series). He illustrates it, among other things, with the tension between what he terms altruism and vengefulness in Christian ethics (Hägerström 1964: 79; 1987: 29). Christian ethics is an ethics of altruism and love; yet a concept of sin has a very prominent place in it, along with the idea that we must fight sin. There is a tension here which Christianity glosses over, according to Hägerström, with the convenient distinction between the sin and the sinner, such that as Christians we hate sin, but not the sinner as this would be an un-Christian attitude. Of course, our hate of sin may on occasion motivate us to torture or even kill the sinner, but this is merely collateral damage.
as it were, incurred in pursuit of our true and pious goal, which is to fight sin and save the sinner’s soul. To Hägerström, however, what we have here is a naked and unmitigated opposition between two elements of Christianity (Ibid.).

I have used the story with which Hägerström opened his inaugural lecture to illustrate the complexity of the phenomenon that Hägerström labelled “incommensurability”. Some might feel that this is a case of over-interpretation of Hägerström’s text. However, given the care and precision of Hägerström’s thought, as demonstrated e.g. in the painstaking analyses in his lecture manuscripts, we do well in accepting that Hägerström chose this unusual term with care and for a reason. He wanted to get across a specific point, viz. that not only are there, within the moral sphere, considerations pulling in different directions, but there is even no rational way to find a compromise between them.

The challenge posed by incommensurability

It is no wonder that incommensurability would create considerable intellectual and cultural unease, as a particular poignant example of irresolvable problems. It is not merely a practical obstacle, a problem concerning what we should do in the case of conflicting motivations—as in the case of Buridan’s ass that is caught between two equally powerful temptations. Nor is it a case of simple ethical conflict, where legitimate concerns clash but where a procedure for its resolution is still available. Such cases might arise e.g. within the framework of a utilitarian ethics where the issue could be decided by a simple comparison of the utilities generated by each of the rival options, with full recognition that the losing side represents a legitimate concern which unfortunately has to go unsatisfied.

Incommensurability constitutes a challenge of a much graver kind. In addition to the practical problem concerning which action to choose, it raises a deep theoretical worry since it undermines two important pillars of any systematic and reflective attitude to the world. One of these assumptions pertains to ontology (metaphysics), the other to epistemology. The ontological assumption is to the effect that we inhabit a logical and coherent reality. The epistemological one is to the effect that we are capable of knowing this (coherent) world through the use of rational methods. Both of these reassuring assumptions are threatened by the discovery of incommensurability.
If this construal of Hägerström’s problematics is valid and accurate, we ought to be able to interpret his lecture as an attempt to address precisely these challenges. I believe it is easy to do so. First, the ontological (metaphysical) challenge: This is resolved by the daring step of declaring that our ethical discourse, with its inherent conflicts and incommensurabilities, does not correspond to (or mirror) any ethical reality at all. Thus, we are not forced to accept the unpalatable or even absurd conclusion that we inhabit an (ethical) reality that is somehow fragmented or contradictory. For there is no ethical reality. This resolves the metaphysical problem to the satisfaction of a philosopher, such as Hägerström, who has a purely theoretical agenda and an astute, analytical mind—but was of course bound to generate worries in broader circles of stakeholders whose concerns were primarily of a normative kind.

Next, the epistemic problem. I have observed already that this problem would have fallen away if we had adopted the radical interpretation of Hägerström’s position that was frequent at the time. This is the “nihilistic” position that we must reject the entire practice of moral judgement and action, since it is devoid of truth content. But, as we have seen, this is not the avenue chosen by Hägerström. He astutely observes that a conclusion to this effect would itself be a normative, indeed an ethical one, hence would have no more objective basis than the contrary decision of holding on to our moral practices.

So far, this is merely a preliminary move on Hägerström’s part. He goes on, however, to suggest a more constructive reaction to the loss of an epistemic authority in ethics. I shall refer to this as the existentialist strand of Hägerström’s thought. Rather than bemoaning the loss of an objective moral standard, we should appreciate that it is actually the distinction of moral decision making that it springs from a personal commitment that would somehow be violated if moral values were demonstrable in a compelling, scientific fashion. They would be imposed upon us from the outside rather than emerging as an autonomous manifestation of our individual humanity. It is we as human beings who introduce meaning and value into the world, and the true object of our moral anxieties is not a vengeful god who will punish our transgressions, but rather our own lack of will and commitment in trying to realise these values. Hägerström goes so far as to say that to the human individual, the realisation of his/her freely
chosen values is what makes her life worth living (Hägerström 1964: 93, Hägerström 1987: 46). According to Hägerström, there are no values in the world, existing as part of its objective inventory; but this leaves each of us with the task of bringing into existence the things that s/he finds valuable. In making this “existentialist” turn, Hägerström not only deflects the epistemic challenge to our moral practices but turns it into a positive factor.

Hägerström and contemporary thought

There are echoes here of debates that were going on in Europe around the turn of the previous century where the death of God had been proclaimed and where mankind was trying to find its bearings in the new situation. Hägerström’s view represents a balanced middle, as it were, between, on one side, the kind of heroic and defiant attitude found in Nietzsche, who declares that now that God is dead, Man must take his place instead, although not ordinary man but rather the Übermensch. At the other extreme, there is the kind of view discussed by Dostoyevsky in *The Brothers Karamazov*, that after the death of God, no morality is possible and man’s baser impulses must inevitably come to rule. This is a position that would deserve the name “nihilism”, but one which Hägerström explicitly rejected.

Hägerström does not stand completely alone among his contemporaries in this “existentialism avant la lettre”. There are traces of a similar position in Max Weber (e.g., Weber 1982: 507f). Like Hägerström, Weber stresses the conflictual nature of our moral tradition; to him, it is a “deadly struggle” among competing values between which there is no possibility of a compromise. In the end, it comes down to a decision to be made by each one of us, the choice, as Weber likes to put it, between God and Devil. This phrase is not meant to imply that the right choice is indeed easy to find, but rather to stress the importance that hangs on it: In choosing one option rather than another, we decide our own fate which may either be (moral) salvation or perdition. The gravity of the decision is such that most of us hide its implications to ourselves most of the time—in the terminology of a later existentialism, we indulge in a bit of mauvaise foi to hide our freedom of ethical choice and the responsibility that comes with it (Weber 1982: 507f).
**The role of religion in the debates**

In Hägerström, the view that there is no shared standard of evaluation, no measuring rod, between contrary ethical values goes together with the idea that there is no higher source of *authority* in ethics; higher, that is, than human interests and concerns. In particular, there is no divine source and guarantor for our ethical views. Not surprisingly, Hägerström’s views occasioned particularly strong reactions among theologians. His views represented an attack upon the conception of God as the upholder of ethical values, which in modern theology is the chief metaphysical role that remains for the deity, now that his role as creator and upholder of the physical universe has long since been given up.

The anti-theistic implications of Hägerström’s position were quite evident to his contemporaries. This is one reason why, in the intellectual climate of the early twentieth century, his view came across as quite radical, and it is no accident that the term “nihilism” would be applied to it. And although this term clearly misrepresents Hägerström’s position, the mere fact that this term was used shows the high level of emotion at play in the reception of Hägerström’s thoughts.

We have on record recollections from a person who was present at Hägerström’s inaugural lecture in 1911 of an exchange that afterwards took place among members of the audience. A philosopher, Enar Sahlin, is described as making the rather innocuous observation that from a record of actual ethical disagreement—the kind of record we find in Westermarck—we cannot infer the impossibility of an ideal normative standard. This is a rather trivial remark and, by the way, one with which Hägerström would certainly agree. But what is interesting is that we read that as Enar Sahlin articulated this critical point, “lightning was shooting out of his blue eyes” (Hägerström 1987: 10).

**Incommensurability in early Greek philosophy**

In the next sections of this article, I shall leave Hägerström for a while and examine what would transpire later in Western thought with respect to the issues and concepts that he introduced. But before I do that, I shall make a quick excursion in the opposite temporal direction to examine an earlier and indeed archetypal incident in European cultural history where a basic societal authority came under pressure because of an abstract epistemic argument.
We shall cast a brief glance at the first time this debacle played itself out in Western intellectual history, which simultaneously brings us to the etymological roots of the very term “incommensurability”. I am referring of course to the status of mathematics as a paradigm of rationality in Greek thought, a symbol of the Greek cult of “logos” which was a notion of almost religious import. This attitude reached a high point in the school of Pythagoras in the period around 5th century BC. To the Pythagoreans, the world is basically a mathematical structure, which means, *inter alia*, that to every kind of thing there corresponds a number which captures the essential properties of that thing. This doctrine reverberates in Plato’s theory of forms which he, too, conceived in mathematical terms. But mathematics as a culturally accepted symbol of rationality and the conception of the world as a well-ordered cosmos received a shocking blow at the discovery, at the very heart of the mathematical discipline, of an incommensurability between the side of a square and its diagonal. There is no unit that will simultaneously measure the length of the side and of the diagonal such that the ratio between the numbers is a rational fraction. The discovery is traditionally attributed to one Hippasus of Metapontum in the Fifth century BC, and it was an event of enormous societal and religious import. No wonder then that, according to Greek legend, the gods would punish Hippasus: A ship he travelled on went down, and he perished. According to another version of the legend, the gods left it to human agents to do their work: Hippasus’s Pythagorean fellow travellers threw him overboard from their vessel. In either version, the legend illustrates that the discovery was recognized as posing a threat to the divine and societal order, and that radical measures had to be taken to restore it.

*Later Developments: Kuhn and the Incommensurability of Scientific Paradigms*

Now back to modern days and to the developments that transpired after Hägerström’s lecture. It would turn out that incommensurability is a very much more pervasive phenomenon than Hägerström ever dreamed. The most striking and influential development along these lines occurred within the philosophy of science. I am talking of course about Kuhn’s introduction of the notion of the *incommensurability of*
scientific paradigms. There is a nice historical irony here, since science with its supposedly secure basis in rational methods and straightforward correspondence with reality (i.e., correspondence truth) was precisely the instance with which Hägerström had contrasted ethics. But now science itself comes under fire.

We might notice at first that incommensurability to Kuhn was not a happy discovery, but something the recognition of which was rather forced upon him; an unwelcome phenomenon that he stumbled upon. The context of his discovery was his readings in preparation for a series of popular lectures on the history of physics that he had been asked to deliver at Harvard University. During his reading, Kuhn recognized that there was no smooth translation of the terms used in ancient texts to describe the phenomena of physics into the terminology used by modern science. As a concrete example, he mentions his difficulty of translating Aristotle’s physics into modern terminology (Kuhn 1970: 269).

This lack of translatability leads to incommensurability between theories (or paradigms) for the following reason: An intuitively appealing way of comparing and ranking competing theories would be by their relative explanatory powers. We might attempt to measure these by computing the ratio, for each theory, of the data it is capable of explaining and those that it must leave unexplained. As the final step, we choose the theory with the most favourable ratio. As it happens, at about the time that Kuhn published *Structure*, Popper would propose a measure of the relative merit of scientific theories of precisely this kind; this is his celebrated notion of “verisimilitude”, or “truth-likeness” (Popper 1963). Unfortunately, such a comparison presupposes that the data in terms of which the rival theories are assessed are couched in the same basic vocabulary, otherwise one can manipulate the outcome of the comparison as one wishes by fiddling with the observational language. One can arbitrarily inflate a theory’s explanatory power by introducing a more fine-grained description of the facts which it alone is capable of explaining, thus boosting its explanatory ratio. To block this manoeuvre, we need to standardize the observational vocabulary in terms of which the comparison is undertaken.

Kuhn’s discovery of untranslatability suggested that such standardization is not possible across paradigms. Observational data are
inherently theory-laden, i.e., structured by the semantics of the overall theoretical system of which they are a part (the paradigm). Kuhn discovered that such semantic frameworks are not intertranslatable, nor is there a “pure” observation language that could serve as a common denominator for all of them: Hence they are mutually “incommensurable”. The result is that an intuitively appealing way of comparing and ranking theories, or paradigms, is blocked. This puts us in a quandary when we are working within a scientific paradigm that has descended into a crisis, and where a new paradigm is on the horizon, offering a way out of the problems. We have to decide whether we will switch our allegiances to the new paradigm, but Popperian “verisimilitude” and similar intuitively plausible measures of ranking cannot help us in this process.

This linguistic source of incommensurability, by the way, has no counterpart in Hägerström’s argument. But there is another source of incommensurability in Kuhn that conforms very closely to Hägerström’s notion. It has to do with the incommensurability of the standards of scientific value we use for comparing paradigms. What we have to work with in this process are the traditional virtues of scientific theories such as simplicity, fruitfulness, precision, and so on. Like Hägerström, Kuhn prefers to refer to them as “values” to indicate that they do not come in the form of exact, propositional articulations (“principles” or “criteria”), but as rather indeterminate considerations that weigh upon us, and may vary between persons in the way they do so (Kuhn 1962/1970: 184f). In any case, such values leave us with a formally insoluble problem when we are faced with two theories, or paradigms, of which one is superior according to one value but inferior according to another; for instance, it is simpler but less fruitful, or less precise, than the other. There is no yardstick that allows us to put the rival values on a common denominator so that we could say, for instance, that paradigm A scores 7 points on the dimension of simplicity and 5 points on fruitfulness, hence 12 points altogether and is thus preferable to paradigm B which scores 8 points on simplicity but merely 1 on fruitfulness, i.e., 9 points altogether. For we cannot aggregate points from different dimensions. The dimensions are incommensurable, and on top of that not ranked according to a lexicographic ordering that could resolve the issue.
The reaction to Kuhn's views

Kuhn’s views met with similar reactions of shock and scandal as Hägerström’s “nihilism” when they were presented some fifty years after Hägerström’s inaugural lecture. In 1965, a conference was arranged in London to discuss them, an event that would soon achieve a mythical reputation somewhat similar to that of Hägerström’s inaugural lecture. (The conference and its general significance is discussed in Fuller 2004). Major celebrities were present, such as the arch-defender of rationality, Karl Popper, along with his lieutenant Imre Lakatos. In a later article which is an expanded version of the paper he read at the conference, Lakatos famously declared that Kuhn’s view represented a capitulation to “mob psychology” in the conduct of science (Lakatos 1970: 178). There is no testimony to the effect that his eyes emitted thunderbolts when he spoke at the conference, but the tone of the article was certainly harsh.

As it happens, Lakatos’s allegations could with more justice be directed at Kuhn’ comrade in arms in the campaign against orthodox philosophy of science, Paul Feyerabend, who coined the famous slogan of “anything goes” (Feyerabend 1975). This is reminiscent of the Dostoievskian attitude to the ethical issue, viz. that if God is dead, anything would be permitted. In justice to Feyerabend, we should add that he engaged in characteristic rhetorical overstatement here, in order to shake up the philosophical establishment. In any case, the idea that “anything goes” was very far from Kuhn’s view—about as far as “nihilism” is from Hägerström’s ethical position. Kuhn insisted that at any given time, scientific activity proceeds within a paradigmatic framework that imposes quite strict limits upon proper procedure. Only the problem is that in the course of history, one paradigm will replace another. And there is no objective standard that would enable us to assess such shifts as rational ones.

This is not to deny that Kuhn’s view comprises fairly radical elements. As a matter of fact, there is a strand in Kuhn’s work that corresponds to Hägerström’s “non-cognitivism”. According to Kuhn, our theories cannot be said in any meaningful way to approach towards truth. In the postscript to the second edition of Structure, Kuhn states, as against overly radical interpretations of his view, that he does indeed recognize some notion of scientific progress; but it is not a progress towards some final and comprehensive truth about the universe (Kuhn
Scientific paradigms are not in the business of corresponding to or mirroring reality, but are tools for handling it. The name of this handling, when everything goes smoothly, is “normal science”. As far as I know you do not find in Kuhn any outright denial that theories (and paradigms) have truth values, but he clearly states that “the notion of a match between the ontology of a theory and its ‘real’ counterpart in nature now seems to me illusive in principle”; so correspondence truth at least is ruled out (1962/1970: 206). Thus, Kuhn’s position is that of a radical instrumentalism. The kind of conceptual frameworks we operate within under the name of “paradigms” are purely instrumental, and do not correspond to reality. In a more recent terminology, scientific theories, or at least such pervasive clusters of theoretical assumptions etc. that go by the name of “paradigms”, are not “truth-evaluable”.

Paradigms, or articulations of paradigms, have an instrumental usefulness, but the theoretical terms occurring in them have no reference outside of their conceptual framework; they do not reach outside of that framework and point to independently existing features of the world. In this, they are like ethical statements. If I announce that giving money to charity is a valuable activity, that sentence does not refer to a special item, a value-object, in the world, but is rather a tool providing me with guidance in my navigation through the social world. It will direct me to do certain things and avoid others.

It may fairly be argued that Kuhn’s (and Feyerabend’s) attack upon scientific rationality and scientific truth had a similar impact upon academia, or at least certain segments of it, as Hägerström’s attack upon ethics. To understand why this would be so we must appreciate that to modern society, science has to some extent come to take over the function that religion used to have as a foundation of the reigning social order. Starting with the scientific revolutions in the seventeenth century and culminating in the great discoveries of the early twentieth century (Einstein’s relativity theory and Bohr’s, Schrödinger’s and Heisenberg’s quantum mechanics), science has gradually replaced Christian religion and its sacred texts not only as a source of knowledge about the world, but as a measure of intellectual virtue; a standard of objectivity and “right thinking”. Hägerström’s lecture bears witness to this: He precisely contrasts moral and scientific ways of thought, to the detriment of the former. Thus, it is no surprise that, to some representatives of
the sciences and even more to many philosophers of science, what was perceived as Kuhn’s and Feyerabend’s attack upon science was received with much the same moral outrage that Hägerström’s attacks upon religion caused in the early twentieth century. (For a particularly vehement reaction, see Stove 1982)

The Reception of Non-Cognitivism and Incommensurability Today

A hundred years have passed since Hägerström announced his ethical non-cognitivism and his incommensurability thesis, and fifty years since Kuhn sprang similar views upon us with regard to the scientific sphere. How do these issues stand today? We start with Hägerström and ethical non-cognitivism.

To some extent, Hägerström’s non-cognitivism with respect to ethical statements has been vindicated in the meantime, but at the same time also disarmed to some extent. A more radical kind of ethical non-cognitivism would be launched by the logical positivists not so long after Hägerström’s initial introduction of the notion. Like Hägerström’s version, the logical positivist one would be premised upon the failure of ethical statements to possess a truth-value. Still the position of Carnap et al. on ethics was more radical in adopting the positivists’ favoured semantic stance: The possession of a truth-value, and indeed one that can be ascertained, is crucial to the very meaningfulness of utterances, according to the positivists’ “verifiability criterion of meaning”. Ethical statements, however, cannot be verified and cannot even be true or false. Thus the official doctrine of logical positivism is that ethical statements are literally meaningless (Carnap 1932). Ayer put an additional spin upon this by assimilating the utterance of ethical statements with exclamations such as “booh” and “hurrah” (Ayer 1936).

Still, the sharp revisionary edge of this non-cognitivist argument would soon be blunted by Hare’s prescriptivist revolution in moral philosophy (Hare 1952). Hare would agree with Hägerström, Carnap and Ayer that moral statements do not correspond to a world of moral facts that make ethical pronouncements either true or false. This does not mean, however, that they should be assimilated to inarticulate airing of negative or positive emotions. Indeed, the very point of having an
ethic vocabulary is to permit rational discourse about morals. This is precisely why we have in our natural languages a duality of instruments for expressing normative attitudes, viz. both the propositionally unarticulated expressions such as “booh” or “hurrah”, and articulations in the form of subject-predicate expressions in which an apparent property, such as “good” or “valuable” or “obligatory”, is attributed to a thing or action. The point is precisely that by choosing the latter mode of expression, we signal that we are currently making moves within a practice where we are willing to abide by standards of coherence and intersubjective consistency. For instance, if I declare my current activities to be good, I get into trouble if my interlocutors can point out that yesterday I denounced somebody else for doing just the same. I get into trouble even if I say nothing but simply act in the way that I condemned yesterday.

Non-cognitivism and ethical reasoning: Hare’s contribution
Richard Hare famously introduced a specific argumentative device which captures this feature of moral discourse. This is the universalisability test, distantly related to Kant’s categorical imperative (Hare 1963). This device instructs us to ask ourselves, when contemplating a particular line of action, “would I be able to endorse that my choice be made into a general norm of action, and, more specifically, would I be willing to accept this norm in cases where I was at the receiving end, as it were?”. If the answer is no, I have to forgo the action despite of its appeals, as seen from the agent’s point of view.

Thus, after Hare’s revolution in moral philosophy, we see that there is a place for rational argument in ethics, even if we adopt a non-cognitivist position with respect to the content of ethical utterances. But Hare’s argumentative device, the universalisability test, is not a panacea for rebutting Hägerström’s challenge. It may resolve the issue in certain cases, but will not always do so. The problem Hägerström was concerned with arises for anyone who has to make a hard choice and finds no objective measuring-rod or weighting scale that will decide the issue. In some cases, Hare’s procedure will resolve the issue, in others not. We may illustrate this with Sartre’s famous example, in Existentialism is a Humanism (Sartre 1966 [1946]), of the young man who must decide between either joining the Free French Forces in the liberation of France from German occupation, or staying home and
taking care of his ageing mother. Very likely, the universalisability test will not resolve that issue. Thus the challenge that Hägerström pointed to persists as a theoretical quandary.

So it is fair to say that Hägerström’s general position has emerged victorious. Now, how do we handle this fact today, in the general intellectual and cultural world, i.e. outside of narrow academic circles? First, we may observe that the existential pathos has long disappeared as a standard reaction to this predicament. I just mentioned Sartre’s well-known example of the young man in the throes of ethical decision making. In his discussion of this case, Sartre stresses the existentialist gravity of the situation: since no abstract philosophical argument will decide the issue, the young man must suffer alone the agony of decision and the responsibility that goes with it. There is a ring of existentialist Angst in Sartre’s way of presenting the situation, the kind of emotion that was anticipated in Max Weber’s writings at the beginning of the century; Sartre’s text was written in 1946. But today, this tone of existentialist pathos has long vanished. And it would be worthwhile to try to understand why this change has occurred.

The cultural impact of Kuhn’s paradigm theory
Here is a stab at what might at least be a part of the explanation: A vast but slow tectonic shift has occurred deep below our intellectual landscape. Our general culture in the West has come tacitly to accept certain metaphysical and epistemic views about the world in general that are in line with Hägerström’s views within the narrower field of morals. These views are pervasive but rarely explicitly articulated within the general culture, at least not with philosophical precision.

Now I am not suggesting that Hägerström’s work plays any major role in this shift, in concrete historical terms. Nor do I even think that Hare’s contribution, although highly influential in the academic world, played a significant role. Instead, I believe that the Kuhnian revolution in the philosophy of science has had considerable impact, in injecting ideas into our general intellectual culture that have considerable affinity with Hägerström’s thoughts on moral philosophy. The crucial term is that of a paradigm, with its associated notions such as incommensurability and the rejection of a realist, representational understanding of scientific theories.
To appreciate this point, we must first remind ourselves of the role, already touched upon above, that science plays in Hägerström’s thought as an object of contrast with ethics. He often phrases the issue as a question of whether we can have a *science* of morals. His answer is a firm no, and the reason given is that there is a lack of a robust notion of truth in ethics. Now part of the legacy of the Kuhnian paradigm theory is that the notion of truth as such has become highly suspect in the academic world, at least in anything resembling a correspondence version. I mentioned above that such a notion has no place in Kuhn’s system, and this stance has proved quite contagious. (In his book, *Knowledge in a Social World*, Alvin Goldman refers to this attitude as *veriphobia*; cf. Goldman 1999). Why this has happened is an interesting issue that I want to briefly examine.

Notice first that the notion of a paradigm and its attendant notions have not caught on in the natural sciences themselves, the very disciplines that were the objects of Kuhn’s investigation; the large majority of practitioners of these disciplines remain as indifferent to Kuhn’s writings today as they were in the 1960s. Nor has the paradigm theory been accepted in mainstream analytical philosophy of science. It has been very influential, however, in a new academic development which Kuhn’s work helped precipitate, starting in the 1970s, namely the so-called strong programme in Science Studies (cf. Collin 2011). Science Studies represent an attempt to achieve by empirical, scientific methods the kind of insight into the nature of science that previous generations had tried to obtain through philosophical analysis, but in vain: The result was a stalemate between logical positivists, Popperians, and others. Now the conclusion to which such empirical investigation seemed to point, according to its practitioners, is that science is a “social construction” through and through. Scientific theories are systematically shaped by the societal circumstances surrounding their “context of discovery” and also informing the “context of justification” through which a theory eventually gains general acceptance in the scientific community (Bloor 1976).

In articulating this stance, Science Studies drew heavily upon the Kuhnian heritage. Against the objection that science is after all a rational enterprise, not an arena for competing societal interests, representatives of Science Studies would point out that Kuhn had already shown
the irremediably irrational character of paradigm change. And to the objection that it would be a miraculous accident that science would correspond to reality (be true of reality) if it were shaped by societal forces, they would retort that science does not as a matter of fact correspond to or mirror reality, but is rather a tool for handling it.

According to the standard position within Science Studies, heavily inspired by Kuhn, natural science should be analysed solely from an instrumentalist point of view. Theoretical constructs such as atoms and dark matter are merely instrumental posits with which we cope with the world, cognitively and practically. Hence to the extent that we say that the world is made up of quarks, dark matter etc., reality in itself is a social construction. The items of which it is allegedly made up have existence only within certain historically contingent intellectual and instrumental practices that we call “scientific theories”. They have no more existence in themselves than the network of latitude and longitude that envelops the earth. And these instrumental practices that constitute science are to a large extent shaped by social forces and interests.

The “science wars” and after: scientific instrumentalism becomes mainstream

At the height of the debates between Science Studies and traditionalists in the philosophy of science in the mid-1980s, the heat of the confrontation reached a level that earned it the epithet of “the Science Wars” among observers. To the philosophy of science establishment, and to the few scientists with philosophical leanings who took part in the skirmishing, the efforts of Science Studies appeared to be nothing less than a crusade against rationality and a revolt against an established social order based upon the achievements of science. The conflict had all of the cultural and societal ramifications that the challenges to religious thought—such as Hägerström’s—had involved two generations earlier (see e.g., Gross and Levitt 1994).

Today, the intensity of these debates has long waned. One reason is that Science Studies, with its instrumentalist and pragmatist conception of science that first appeared so controversial, has found a somewhat unexpected ally at the very heart of the societal establishment, and has thereby become almost mainstream. The current science policies in most industrialized countries emphasize the instrumental aspect of
science, and conceive scientific discoveries as springing from a close collaboration between societal stakeholders. This conception of science, called Mode 2 Science (Gibbons et al. 1994), has close affinity with the picture offered by Science Studies; and, regardless of the historical accuracy of that picture with respect to past science, modern research politicians see to it that future science will conform closely to it. Research funding is directed massively towards projects of an applied nature, such as information technology, biotechnology and nano-technology, to the loss of basic research the sole purpose of which is to gain abstract knowledge that simply “represents” reality without giving us a handle upon it. In the wake of this shift, an instrumentalist construal of science is quickly becoming the reigning orthodoxy, to the point where realist conceptions of science as “mirroring” reality are coming to appear naïve or even somewhat perverse. The politically correct view of science is currently that it is a means for intervening in reality, not for representing it (Hacking 1983). Thus, the robust realism with respect to the physical world, with which the objectlessness of ethical statements was compared in Hägerström’s thought and found wanting, has slowly crumbled.

Kuhn’s influence upon social science and the humanities

There is a parallel and equally important route along which the paradigm idea has invaded general common sense, with its attendant instrumentalism and constructivism, viz. via social science and the humanities. There is a well-known paradox in the reception of Kuhn at this point: although Kuhn explicitly stated that his theory of paradigms does not apply to the social sciences and the humanities, which are still (and perhaps forever will be) in a pre-paradigmatic stage (Kuhn 1962/1970: viii), Kuhn’s story about paradigms was greeted with great enthusiasm in the social sciences, and even more in the humanities, and was taken to apply straightforwardly to those disciplines. One particularly appealing aspect was the doctrine that scientific data are irremediably theory-laden such that no sense can be made of the idea that our theories correspond to something outside of themselves. Science is interpretation all the way down, as it is often put. This thesis applies to natural science as well as the humanities (where is was always popular in the literary and aesthetic disciplines), which means that the humanities are no less scientific than the natural sciences, and also that the
idea of truth, in the sense of correspondence, has no place in either. In the modern humanities, most people scrupulously avoid the use of the term “truth”, and it is generally taken to be a sign of lack of sophistication not to harbour serious reservations concerning this term, at least in anything resembling a correspondence sense. At most, a consensus theory of truth, or a pragmatic one, will be accepted.

This development has a general societal significance, since the humanities as taught at university and college levels to generations of teachers in high school or elementary school serve as important routes through which philosophical and metaphysical ideas are disseminated to the general population, although they largely remain implicit. They contribute to the formation of the tacit metaphysics and epistemology of lay people in a given epoch. And to a large extent, the metaphysics and epistemology of lay people today are constructivist.

**A Parallel Development: The Turn from Absolutism in Modern Culture**

Now to another intellectual shift that has taken place in our culture: it concerns the absolutism vs. relativism issue. The initial shock of a hundred years ago at the death of God, and thus the disappearance of an absolute, objective ethical standard, has worn off long ago. There is today no fear of relativism or of a lack of absolutes, on the contrary, absolutes are abhorred in this sphere.

Behind this shift in attitude lies a harsh lesson learned throughout the twentieth century, including two world wars and countless minor clashes between populations, with genocide in their wake: These events taught us about the dangers inherent in raising values to an absolute status. Such exalted and absolute norms may inspire large-scale atrocities and crimes against mankind. The metaphysical cult of absolute value, combined with the empirical fact that values do after all differ among cultures, constitutes a recipe for disasters of the kind we have witnessed throughout the twentieth century.

It is interesting that Hägerström actually points to the danger inherent in absolutism in his inaugural lecture. As he puts it, the idea of a moral value of absolute validity and absolute epistemic authority may easily lead to fanaticism. It might induce in people the idea that
they are chosen as instruments for the installation of a new, sacred world order for which all other values must be sacrificed (Hägerström 1964: 94f; 1987: 47f). This is an apt and prescient diagnosis of the ideologies inspiring Nazism and communism that would inflict such great disasters upon the world later in the century.

*Reason as procedural: the role of negotiation*

This is only one part of the story, however. The recoiling from absolutes and the strong urge to find a *modus vivendi* among opposing views is one of the historical lessons of the generations following Hägerström. But this still leaves us with the problem of incommensurability. How can an accommodation be reached between opposing positions if they are of such a nature that we cannot find any geometrical means between them, as it were?

The answer that has emerged in our general intellectual culture, I believe, consists in a shift towards pragmatic and procedural, one might also say processual, solutions to problems that do not allow of a theoretical, a priori resolution. Instead, they are solved in practice by what we might call *negotiation*, in a broad sense.

For instance, there has been a shift towards procedural positions in ethics. The best known example is no doubt Habermas’s discourse ethics, which springs from the recognition that correct decisions in ethical and political matters cannot be determined by a priori reasoning but emerge through a procedure of open rational dialogue or, if you will, negotiation between the persons who have a stake in the issue (Habermas 1990). Indeed, negotiation is the keyword in this emerging stance.

It is interesting that the debates in the philosophy of science that were inspired by Kuhn’s work have arrived at a somewhat similar conclusion. Take incommensurability in science as an example. As we saw, Kuhn argued that commensurability of data was not possible across paradigms since this would require the participants to speak the same theoretical language. This they cannot do, since each side speaks a language that is ineradicably infused with the norms and concepts of their own paradigm. Now after two decades of abstract and rather fruitless philosophical debates about this issue, the Harvard historian of science Peter Galison decided in the mid-1980s to examine empirically how
such issues are actually decided; or, to use the jargon of Science Studies, how closure is achieved in cases of scientific controversy (Galison 1987). What he found is that the two parties to a controversy actually develop a new language, a “pidgin” in which they negotiate the interpretations of the data, and the pros and cons of their respective theoretical stances.

So both in ethics and in philosophy of science, the keyword is *negotiation*. There is no abstract, theoretical and a priori solution to the question what are the true moral values, or which is the better theory or paradigm. Instead, we have to rely on negotiation, i.e., a procedure through which the parties reach a practical settlement of the issue.

It is interesting to observe that the two areas in which debates about incommensurability and the failure of truth value have raged in the twentieth century have recently merged, in some of the most influential new developments. I am thinking in particular of recent work by Bruno Latour (Latour 1999, 2004). Latour started out as a contributor to the classical debates within the philosophy of science, and advocated a very radical constructivist position. According to him, scientific objects are created by the scientific process, not discovered by it, hence a notion of correspondence truth has no place in science (Latour and Woolgar 1979). In Latour’s later work, an ethical or political undercurrent that was always present in it comes strongly to the fore. According to Latour, the scientific process and the political process in society are really one and the same since, to him, science and technology are one and the same, they are both practical ways of administering human society and its physical surroundings and are hence essentially political.

So the solution Latour advocates with respect both to scientific choices and to ethico-political decisions is a procedural one, viz. the installation of a radically democratic decision procedure. This is not so much our familiar punctuated democratic process with elections held at regular intervals but rather a continuous process of networking between society’s members, referred to by Latour as actants. Notice that according to Latour, what we have here is not a parallelism between two spheres, the scientific and the ethico-political one; to him, they are the very same sphere, fused together to form one single domain, that of a techno-scientific-administrative network that constitutes society.
The role of economic categories

Let me turn to a final way in which certain subterranean cultural shifts may have made it easier for us today to accommodate the kind of theoretical quandaries that Hägerström introduced in ethics and Kuhn in philosophy of science. Peter Galison referred to the places in which negotiation between paradigms takes place as *trading zones*. This term extends the analogy with the domain of languages inherent in Galison’s use of the term “pidgins”. Historically, pidgin languages arose in areas in which members of different cultures met, typically for the purpose of trading; and pidgins and creoles are often referred to as “trading languages”.

Now trading is a matter of give and take, of *trade-offs*, and the paradigm example of this is of course economical transactions in the marketplace. This fact reminds us of a crucial feature of our current culture, which is that we constantly make things comparable in practice that may be theoretically incommensurable, by the mechanism of *pricing*. As the saying goes, you cannot compare pears and apples. This may be true, yet we do this routinely every day when we go grocery shopping and buy pears at, say, double the price of apples. Thus the institution of pricing solves a problem in practice for which there is no theoretical resolution.

Herodotus’s story revisited

At this point, let us return to the legend with which Hägerström opened his inaugural speech. As I tried to bring out, Herodotus’s story illustrates two elements that are combined in Hägerström’s concept of incommensurability, viz. that ethical conflicts may occur not only between different cultures but even inside of them; and that these conflicting values may be of such a kind that they cannot be put on a common denominator. More specifically, they cannot be measured on a monetary scale.

Now it is obvious that in modern Western culture, there are still things that we value in such a manner that our evaluation cannot be expressed in monetary terms: A human life is priceless, we like to say. Still, all of us, when we participate in the political process, e.g., just by voting, contribute to decisions where human lives are implicitly priced. We vote for a party that will close down local hospitals and move health services to larger regional institutions in order to save money. Sometimes in the attending debate, one side will throw figures around
specifying the savings involved, while the opposite side will stress the point that human lives are at stake, since longer transportation times to a central institution will cost lives in emergency situations. We do not normally sit down to calculate the precise price that is thereby put on a life, but we are tacitly quite aware that this is what is going on. We are aware that we are measuring human lives against money, under the official and aseptic title of “cost–benefit analysis”, and we are also aware that in voting in favour of a cutback in hospital services, we are implicitly saying that the price paid for saving lives according to the old scheme was just too high.

Sometimes the pricing of human lives is made quite concrete and explicit: This occurs, e.g., when we are asked to donate money to deserving causes where the point is bluntly made that by sacrificing, say, 50 dollars, you can save a life in an African village. We all occasionally give money to such causes, but we all at times turn our backs. In so doing, we declare that, at least at that precise moment in time, those lives are not worth 50 dollars to us.

What distinguishes us from the ancient Greeks is not that we are more cynical than they, indeed I am sure that the opposite is the case. The point is rather that the modern way of administering society puts monetary prices on everything: In this age of cost–benefit analysis and New Public Management, we are constantly being reminded that services, including those involving human lives, come at a price. Economists are constantly called upon to compute what that price is, and politicians and administrators are forever struggling to reduce it. Money has become the common denominator, the common measure, of all political decisions. In this situation, we have lost the sense of the existential pathos involved in making such choices, and of the fact that we have no objective standards on the basis of which to make them. They have become routinised and standardised.

In Conclusion

It is time for a brief summary. Hägerström’s incommensurability thesis and his non-cognitivism have strong formal similarities with developments in philosophy of science that would occur later in the twentieth century. Both are quite radical and revisionary both of traditional
philosophical conceptions and of deeply ingrained attitudes in our culture. Hägerström’s challenge eliminated the “sky-hook” that had historically been thought to secure out ethical views from above by attaching them to a higher, divine authority (to use Richard Rorty’s apt metaphor, cf. Rorty 1991: 13), while Kuhn’s challenge to scientific rationality and realism removed the solid support, from below as it were, of our social practices which science had been thought to provide.

In either sphere, these challenges have been accommodated and absorbed through a shift in societal modes of thought that we may describe as pragmatic, processual and anti-dogmatic, and in which the notion of negotiation plays a central role. It has come to be a commonplace that there are no higher standards of rationality and no more solid foundations of reality than that provided by human negotiation and agreement; reality and the categories in which we grasp it, including in scientific theories, are just human and social “constructions”. This development is to a considerable extent the result of the impact of these revisionary philosophies themselves, in particular Kuhn’s paradigm theory, but is also in part due to the impact of traumatic collective experiences during twentieth-century history, and finally to the spread of economical and market-oriented modes of thought as a general framework for understanding ourselves and the world we live in.

References

The Uppsala school of philosophy had a huge impact on public debate. It influenced not only philosophy (Einar Tegen, Konrad Marc-Wogau, Ingemar Hedenius, Anders Wedberg and others) but also theology (Anders Nygren, Gustaf Aulén, Ragnar Bring, political science (Herbert Tingsten, Gunnar Heckscher), economics (Gunnar Myrdal) and legal science (Vilhelm Lundstedt, Karl Olivecrona and others).

Even the rather esoteric “dialectical method” of Adolf Phalén had some influence.

In his article “Our common notions and their dialectical movements in the history of philosophy” Phalén wrote:

it is coming increasingly to be realized that our common notions, which constitute our system of ‘natural’ categories, involve contradictions such that without thoroughgoing revisions they are necessarily devoid of scientific value. [...] In spite, however, of the force of these criticisms, the power of these ‘natural’ conceptions of our everyday thought is so strong that they still give rise to common-sense philosophical reactions, and even those philosophers who consider themselves to have abandoned them are generally in fact more or less still under their influence.
In Phalén’s view it was an important task for philosophers to pursue these contradictions and to expose their presence everywhere, not least among all the classical philosophers. Tingsten tried to highlight the presence of such contradictions among ideologies and political ideals. Myrdal found them in economic theory. Hedenius detected them within religion and theology. Exposing “contradictions” became a popular intellectual game to many clever people.

Even more important than chasing down contradictions was chasing down “metaphysics”. “Metaphysics” was of course seen as contradictory, but also as much too idealistic from an ontological point of view. Axel Hägerström adopted some famous mottoes. For example “Preterea censeo metaphysicam esse delendam” and “From words to things” (from Pope). Both mottoes were taken to mean the same. Metaphysics is mere “words”. What is important in philosophy is to get to the “things”, to facts, to reality in space and time. Olivecrona made the same point in his *Law as Fact*. Notions such as “right”, “human rights”, or “justice” were seen as illusory and metaphysical. Legal science if it was to be scientific had to stick to the facts, that is to realities of the “legal machinery”.

Hägerström’s philosophy never became very well-known except in Sweden and to some extent in the other Nordic countries. The British philosopher C.D. Broad translated some of Hägerström’s texts into English in 1953 (*Inquiries into the Nature of Law and Morals*). But he complained of the glue-and-sawdust character of the Swedish philosopher’s prose. But during Hägerström’s lifetime one well-known foreign philosopher took an interest in his work. That was the German Jewish philosopher Ernst Cassirer who spent the years 1935–1942 in Sweden as a guest professor in Gothenburg. In 1939 he published his book on Axel Hägerström. Cassirer made a thorough study of Hägerström’s writings. But he confessed that he seldom had encountered Hägerström’s name in the international philosophical literature:

I admit that my knowledge of these writings until shortly was very incomplete. But the necessity of acquiring a more profound knowledge was clear for me from my very first days in Sweden. Both in reading, in personal conversations and in philosophical discussions I always encountered the main questions that Hägerström and Phalén had raised and I became
Balancing the Accounts

convinced of the strong impact they had had on philosophical thinking in nearly all spheres, among adherents as well as among adversaries.

Cassirer was critical of most of Hägerström’s ideas, especially within moral and legal philosophy. But he learnt from his encounter with these ideas. In the preface (p. 19 in the Swedish translation, p. 6f in the German original) he said that his book had not only been an examination of Hägerström’s philosophy but a re-examination of his own:

I have not been content to say again what I have said before. Instead I have used the impulses that the study of Hägerström’s main works have given me to get a firmer grasp of the foundations of my own philosophy, especially as developed in my Philosophy of the Symbolic Forms (3 volumes, 1923–29), and to use it in new fields of inquiry. My whole view of the problems of ethics and philosophy of law is much more fully developed here than in my previous writings which mainly dealt with theoretical philosophy.

But of course the main impact of Uppsala philosophy was on Sweden, not only on its philosophical life but on its public debate and its cultural currents. Were these ideas becoming part of a national mood? Some people thought so. Among them was Vilhelm Moberg whose satirical novel Det gamla riket (The old kingdom) was published in 1953. In this novel there is a figure, a professor of law called Adam Haggard. He is Hägerström and Olivecrona out into one. His lectures at the University of Flamingona, capital of the kingdom of Idyllia, have the following message:

"All speculations which had made their appearance in the development of legal notions from oldest time to our time about “ius naturale, lex nature” were significantly untenable and ripe for dismissal from the debates of legal science. […] The ideas of natural rights were based on metaphysical theories about human dignity and human life as its own goal, theories which belonged to ethics and consequently laid outside the domain of purely scientific thinking. As a single individual Man possesses no natural, eternal or indestructible rights. Man is of nature a member of civil society (statsvarelse, is Moberg’s Swedish term here, SE). Human value
and the so called human rights belong to Man only collectively.” (Moberg, *op. cit.*: 63f).

In 1953 few people took Moberg’s criticism seriously. But forty years later when Sweden applied for membership of the European Union there was a vivid revival of the questions indirectly raised by Moberg. Could ideas of “ius naturale” really be discarded once and for all as Hägerström, Lundstedt and Olivecrona would have wished? Could there be an un-metaphysical discourse on human rights?

Is Sweden a bad country for human rights? Some critics of the Uppsala school have believed so, a bit prematurely I would say. Is it a bad country for metaphysics? Even that conclusion might be premature. But it is certainly true that the influence of the Uppsala school for a long time put metaphysical arguments under suspicion of being vacuous and even dangerous.

**Note**

Appendix
Translations of Two Texts by Axel Hägerström
On the Truth of Moral Ideas

Axel Hägerström

Translator’s Preface

“On the Truth of Moral Ideas” was the inaugural lecture delivered by Axel Hägerström on his accession to the Chair of Practical Philosophy at Uppsala University, 18 March 1911. A slightly expanded version was published in April the same year. The text is of great historical and philosophical interest, being the first statement of a non-cognitivist theory of ethics.

In this translation, “idea” is used for the most part for “föreställning” (cf German *Vorstellung*). The word can denote beliefs, concepts, or other intellectual acts or contents. These are of course different notions, but the contexts where the word appears disambiguate sufficiently.

Hägerström’s draft for the lecture is preserved in the manuscript collection in Uppsala University Library (call-number Hägerström 11:2a). Certain deletions in the manuscript indicate parts omitted when the lecture was actually delivered. Some, but not all of these were included in the published version, and some additions were made. These variations are recorded in the annotations to the 1987 edition (1987MG). A small selection of these annotations are reproduced here in the notes to the text. Passages omitted when the lecture was delivered are indicated by
one asterisk (*) at the beginning and two at the end. Passages added in
the published version are indicated by one hash mark (#) at the begin-
ing and two at the end. Paragraph numbers and sub-headings have
been supplied by the translator.

The first version of this translation was made decades ago and was
intended for limited circulation only. It has now been slightly revised.
I remain greatly indebted to Mr. F. Langman and the late Mrs. D.
Green, both formerly of the Department of English, Australian National
University, and to Professor B. Almond, formerly of the Department of
Philosophy, University of Hull, who all offered helpful advice on ques-
tions of language and style.

* * *

The Text

The Diversity of Morals

1. Herodotus relates that the Persian King Darius asked some
Greeks at his court: “For what price would you eat the dead
bodies of your fathers?” “Not for anything” was the answer.
Darius then summoned representatives from an Indian tribe, among
whom that which the Greeks abhorred was the custom, and asked them
for what price they would burn the dead bodies of their fathers. They
vigorously rejected such a repugnant proposal. Herodotus’ comment is
that if all possible customs were presented to various peoples to let them
choose the most excellent ones, each would select their own.

2. Similarly, a Greek statement, probably dating from a period
immediately preceding the sophistic, is as follows: “If people were
allowed to cast in a pile all those customs which they regard as good
and noble, and if then everyone was allowed to select those which in
his view were wretched and contemptible, nothing would be left but all
would be distributed.”

3. The diversity of moral values is if anything even more indisput-
able to us, children of more recent times with access to a greater fund
of data. Let us leave aside the views of primitive peoples and attend only
to views grown in civilized soil. Let us, for example, compare Aristotle,
the famous representative of Greek civilization, with Christian morality or the morality influenced by Christianity.

4. To devote one’s life to another person (other than a friend) is below the dignity of the free man, says the philosopher. Self-sacrifice independently of relations of friendship is the highest virtue, the other side proclaims emphatically. A moderate reaction against wrongs suffered is a feature of moral excellence according to Aristotle. But Christian writings\textsuperscript{3} tell us:

\begin{quote}
… whosoever shall smite thee on thy right cheek, turn to him the other also …
\end{quote}

According to Aristotle, barbarians or non-Greeks, and persons who practise a trade generally lack for various reasons the ability fully to realize the ideal: the highest good, which consists in intellectual, aesthetic, and moral cultivation. Hence the frequent note of contempt when such people are mentioned. Christian morality is to the contrary effect: any kind of person can attain the highest good—what matters is the disposition of mind.—When Aristotle exalts justice in social relationships, it is not a matter of human rights or human dignity, in contrast to more recent moral views which have been influenced by Stoicism and Christianity. The decisive ground is rather the aesthetic value of the mean with regard to the distribution of the means for satisfaction of needs.

5. Thus, fundamental oppositions emerge on various points. What is dishonourable according to one view is often right and proper according to another.

6. There is an even more obvious gap between a morality of unbridled sensuality, often advanced during the Renaissance and developed into Nietzsche’s morality of the superman, and, on the other hand, the more or less ascetic Christian outlook.

7. We can, however, leave historical examples aside and limit ourselves to contemporary society. Immediately we notice the opposition between what may well be termed the moral outlook of different social classes. In the current bitter struggle between capital and labour, as they are called, one side maintains that the individual has a right to provide for himself by means of legal agreements that he considers appropriate,
but also that he is under an unconditional obligation to fulfil his part of legally binding agreements. Violations of the rights and duties so created are considered dishonourable. The other side maintains the unconditional duty of the individual to consider the interest of the class to which he is committed in the name of solidarity. All alleged rights or obligations which come in conflict with this duty of solidarity are considered illusory. *The only thing that is truly contemptible is the betrayal of the principle of solidarity.

8. Or consider the conflict over the moral status of the right of ownership. One side claims that an individual is morally entitled to anything that he has legally acquired, be it the product of his own labour or not. The other side claims that any income gained without work is a violation of the worker’s right to the full value of the product of his labour.**

9. Moreover, an individual who tries to analyse his own criteria of moral valuation will easily find conflicting layers. We carry within us a conflict between an altruistic and a vengeful morality.† We condemn vengefulness as such. But hatred, not inhibited by any moral censure from within us, arising from our interest in justice against a “sinner”, comes to expression in our moral indignation. As long as our indignation is inspired by our moral interest, we consider it perfectly in order and feel no need to restrain our reactive instincts. We may try to cover the gap by telling ourselves that it is only the sin we hate, not the sinner. But an unprejudiced mind will quickly realize the psychological impossibility of such a subtle distinction.

**Criteria of Correctness**

10. Given such conflicts in our moral valuations, the question of which one is correct becomes unavoidable. By what criterion can we judge the correctness of different views? It is evident that we cannot simply appeal to those moral views that we happen to hold. They are not even consistent. It would seem as if two types of criteria are applicable and actually used. One of these is evolution. The other is some kind of non-empirical reality that may be thought to manifest itself more or less perfectly in the demands of morality.

11. First, evolution. The word is ambiguous. It may mean a process leading to the actualisation of something that is intrinsically and
objectively an end. If this is what is meant, then, in order to determine whether a particular development of man’s moral outlook is progressive or retrograde, the moral end must already be given. But that is precisely what we were asking for.

12. Evolution can also signify something else, i.e. nothing more than continuing adaptation to the conditions of life. A certain progression is necessary since only those who are best adapted survive in the struggle for existence. On this criterion, that morality is higher which manifests a greater adaptation and with it the greater possibility for the continued existence of the individual and of society. In this way life itself turns out to be the highest principle of value. The right rules of conduct right are those required for the promotion of life. But now the moral problem re-emerges in this form: what reasons can there be for claiming that life itself is the ultimate end—reasons that would be sufficient to refute opposing life-denying views, which constitute a powerful current in the history of ethics, and sufficient to refute views according to which not any kind of life is worth living, but only a certain kind of life?

13. Next, let us consider the other type of criterion: the supernatural reality which is supposed to manifest itself in our awareness of an ought. It can be said, in a Kantian spirit: when an ought appears as an absolute demand upon us it reveals the existence of an absolute or supernatural will within ourselves, a will which makes demands on us. Being absolute, this will, in each person, is universal and must therefore have as determinations the supernatural wills in all other persons. That is to say, they must all constitute a community. From this can be derived the principle that all moral beings should be determined by each other. No one should ever be treated, as it is said, as a means only, but always also as an end. The more a morality embodies this principle, the higher it is.

14. But if the supposed supernatural will within us is to be our own will, as it must be if it is to affect us, the question arises how its supernatural character can be maintained. For it would have to be related to the natural world to which we belong. But, insofar as it has natural predicates it can no longer be said to be above or beyond nature. It may be suggested that it combines two aspects, one related to the realm of natural existence, the other unrelated to it. But this gives rise to the question as to how these two aspects can be combined in one unified
will. Such a will is one entity, so the supposed supernatural aspect will necessarily have natural determinations.

15. Moreover: how is it possible to conceive of a particular supernatural will without ascribing to it the content of our moral consciousness? The concept of such a will would not make sense unless the will be thought of as demanding an action or a disposition which belongs to the empirical world. In other words, it is our moral interests and their relation to our actual, natural life that give a meaning to the concept. Remove these natural elements and the whole thing would fade away in a distant haze.

16. In fact, the supposed supernatural will within us which is supposed to manifest itself in oughts, is no more above nature than are the gods of the religions. In both cases, what we have in mind makes sense in virtue of concepts that apply in our natural social life: vengeance, justice, charity, caring. What content would there be in the idea of charity, without reference to beings in need of help, beings towards whom we feel compassion? But conditions of this kind necessarily belong to the natural world. The idea of such a condition loses all content if attributed to a supernatural being who cannot feel compassion.—What would remain of the idea of justice if it had no reference to other persons whose rights are to be respected? An absolute being cannot stand in relation to persons with their own realms of rights.

17. As a way out of these difficulties, it is often suggested that our notions of the supernatural are merely symbolic. It is argued that since we are imperfect and finite, we cannot have a grasp of the supernatural except by recourse to natural predicates. To us, the supernatural is intelligible only by conceiving it in empirical terms. But it is argued that by means of those something really supernatural can come to be understood, albeit imperfectly, and we symbolise it in various ways according to historical conditions. Still, if it is not intelligible without recourse to empirical concepts, the view that it is above nature becomes devoid of meaning. We are asked to disregard the empirical elements which are required for the concept to make any sense at all—and yet it is supposed to make sense. It is like saying: God is just—but when we think of his justice we must entirely disregard what we understand by justice …

18. What is more, even if these doubts concerning the intelligibility of a supernatural will within us could be dispelled, we would still have
no criterion for the correctness of moral beliefs. The non-empirical wills of all moral beings were said to constitute a community. In the non-empirical realm each will would be determined by every other will as an end in itself, without ceasing to be an end in itself. But difficulties arise as soon as we try to apply to wills in the empirical world the principle that all, including oneself, are to be treated as ends in themselves. The natural ends of one will may conflict with those of another. How is mutual adjustment between competing interests then to be brought about? Anything can be defended according to the principle. If a person, by nature hungry for power, renounces this natural interest of his out of consideration for others, he treats himself as a means for their ends—and acts wrongly according to the principle. Therefore he ought not so act. In this way, any exploitation of human beings could be justified. On the other hand, it can be argued that if an individual satisfies his desire for power without consideration for others, he treats them as means for his ends—and acts wrongly according to the principle. Therefore, he ought not so to act.

19. To resolve such conflicts of interest by appealing to conscience as a normative authority is from a scientific point of view an admission of defeat. For the question was to find a criterion for the correctness of different moral views. The frequent use of this method shows is an attempt to make science a handmaid to morality, which is no better than making it a handmaid of religious belief.

20. The result appears then to be that there is no objective distinction between right and wrong. But is it possible that our ideas of right and wrong are nothing but illusions? Naturally, a question concerning truth must be answered in a rational way. Interests other than those in truth must be disregarded: only objective grounds can have any claim to consideration. To regard such a proposition (viz. that there is no objective distinction between right and wrong) as a priori impossible because it may fail to satisfy certain interests, however important they may be, is unacceptable. Plato amicus, veritas amicior!

**The Turning Point: A New Question**

21. First to be investigated is whether it is correct to ask of a moral idea whether it is true or false. A person who asked whether gold were just
or unjust would of course immediately be ridiculed. The history of ideas, and particularly the history of philosophy, abounds with similar questions, although their incorrectness may be less obvious. In the same way that gold is neither just nor unjust, so it may be that an ought, or rightness, cannot be asserted or denied as a fact about an action. When we think of an action as objectively right, another as objectively wrong, it may be that we are combining right and wrong with a concept which is foreign to it. If this is so, the question of the truth of moral ideas would be absurd. If moral ideas as such do not represent something as being true, if they do not represent something as actually being the case, then it would be meaningless to ask for their truth.

**The Evolution of Moral Ideas**

22. In order to investigate this it is necessary to touch on a certain aspect of the origin and evolution of moral ideas. With regard to their evolution, I confine myself to the development which can be traced in the history of ideas in Western civilization.

23. It has often been stated, and confirmed by many observations, that there is a close connection between primitive moral ideas and customs. It is sufficient to refer to Westermarck’s famous work on the origin and evolution of moral ideas. In primitive peoples, custom is not only habitual conduct, but also a coercive force. Transgressions of it give rise to reactions from the community: custom is protected by fear of these reactions. With fear is combined another motive of a distinctive kind, the idea that it is right to follow custom and that the sanctions protecting it, imposed by the society, are justified. The individual experiences pressures from many kinds of coercive forces. But particularly towards custom does he have the feeling that compliance with it is right and the coercion appropriate.

24. In all this there is the vague notion that the kind of action in question is to be done for its own sake and that reactions against the violations of custom are good. In other words, for the individual they take on an independent value. What is more, their independent value is such that it is not to be subordinated under other values: it takes precedence whatever the circumstances. This is also what constitutes the specifically moral element in the individual’s attitude towards custom.
25. It could be said that we have here a kind of psychological adjustment. People reconcile themselves to the fact of coercion if they regard custom and its sanctions as an independent supreme value. Such an acceptance takes root because it is useful for the individual and the society. It is of benefit for the individual as it tends to make him adhere to custom with greater constancy, and it is of benefit to society as a whole, since customs firmly established increase social cohesion.

26. Thus custom exerts its influence through two distinct motives. One is the fear of a superior power, the other is the idea of a supreme value. Initially the specifically moral motive, the interest in a supreme value, is intertwined with the other motive of fear of a higher power. In actual fact, the motive of fear of punishment does not disappear altogether in the evolution of morality. Our moral consciousness, in which conscience is the supreme judge, is animated both by a direct interest in our moral ideals and by fear of the sanctions of conscience.

27. In primitive morality the ought or the supreme value makes itself felt, as we have argued, in intimate association with fear of the power of custom. This is why there will be a certain natural tendency to associate custom and the ought. Custom becomes identified with the supreme value, as the very substance of rightness. It becomes a moral authority, in itself sacred and venerable. The ought becomes represented by something in the real world. This connection between the ought and an authoritative reality is never dissolved in popular morality. Even when the ought is to some degree released from its association with custom, it is always linked with something factual and is regarded as essential, which determines its content. “This is the will of a powerful divine being”, “this is what the world-order requires”, “this is what the law of conscience demands” — these are the proclamations of a morality which rebels against custom. But it continues to find its backing in a normative reality.

28. The predominant significance of conscience in contemporary morality deserves special attention. To us, that inner demand which we call conscience appears as a moral norm. It is conscience—rather than custom, divine power, or the world-order—that appears as the intrinsically venerable authority, as that which embodies the supreme value.

29. Let us now consider some ways in which moral consciousness tends to develop because of this association between the ought and a
certain normative reality. Among these are, importantly, the tendencies
to internalise the moral standard and to regard it as absolute.

30. When the idea of an ought, in the sense of a supreme value,
takes shape, there emerges also a tendency to regard as absolute that
reality with which the ought is identified. Anything that is elevated so
as to be seen as intrinsically to be revered tends also to be placed above
any limitation. For how could it be intrinsically sacred if were only
some natural entity, dependent on all kinds of external circumstances?
Particularly, it is felt that the commands of the authority must admit of
no exception and that transgressions are absolutely dangerous. Unless
this is so, it would lose in intrinsic venerability.

31. On the other hand, as the ought is more distinctly conceived
as a supreme value for the individual, there is a tendency to bring the
normative reality closer to man and to remove such features of it as
are external and alien. Tendencies of this kind are particularly evident
whenever there is a direct association between religious and moral ideas.
In Judeo-Christian monotheism the boundless reverence for the deity,
who is considered as the moral authority, is closely connected with the
idea of the absolute character of the divine. We may also recall the medi-
aeval idea of evil as something unreal, a “non-being”, and true reality as
identical with the good. Admittedly, in Platonism the construction of
a non-empirical, absolute realm of forms rests on different, more theo-
retical, grounds. But it is without doubt the absoluteness of this realm
that for Plato relates it to moral value: to the good properly so called.

These two examples of moral-religious beliefs also illustrate how
the tendency to internalise authority serves to bring to greater prom-
inence the immediate value of the moral. The God of Christianity
inspires not only fear but also trust, since he loves mankind. The realm
of forms in Plato is not only an external reality to man, but also imma-
rent in human reason.

32. The development which we have considered reaches a con-
clusion in the ideas relating to conscience which are to be found in
modern, not directly religious, thought. In conscience there is a feel-
ing for or an interest in a certain form of conduct thought to be right
or supremely to be valued. This is linked to the idea that disobedience
to this inner demand will destroy the individual and lead to his utter
misery. In the background we have the idea, often overlooked, of an
inner absolute power which places demands upon us and reacts most severely against violations. Without doubt it is religious conceptions of a supreme power, itself one with rightness, that exercise an influence here. They have been imparted by education and by the social environment. This way of thinking is particularly evident in our ideas of guilt and responsibility. We think of ourselves as being inescapably responsible to a power within ourselves which condemns or acquits us. In this situation our moral feeling and interest are more prominent, and the divine power is added on to that, but then the religious element is not developed independently. The idea of the divine power as the ground of the world is neglected in favour of the idea of the purely moral function of the divine. This is why we do not notice that we in our consciences fear a god. Yet it is so. We cannot properly understand how conscience functions if we disregard the effects of centuries of religious education.

33. What is of interest is that the authoritative reality which conscience-morality associates with the ought retains its absoluteness and acquires to the highest degree a closeness to man. It has merged with man's own moral feeling and interest. It is here that the tendency to internalise the moral authority has been most powerful.

**The Main Question**

34. Our problem was: is it correct to ask whether moral ideas are true? Perhaps their claim to truth is due to an association between the ought or the supreme value and other elements alien to these. They survey we made of some features of the origin and evolution of moral ideas gave some support to this hypothesis. We saw that the ought was originally connected with custom; when this connection is dissolved, the ought continues to be linked with a certain authoritative reality, such as divine will, the world-order, or the dictates of conscience. Obviously, the ought in all these cases is linked with something foreign to it. No reality, whether absolute or not, can as such imply a supreme value. The presence of a divine will or an inner demand can never as such imply that we ought to comply with it, that compliance with it is of supreme value. The meanings of “reality” and “value” are not like that. Value cannot be implicit in reality. A moral authority or standard thought of as a reality good *in itself*, is objectively speaking impossible.
35. The association between the ought and another element foreign to it can, however, explain why it is that we believe there to be an objective distinction between right and wrong. If what we ought to do is determined by a certain reality, then questions of what we ought to do can, of course, be decided on objective grounds. It is only a matter of making clear what kind of action is in conformity with the reality in question, be it divine will or our own conscience. Once this is done, we have established what is really right, against various subjective value-judgment.

36.* The tendency, mentioned above, to regard the normative reality as absolute explains why we think that a certain mode of conduct is right whatever the circumstances. If it conforms with absolute, hence universal, reality, then it is right under all conditions. The tendency explains in particular why we assume that the basic principle of right conduct is self-consistent. This is so because the absolute reality which is thought to determine the ought has to be self-consistent. Therefore right conduct is uniquely determined, although applications of the principle may vary according to different circumstances.**

37. The increasing tendency to internalise authority explains why the ought is thought not to be externally determined, but is regarded as a property directly belonging to a certain mode of conduct.

38. What we have said does not only provide a possible explanation of the truth-claim of moral ideas. It provides the most plausible real explanation. For it can be shown directly that the idea of an ought, or of a mode of conduct as having supreme value, is not an idea of anything objective.

39. Kant says in one place that duty presents itself to us only insofar as we are agents. This implies that duty exists for us only if that which we feel obliged to do is an actual or possible motive for action. But this again implies that it must arouse an interest in us. Without any doubt this is correct.

40. If we coolly observe ourselves, that is, if our interest is not in the object of our inquiry but solely in our inquiry of it, what do we observe? We notice in ourselves among many other phenomena a feeling of duty associated with a value-judgment and an immediate interest in a certain course of action. What we observe is a particular series of mental occurrences. That an action ought to be done, is not among the
things that we discover by observation. Not even the acutest analysis of the observed data will disclose any such thing. Or let us similarly investigate a particular action. We may find that it arouses the strongest desire or pleasure, or that it promotes the well-being of ourselves or of others. Let us even assume that we may find that it is commanded by a god or by our non-empirical self. Still, any attempt to infer from those facts that the action deserves to be done is doomed to failure. No ought or supreme value can be discovered in this manner. For as long as we are only indifferent observers of ourselves and our actions, we can only establish matters of fact. But no is implies that this or that ought to be the case. To an indifferent observer, nothing is better or worse: to him these ideas can make no sense.

41. Now turn the situation around: we are about to act, and different motives are at play. In this situation, the idea that we ought to act in a certain way immediately makes sense. We are no longer indifferent to ourselves and our actions. We adopt a certain attitude to what is before us. In this situation, the idea of a supreme value makes sense to us.

42. Insofar as we mean that something is actually the case, that something is true, we mean that this is so, independently of our subjective attitudes towards it, our feelings or interests in regard to it. What follows from this is that when we have a moral idea we do not mean that the ought really belongs to the action. That would imply that the ought would apply to the action independently of any subjective attitude to it. But that would make no sense.

43. Accordingly, in our notion of an objective difference between right and wrong, a foreign element must come in. The explanation closest to hand is that, especially in the our ordinary moral ideas, this element is the normative reality with which the ought is associated.

44. This is not to suggest that such a normative reality is the only foreign element which, when associated with the ought, makes us ascribe objectivity to the ought. Especially some systems of moral philosophy try to establish an objective principle of morality using our actual moral value-judgments as a starting point. In the common culture of present times moral value-judgments in different places have certain elements in common, because of similarities in conditions of life. It is believed that the discovery and systematizing of these common elements will yield valid principles by which actions can be judged. This
is how Spencer and Wundt proceed, in different ways. Moral value is then connected to actual human value-judgments, which constitute the foreign objectivising element. Still, knowledge of actual valuations is clearly not the same as knowledge of values. We only establish certain facts, not that anything is better or worse. In order to do the latter, our knowledge could not just have valuations as its object, but would itself have to be a valuation.

45. In Westermarck there is a similar confusion of moral values and moral valuations, although he does not use it to establish an objective moral principle. He analyses our moral ideas, including our idea of the value of an action, as an idea of the aptness of certain actions to arouse moral approval. Hence, the moral ideas are nothing but ideas of actual modes of valuation, and such ideas can be true or false. However, insofar as a moral idea concerns the value of an action it is not about a valuation, but is itself a valuation.

46. Modern philosophy of value contains, however, an endeavour to sustain the idea of an objective supreme value by means of a reinterpretation of the concept of truth itself. The truth of an assumption is identified with its value. Thus, the impossibility of objective values is removed. It is said, for example: “what we call true is nothing but those ideas which promote certain life-values”. Or truth is seen as the directly universal value of certain judgments. But these views, of wide contemporary currency, are self-refuting. They are themselves based on the ordinary concept of truth. An advocate of such a theory is committed to claiming that it states how it is. He must mean that it is like that, independently of all valuations. If not, all he could mean would be that his propositions themselves are true only in the sense that they are valued in a certain way. Again, the correctness of that proposition is to consist in nothing but the fact that it is valued in a certain way, and so on ad infinitum. But then the whole theory would be suspended in thin air.

47. Insofar as modern philosophy of value takes this line, it gives expression to our deeply rooted inclination to identify our own values with the true nature of reality. Often to be truly real is even held to be the same as to satisfy the deepest interests of man. Surely the apotheosis of man can go no further!

48. It would not be correct to infer from has been argued that it would be impossible to convey a meaningful ought to other people.
It is nowadays a widely known and accepted truth that an individual develops intellectually and morally only in a social environment. This presupposes the possibility of commonality not only at the intellectual level, but also at the level of moral valuations. This again cannot come about unless an individual can reach an understanding not only of another's thoughts, but also of his feelings and volitions. It is then possible for the individual to form opinions, on behalf of or from the point of view of the other person, of how the other person ought to act. This becomes particularly significant for the other person if he is informed of relevant facts, if he is brought to insight about the correct means for a given end, or about the reason why a particular case comes under a previously accepted general rule of conduct. If he becomes convinced about such facts, and if he lets this conviction have any bearing on his value-judgment, then the ought addressed to him will also be meaningful to him.

49. But it must be denied that in such a case it is a question of an objective ought, capable of convincing a person on objective grounds. If he does not accept the general rule of action, if he fails to relate his newly acquired knowledge of certain facts to his particular value-judgment, then the ought in question would mean nothing to him. Objectivity comes into this context only in that knowledge of facts, insofar as they influence value-judgments which are based on a certain principle, will necessarily affect the value-judgments in a particular direction. We may also express this by saying that with increased factual information which influences value-judgments, other particular value-judgments will be made.

50. Furthermore, even the basic moral valuation itself is of course influenced by factual knowledge. Greater awareness of human suffering usually makes the principle of moral valuation more humane. Increased knowledge may make new aesthetic values accessible to the mind, values which a person may even place above all others. But a person's natural dispositions, emotions, class interests, ingrained habits and suchlike can prevent increased knowledge from having any influence on the basic moral valuation.

51. It cannot be inferred from what has been said that the principle of valuation itself could be factual knowledge. A conviction based on objective grounds can only be about some matter of fact, even though a
subjective valuation may be modified by the emergence of such a conviction. But trying to convince a Cesare Borgia of the objective rightness of a more social disposition is as futile as it would be for the sheep to try to prove to the wolf that it is wrong to bite so inconsiderately. This does not rule out that society will have a duty to protect itself against such individuals—like the shepherd’s duty to eliminate the lupine danger.

52. Moreover, let us assume that it would be possible to discover a moral valuation that would be shared by all rational beings once they had acquired sufficient factual knowledge. This would not mean that something was objectively right. Such a discovery would yield knowledge that had for its object valuations, but not values. It would have only matters of fact for its object. The knower must adopt some emotional or volitional attitude if anything is to be judged better or worse. But having an attitude of that kind is entirely different from having knowledge of something.##

53. The upshot of this inquiry is, consequently, that moral ideas, that is, ideas that a certain action represents a supreme value, cannot be said to be true or false. They are not ideas that an action actually or truly is right. The contrary view is due to the fact that in ordinary moral thinking the ought is associated with something foreign to it, primarily a certain supposed moral authority.

The Evolution of Morality: Past and Future

54. Let us again consider the general features of the evolution of moral thought, especially the tendency in it to draw the absolute, sacred, and venerable authority closer to man, the tendency, that is, to internalise the authority. We suggested that this development reached its conclusion in conscience-morality. Here the absolute authority merges and becomes identical with our own moral interest. However, when the identification is complete, the moral authority ceases to have independent existence. Insofar as its external character is removed and it becomes one with our own moral effort, which is obviously relative, it becomes finite. Divine dignity is imperilled by too open intimacy with man. What remains is nothing but the moral interest itself, directed towards that which we value above everything else.
On the Truth of Moral Ideas

55. The feeling of being subject to the demands of an absolute will which is ever present in the background and the feelings of guilt and responsibility towards it, are now bound to disappear. A truly autonomous morality can now arise, determined only by direct love of that which we cherish above everything else. All avowed or disguised notions that our supreme values have a cosmic, and therefore objective, significance will dissolve. Nevertheless, civilized man will always feel responsibility in one sense concerning the realization of his highest values. He will fear above everything else to fall short in his endeavour to realize them, he will fear doing less than he is able to do. But if the ideas discussed before are eliminated, it is not punishment that will be feared. Instead, the fear be determined only by the fact that it is a matter of his highest values: it is realization of these, at least to some extent, that alone makes life worth living.

56. These observations suggest a trend for the future development of morality. The progress of scientific thought itself provides evidence for this. For centuries, science has been in vigorous opposition to opinions which make human interests, dressed up in divine clothing, the centre of the universe. The scientific outlook has gained territory inch by inch. In the long run, not even our innermost and most cherished opinions will be able to resist the power of knowledge.

57. If the future development of moral ideas will go in this direction, we are facing a revolution in the world-view of Western civilization, a revolution the extent of which is impossible fully to grasp. The association, not always openly acknowledged, of our highest values with an absolute reality has served as a strong protective force for social and even cultural values. Popular morality, more or less directly influenced by religion, as well as systems of moral philosophy based on it, are like cathedrals which have served as sanctuaries for these values. Only barbarians attack them by throwing stones.

58. The values in a morality have always, to a greater or smaller degree, been of social as well as cultural importance. A world-power or an absolute inflexible world-order has served as their guarantor. Although this idea is pushed into the background in conscience-morality, it has supported man’s faith in the final triumph of the good. This faith has served as an inspiring force in the struggle for the values. Add to this the immense importance of this way of thinking as a means
of restraint on conduct. The belief in hell and the—actually closely related—feeling of a guilty conscience have been powerful task-masters in the service of social and cultural values.

59. On the other hand, the belief that one’s own moral opinions are backed by an absolute authority and therefore are the only right ones has led, and will always lead to fanaticism. One’s own indignation against opposing moral views is felt to be one with the universal world-power’s condemnation of its opponents. One regards oneself as charged with the task of executing the demands of a sacred world-order. Indignation turns into a holy wrath which is boundless. In fact the unrestrained class hatred of our day has its roots in the popular moral belief in the absolute authority of its values. Obviously fanaticism will flourish when there is a conflict within a society between moral beliefs and each party regards its own values as absolutely sacred. In this way popular morality can also be socially and culturally disruptive.

60. Those of us who above all desire the happiness and civilization of mankind should not feel altogether despondent. It has happened before that superstitious beliefs which have provided support for a popular morality—which is to some extent socially and culturally determined—have fallen away. But popular morality has always regained its vitality and become rejuvenated, with its objective purer and more universal. It always survives because of its close connection with society’s own instinct for self-preservation. There is no reason to believe that it will wither away when we take the last step and relinquish any open or disguised belief in the cosmic and hence objective, significance of our values. It will be reborn, like a phoenix, out of the ashes of the old morality, with an outlook more free and far-sighted. It will be milder in its judgment of all human endeavour, seeing it sub specie aeternitatis, and informed by the insight that everything is a part of the endless whole of nature in which nothing is in itself higher or lower.11

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The Nature of Moral Philosophy

61. It is evident from all this what moral philosophy as a science cannot be. The aim of scientific inquiry is truth. Since it does not make sense to regard an idea of an ought as true, there can be no science of how we ought to act. Systems of moral philosophy which propose a principle
of morals connect the ought with something alien to it. They are misled primarily by the claim to objectivity in ordinary morality, a claim which is based on its assumption of a normative authority. But a science of morals can no more be based on moral beliefs than a science of religion can be based on religious beliefs. In both cases we are dealing with subjective beliefs influenced by feelings and interests: science cannot assume their validity, but can indeed make them an object of inquiry.

62. A science of morals cannot even establish a conditional ought. Of course, if a principle for right conduct is assumed, then the means to an end can be scientifically determined. But such an inquiry, important enough in itself, e.g. into the means to achieve human happiness, embraces all sorts of things. It may be a congeries of historical experience, sociology, physiology, and psychology. But it cannot be described as a science of morals, for in itself it has no particular reference to moral questions. As soon as results of such inquiries are to be applied in practice and it is said: “therefore, you ought to act like this”, another area has been entered within which the concepts of truth and falsity have no application. Höllding, who in other contexts defends the subjectivity of the moral criterion, is guilty of conceptual confusion when he claims that a scientific ethics is possible because means to an adopted end can be scientifically determined. His view actually implies that there is such a thing as a scientific expression of feeling. (Compare, for example, these statements: “Philosophical ethics is a system of value-judgments” (Etik, 3rd edn., p. 10); “judgments of good and evil are expressions of feeling” (p. 23)). Of course inquiries of the kind mentioned can have indirect, secondary significance for a science of morals. If something is actually a means to attain an end which is favourably valued from a moral point of view, then a person who has enough knowledge, whose principles of valuation contain this end, and who lets his knowledge affect his particular value-judgment, will also value the means in question favourably from a moral point of view. But such a result indicates merely how people are actually going to judge under certain conditions. In no way does it provide a conditional ought.

63. As a science, moral philosophy is concerned with actual moral valuations in their historical development, supported by psychological analysis and guided by critical philosophical penetration into the ideas pertaining to this field.
64. Although moral philosophy, like any other scientific inquiry, must be beyond good and evil, we should not infer that moral philosophy would teach us to disregard all current morality and to heed only our selfish interests. This is the so-called sophistic standpoint. It would mean that science would make value-judgments which would be at variance with our ordinary moral beliefs. But it is not for science to make any value-judgments at all. It can prove neither that given rules ought to be followed, nor that they ought not to be followed but ought to be replaced. The view presented here has therefore nothing in common with sophistic morality, the morality of the superman and the like. The view is only that there can never be a scientific morals, but only a science of morals.

Notes

1. For publication details, see the bibliography at p. 437.
2. The title originally intended for the lecture was “Verklighet och bör” (Reality and ought).
4. A few lines in the manuscript which propose that these opposing attitudes are present in the Jesus of the gospels have been struck through. Perhaps Hägerström wanted to avoid giving offence on the solemn occasion.
5. “foreign”, “alien”: i.e. that the concept belongs to an entirely different category
6. The reference is to Westermarck 1906. Hägerström used the German translation (Westermarck 1908). He respected Westermarck’s work. In a struck-through passage in the manuscript, Westermarck is described as the distinguished sociologist. An intriguing detail is that Hägerström had first written—and deleted—the incomplete word “moralf”. If completed, it could be either moralforskaren (moral researcher) or moralfilosofen (moral philosopher). His metaethical non-cognitivism was of course incompatible with what he took to be Westermarck’s meta-ethical subjectivism.
7. “normative reality” is used throughout to mean a reality which is supposed to ground the validity of certain norms. Hägerström’s central thesis is that no reality can do that.
8. It would have been better if Hägerström had written “matter of fact”, rather than “is”.
9. The reference is to works by, e.g., Münsterberg, Rickert, Windelband, Bergson, and also to pragmatism.
10. The metaphor replaces the one in the manuscript: “making an onslaught with the axes of blasphemy”. Hägerström may have wanted to prevent any impression that he approved of the prosecution which in 1908 had resulted in a (short) prison sentence for Knut Wicksell, the eminent economist and neo-Malthusian.
11. This paragraph has a counterpart in Westermarck 1906: 18–20. Both authors believed that meta-ethical anti-objectivism (subjectivist in Westermarck, non-cognitivist in Hägerström) would promote toleration and lead to an improved moral outlook.
12. An obvious allusion to Nietzsche, whose works made a strong impression on Hägerström in the early 1890s.
The Powers of Magistrates in
Ancient Rome

Axel Hägerström

Translator’s Preface

The text that follows is a translation of Hägerström’s introduction to his Das magistratische ius in seinem Zusammenhang mit dem römischen Sakralrechte (The magisterial ius in its relation to Roman religious law) (= Juridiska Fakultetens i Uppsala Minnesskrift 1929.8), Uppsala 1929, a work which analyses the law governing the appointment and the powers of the magistrates (dictators, consuls, praetors, tribunes, etc.) in ancient Rome. As indicated in the last paragraph of the text, it is a counterpart to the introduction to Der römische Obligationsbegriff vol. I (The Roman Concept of Obligation), Uppsala 1927. In each of these introductions Hägerström briefly compares ancient and modern legal concepts. He finds an important similarity in that both are non-factual and in a sense illusory, and an important difference in that the modern ones include a notion of duty absent from the early ancient ones. The heading for this chapter and the notes that follow have been supplied by the translator.

*   *   *

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The power of the state, in the sense of a purely factual power, can, when it is regulated by law, be traced back to a system of coercive rules which are on the whole maintained within a particular territory. Certain persons who are designated by the rules themselves, so-called state organs, act on the whole in conformity with the rules. It is, however, essential to state power, considered as a fact, that the individuals in the territory, private persons, are as a matter of fact on the whole subjected to the coercive measures of the state organs. Certain so-called subordinate state organs are also on the whole subjected to the coercive measure of other ones. But the regularity of the coercive actions of the state, as well as the actual compliance of private individuals and subordinate state organs, can be explained in terms of social psychology by reference to a distinctive ideology. The ideology raises the supposed matter of fact above the merely actual power-relations. There is the idea that the power of the state, present in state organs and especially in the personified superior state power, possesses the right, above merely actual power, to impose coercive measures on private individuals and subordinate state organs—a sovereign authority {Herrscherrecht}. The state power has, for instance, a right to punish criminals, even if in a particular case the criminal actually cannot be caught. It is clearly evident that this sovereign authority, which is supposed to underlie the actual exercise of coercion, denotes an ideal power that exists above the natural power relations.

The concept of a “valid” public law is entirely based on such an ideology. That this law is valid cannot mean that the rules contained in it concerning the exercise of coercion are actually followed. If that were so, no transgression of the law would be possible, since the very validity of the law would consist in its actually being followed. This law is above the state organs and private individuals, and remains “valid” even if they do not comply. It might be said that this only means that coercive reactions will occur against state organs or against individuals, if they prevent the rules from being followed or break the rules. But a monarch in a constitutional monarchy who violates the constitution and is in control of adequate means of power need have no fear of any coercive reaction. Such a situation is even more obvious if the ultimate
holder of power, for instance, in a constitutional state the monarch and the representatives of the people jointly violate the constitution. In both these cases there are no rules about the exercise of coercion against the transgressor. And a subject, who, for instance, successfully avoids paying tax according to law, may be able to do so with impunity. For reasons like these, the thought of a “valid” public law goes beyond actual power-relations and leads to the idea an ideal realm in which ideal powers and subjections, i.e. rights and duties of public law, exist. These are thought to obtain even if they do not manifest themselves in the natural world. The superior state organs are considered to be entitled to exercise force, albeit only within the limits of the rules of public law (ultimately the content of the constitution) or they are considered to be obliged to respect such rules, and the subordinate state organs or individuals are considered to be obliged to perform actions, whose omission is linked to a coercive reaction, and obliged to submit to such coercive reactions. The reason why entitlement and obligations are linked to rules about the exercise of coercion which are on the whole actually observed, is that otherwise this ideology could not fulfill its social function. It would not be able to create a stable social order. This alone provides it with social significance. That these ideal powers and subjections are conceived as being independent of actual power-relations is nevertheless evident from the fact that in particular instances valid public law is actually transgressed with impunity.

Attempts are made to solve the problem of “valid” public law without the assumption of an ideal law, by taking it to be the declared will of the actual power-holder. The content of this will does not depend for its existence on actual compliance. This is, however, a completely unrealistic construction. In a state with a constitution, who is the actual power-holder, whose declared will would be valid public law? (More on this in Inquiries, p. 12f.) And even if such a power-holder could be identified, the assumption that he is bound by the constitution would remain unexplained. Talk of a self-imposed obligation or limitation of the power-holder’s own right goes beyond the realm of the merely factual, and presupposes ideally existing rights and duties.

In particular it is obvious, that the part of public law which refers to private law and is “valid” for judges in civil cases, cannot be thought to have validity in the sense that in general the judges actually maintain
the rules. If that were the case, it could never be said that a decision was contrary to law. That private law is considered to be independent of actual court practice can be seen most clearly from the fact that every scientific treatise on private law aims to provide binding guidance for the judge, by means of interpretation of the laws, by analogy, by investigation of uncertain court practice which suffers from a lack of determinate legal principles, and so on. The aim is to discover previously ignored features of the supposedly real “valid” law, in order to provide judges with binding guidelines. That the judge is bound by this highly uncertain law, which is nonetheless always supposed to exist, cannot consist in his actually being punished or forced to pay damages in case he should decide contrary to law. Even less is it the case that execution of the judgment would not take place in those cases in which there is no appeal to a higher court against a decision contrary to law. The judge is bound only in the sense that he is obliged to decide according to the rules. In actual fact, this obligation is commonly understood to correspond to an equally ideal legal claim that a plaintiff in a civil lawsuit has against the state. Moreover, the “valid” private law, to which reference is made in the public law that is “valid” for the judge, can be distinguished from public law and regarded as existing in its own right, only in the sense that it determines the ideal powers and the ideal subjections in the relations between private individuals. What gives rules the character of rules of private law is obviously not that one party actually is able to enforce compensation or restitution in case the other party fails to follow the rules. Because that possibility requires that various conditions laid down in public law of legal procedure are satisfied—in the first instance the rules of evidence. It also depend on contingent circumstances, as, for instance, the judge’s opinion of what the “valid” law is.

However, the discussion so far has focused on conceptions in the modern era concerning the ideology which through its notions of the supremacy of certain rules which govern the use of coercion brings stability to the state. This is why the concept of duty has acquired a special significance. In actual fact, a private right, for instance a real right or a claim, is in this view not immediately an ideal power over objects or persons of such a kind that the right-holder as such would be able to exercise an actual influence on the object of the right by means of supersensible powers. The modern view of the significance of the ideal power
leads rather to the view that the interest of the right-holder as such according to “valid” law is the ground for a certain obligation of other individuals, or in any case that he, but not others, according to the same law ought to be allowed to enjoy certain advantages connected with the object of his right. On the other hand, the idea of a substantive power comes to expression in that the ought in favour of the right-holder is at his own disposal. In private law, a right implies not only that there is an ought incumbent on other parties in favour of the right-holder, or that one ought to be allowed exclusive enjoyment of a certain advantage. It is furthermore implied that the right-holder has at his disposal the external enforcement of this ought. In this respect he has an ideal power, independently of the actual power over the object of his right. The legal ideology of the civil-court judge who makes an execution-warranting decision, is that in the decided case the situation which ought to have arisen in favour of the successful litigant did not in fact come about. But this litigant would have at his disposal the maintaining of the relevant ought against any violation. The judge declares in the decision, that a right in this sense has been violated, and arranges for a corresponding compensation on the basis of the violated right. Similarly, the imperium of the state authorities, considered as a right, has come to mean that they can by their commands impose duties on private individuals and subordinate state organs, and that they may punish transgressions as acts contrary to duty—indeedly of any actual power-relations.

In contrast, this intrusion of moral elements in the ideal power over things and persons, implicit in the idea of a “right”, is absent from Roman legal ideology. The Roman gods were by no means hypostatisations of moral principles. They were thought of as independently existing entities, identified with some natural process or human function, and capable of influencing events in the natural world. Similarly, the “right” of a person was seen as a mysterious power, akin to physical power, over things and persons, which, independently of any natural power, made its presence felt directly, without any mediation of an ought. I have tried to demonstrate this for the Civil Law in Der römische Obligationsbegriff vol. I. Additional light will be shed on this through the following investigation of Roman public law with special reference to the meaning of the magisterial ius.
Notes

2. The expression “valid law” (geltendes Recht) denotes legal rules and principles which are in force, are binding, have normative force, etc. in contrast, for instance, to those abrogated or those merely proposed.
3. Public law (öffentliches Recht) is law to which state organs as such are subject, in contrast to private law (Privatrecht), to which individuals as such are subject.
4. “Ideal” (ideal) is used here for items not belonging to the natural world.
5. Wissenschaftlich: here, the science of jurisprudence.
6. A real right (a right in rem) is a right in a thing. A personal right (a right in personam) is a right against a person, a claim.
Axel Hägerström’s Published Works: Select Bibliography

Thomas Mautner

This list of published writings by Hägerström follows the bibliography in Vägledning till Hägerströmstudiet (Guide to Hägerström research) (= SKHVSU 49), Uppsala 1994, with a few additions. A number of writings of a more occasional kind are left out. Explanations of Swedish titles of works which have not been translated into English have been inserted. The letter H followed by numbers, indicates the call-number for an item held in the Hägerström collection in the Uppsala University Library. Other abbreviations are:

HT (Lectures given in the) autumn semester
SKHVSU Acta societatis litterarum humaniorum regiae Upsaliensis (Skrifter utgivna av Kungliga Humanistiska Vetenskapssamfundet i Uppsala)
Transl. Translated by
UUÅ Uppsala universitets årsskrift (Acta universitatis upsaliensis).
UUB Uppsala University Library
VT (Lectures given in the) spring semester
Axel Hägerström’ s Published Works


1895MK Om den moraliska känslan och den moraliska driften såsom förnuftiga i den moderna rationalismens huvudformer (The rationality of moral feeling and moral impulse according to the main forms of modern rationalism). Uppsala 1895. (6) + 148.


1909ST Social teleologi i marxismen (Social teleology in Marxism). Uppsala 1909. (= UUÅ 1909. Filosofi, språkvetenskap och historiska vetenskaper. 1.).
Axel Hägerström’s Published Works


1910KP Kritiska punkter i värdepsykologien (Critical points in the psychology of value). Festskrift tillägnad E.O. Burman på hans 65-årsdag den 7 oktober 1910 Uppsala 1910, pp. 16–75.

Reprints:
1939SU.

On the truth of moral ideas: pp. 409–428 in this volume.
Translations:
In 1964PR.
Über die Wahrheit moralischer Vorstellungen. Transl.


Till frågan om den objektiva rättens begrepp. I. Viljeteorien.
Uppsala 1917. xii + 168 pp. (= SKHVSU 9:2).

Translation: On the question of the notion of law. Transl.
C.D. Broad. In 1953IN, pp. 56–256. The sections 4–6, i.e.
pp. 116–201, are reprinted under the heading “On the
idea of duty”, in 1964PR, pp. 97–172.

Naturrätt i straffrättsvetenskapen? (Natural law in the theory of
criminal justice?). Svensk juristtidning 5 (1920).

Anmälan av: Sven Helander, Marx och Hegel. En kritisk studie
över socialdemokratisk världssåkdåning (Review of Sven Helander,
Marx and Hegel. A critical study of the social-democratic world-
view) (= Skrifter utgivna av Fahlbecks stiftelsen 1). Lund 1920.
Statsvetenskaplig tidskrift 25 (N.F. 4) (1922).

Kriminalpsykologiska reflexioner. [Anmälan av:] Andreas Bjerre,
Bidrag till mordets psykologi (Reflections on criminal psy-
chology. Review of: Andreas Bjerre, Contributions to the psychology
329–353.


Axel Hägerström. In: Alf Ahlberg, Filosofiskt lexikon. Stockholm:
Natur och Kultur, 11925, 21931, 31951 , 41963, and Alf Ahlberg & Hans

Translation: The Philosophy of Axel Hägerström. 1964PR
pp. 313–316. Trans. Robert Sandin. The translation is
based on the second edition 1931.

Der römische Obligationsbegriff im Lichte der allgemeinen römi-
schen Rechtsanschauung. I. Uppsala 1927 (= SKHVSU 23). . IV +
631 pp. See also 1941RO.

Translations of the Introduction, pp. 1–18:
C.D. Broad (transl.) in 1953IN, pp. 1–16.
Italian translation in S. Castignone (ed.) Il realismo giuridico

Anmälan av (review of) Hans Kelsen, Allgemeine Staatslehre,

Translation: 1953IN, pp. 257–298. Kelsen’s theory of law and
the state.
<table>
<thead>
<tr>
<th>Publication Date</th>
<th>Title and Details</th>
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| 1929MI | Das magistratische ius in seinem Zusammenhang mit dem römischen Sakralrechte. Uppsala 1929. 87 pp. (= UUÅ. Juridiska fakultetens i Uppsala Minnesskrift 1929. 8.)  
*Translation of the introduction to this work: pp. 429–434 in this volume.* |
| 1932SR | Om social rättvisa (On social justice). *Spektrum* (1932) 1, pp. 1–14.  
| 1934NE | Nehrman-Ehrenstråles uppfattning av grunden för ett löftes juridiskt bindande kraft, belyst genom å ena sidan romersk, å andra sidan naturrättslig rättsåskådning (The ground for the legally binding force of the promise according to Nehrman-Ehrenstråle, in relation to the legal conceptions in Roman Law and in Natural Law theory). In: *Minnesskrift ägnad 1734 års lag.* II. Stockholm 1934, pp. 571–630.  
*Translation: See 1965RP.* |
*Reprint: 1939SU, pp. 69–92.* |


1938HU Om handslagets ursprungliga innebörd (The original meaning of the handshake). *Presens* 5 (1938) pp. 53–72.


*Reprint:* 1939SU, pp. 231–255.


This volume contains 1911MF, 1934PM, 1913SV, 1932SR, 1935PR, 1938HU, 1925KR, 1939SP.


Lectures H108:1 and H110:2 [VT 1909].
Translation by C.D. Broad of 1949RF pp. 41–79.

Primitiv och modern kraftföreställning 15–38. Translation of 1933VK.
Andlig religion. H 118:2 [VT 1926], pp. 41–79.
Translations: 1948LS, and 1964PR, pp. 224–259, both headed “Lectures on so-called spiritual religion”.


1953IN Investigations into the nature of law and morals. Uppsala 1953. (= SKHVSU 40). Edited by Karl Olivecrona. Translated by C.D. Broad. The volume contains:
Translator’s preface: vii–ix.
Editor’s preface: x–xxvii.
General view: 1–16 (Translation of pp. 1–18 of 1927RO).
Is positive law an expression of will? (Translation of 1916GR)
pp. 17–55.
On the question of the notion of law (Translation of 1917FO)
pp. 56–256.
Axel Hägerström’s Published Works

Pp. 116–201 of these are reprinted in 1964PR pp. 97–172.
Kelsen’s theory of law and the state (Translation of 1928HK) pp. 257–298.
The conception of a declaration of intention in the sphere of private law (Translation of 1935BV) pp. 299–347.

This volume contains three lecture series:
H 116: 3 [HT 1917] Rättsideers uppkomst (The emergence of ideas of rights) 2–118.

Translated by Robert T. Sandin.
The volume contains (provenance within parentheses):
On the truth of moral propositions (1911MF), pp. 77–96.


Axel Hägerström’s Published Works

A talk in the Verandni student society 24.4.1909.

Gustaf Aulén (1879–1977)
Professor of theology first in Uppsala and then in Lund. He later left this chair to become bishop of the Strängnäs diocese. Author of several important works and a representative of Lund theology (see Anders Nygren below). Honorary degrees from among other places Saint Andrews, Glasgow and Augustana College (Rock Island).

Gösta Berling
A character in Selma Lagerlöf’s first novel Gösta Berlings saga (The saga of Gösta Berling) from 1891. It is set in Värmland in the 1820s. The novel has been translated into fifty languages. Gösta Berling was a bohemian priest, a handsome and likeable drinker and womaniser. Who the real life prototype for the novel character was is a matter of debate. Several movies have been made based on this romantic story from Bergslagen (an iron-producing region in central Sweden, characterised by water power, charcoal-producing forest and iron ore) and its particular cultural traditions. Lagerlöf’s novel is part of the Swedish canon.
Christopher Jacob Boström (1797–1866)
Professor of practical philosophy in Uppsala 1842–1863. His idealist philosophy predominated in Sweden until a reaction, in which Hägerström played an important part, by the turn of the century.

Karin Boye (1900–1941)
Her poetry was much loved, especially by younger people. One of her novels was Kallocain, a dystopia with science-fiction ingredients. In a memoir she remarked on the cold and gloomy atmosphere in Uppsala.

Gustav Cassel (1866–1945)
Swedish political economist and, according to Joseph Schumpeter, a world leading one. A representative of Enlightenment rationalism, he was active as a public intellectual and adviser of governments. He taught Gunnar Myrdal, who succeeded him as professor of political economy in Stockholm.

Arthur Engberg (1888–1944)
Swedish social democratic politician. Minister for education from 1932 to 1939 (with short interruption for the so-called vacation government 1936). His journalism and speeches displayed great eloquence. During his studies in Uppsala (1908–1913), Hägerström’s influence on him was significant. His shorthand notes from the lectures have not yet been explored.

Gustaf Fröding (1860–1911)
Sweden’s most popular poet. Some of his poetry is very parochial and in the tongue of his home province Värmland. He was a bohemian character and as a student in Uppsala he became an alcoholic. He suffered from mental illness and died relatively young. The procession at his funeral was one of the most well attended in Sweden ever, numbering several hundred thousand. His poetry is characterised by humour and most Swedes know his best-known poems by heart. He became increasingly depressed which leaves an imprint on his later work.
Gunnar Heckscher (1909–1987)
Son of the eminent economic historian Eli Heckscher and professor of political science at Stockholm University. Author of several pioneering works in comparative government and administration. His studies of the Swedish polity laid the foundation for controversy over corporatist elements in Sweden. As leader of the Conservative Party (1961–1965) he represented a conservatism that left scope for social reform. He was Swedish ambassador to New Delhi, Tokyo and Seoul and served on Swedish state commissions and was an expert in constitutional matters.

Ingemar Hedenius (1908–1982)
Professor of practical philosophy at Uppsala University 1947–1973. Student of Hägerström and Phalén. Prominent as a public intellectual and renowned for his polemical style, notably in his vehement attack on Christian doctrine and theologians. He proposed a modification of Hägerström’s theory of law by distinguishing genuine and non-genuine statements about legal norms, i.e. distinguishing a legal norm from a statement that there is such a norm, a distinction which generated both misunderstandings and controversy.

Gunnar Hägglöf (1904–1994)
As a student he followed Hägerström’s lectures but did not accept the anti-objectivist message. He later served as a minister for trade in the late 1930s and negotiated Sweden’s trade agreements with Germany and the UK during the Second World War, together with Erik Boheman and the Wallenberg brothers. He had a successful career as a diplomat as Sweden’s ambassador to Moscow, the UN, London and Paris. Among his many publications is an autobiography also translated into English. He converted to Catholicism.

Anders Karitz (1881–1961)
Anders Karitz was a docent in philosophy in Lund. His major publication was a study of the philosophy of the eighteenth-century Swedish author Thomas Thorild and its relation to Spinoza and Leibniz. His main interest was the relation between philosophy and other disciplines, reflected in his work Philosophie und Spezialforschung (1932). His appointment
to the chair of practical philosophy after Hägerström was controversial, generating tensions within the Uppsala School of philosophy.

**John Landquist (1881–1974)**

He introduced Bergson to Sweden, and his doctoral thesis on the nature of the will (*Viljan*, 1908) was well received in literary circles. He soon established himself as a prominent literary critic and public intellectual, and he also edited the collected works of Geijer and of Strindberg. When he applied for a vacant chair in philosophy, the analytically inclined philosophers in Uppsala did not look favourably on his writings, and the resulting public controversy was acrimonious. It was in this context that he used “value-nihilism” to characterise Hägerström’s theory. Later in life he became professor of pedagogical psychology in Lund.

**Vilhelm Lundstedt (1882–1955)**

Professor of private law at Uppsala University from 1914. A devout follower of Hägerström and a main representative of Scandinavian legal realism. Some of his writings translated, although not well, in his *Legal Thinking Revised*. Member of parliament (First chamber) for the Social Democratic Party and together with Östen Undén (see below) a source of inspiration for so called functional socialism, according to which property rights could be gradually deconstructed.

**Konrad Marc-Wogau (1902–1991)**

Born in a German-speaking family in Moscow, he moved to Sweden after the revolution and became naturalised. Studied philosophy in Uppsala, where Phalén was his major influence. Professor of theoretical philosophy at Uppsala University (1946–68). Author of a number of papers on Hägerström’s ontology and value theory.

**Vilhelm Moberg (1898–1973)**

A major novelist and prominent in a number of political debates. As a layman, he also produced pioneering studies in the Swedish migration to North America, writing a four-volume novel cycle, which is part of the Swedish canon, about Swedes leaving their rocky smallholdings in Småland and resettling in Minnesota.
Swedish economist of the institutionalist school. He was strongly influenced by Hägerström’s anti-metaphysics. Myrdal had what the Americans call “larger than life” qualities and forged twin careers as a scholar and a politician. More than 1,200 published works, most notably: An American Dilemma (1944); The Political Element in the Development of Economic Theory (1953, orig. in Swedish 1929) and Asian Drama (3 vols, 1968). Director of ECE (UN’s Economic Commission for Europe) 1947–57. Received the Sveriges Riksbank Prize in Economic Sciences in Memory of Alfred Nobel in 1973 (shared with Friedrich von Hayek). Swedish senator (member of parliament’s First Chamber) representing Dalecarlia and also minister for trade in the Social Democratic post-war government. He never wrote his memoirs but in 1982 he published Hur Styrs Landet, del 1 (How the country is governed, part 1), which is a critical account of the Swedish modernity of which Myrdal’s own social engineering is a main cornerstone.

Anders Nygren (1890–1978)
Professor of theology in Lund 1924 and bishop there from 1948–58. The leading representative of the so-called Lund theology, which, influenced both by Kant, Schleiermacher and neo-Kantians and also by Hägerström, argued for the possibility of peaceful coexistence between faith and science. Main work: Eros and Agape.

Karl Olivecrona (1897–1980)
As a law student in Uppsala, Olivecrona attended Hägerström’s philosophy seminars and was strongly influenced by his ideas. In 1933 he became professor of procedural law in Lund. The strong influence of Hägerström notwithstanding, impulses from philosophers in Oxford and Cambridge led, from about 1950, to a number of revisions and refinements of his original outlook. Olivecrona can be regarded as the leading representative of Scandinavian Legal Realism. Main work: Law as Fact, 2nd edn., 1971.

Olaus Petri (1493–1552)
A Swedish humanist, church reformer and historian, born as Olof Pettersson in Örebro. He helped Gustav Vasa (Gustav I) and translated
the Bible into Swedish. He was, however, sentenced to death for high treason by Gustav Vasa, Sweden’s “Kemal Attaturk”/“Henry VIII”. After being pardoned he became Gustav’s chancellor and he was the main architect behind the Swedish Reformation. August Strindberg wrote a play *Mäster Olof* (Master Olof) about him. He was also a pioneering philosopher of law.

**Adolf Phalén (1884–1931)**
Pupil and later colleague of Hägerström following his appointment to the chair of theoretical philosophy in 1916. His first published work refuted epistemological and ontological subjectivism. His doctoral thesis from 1912 dealt with the problem of knowledge in Hegel’s philosophy. Phalén’s writings were all strictly analytical. In his view, a central task for philosophy was to reveal inconsistencies in our inherited, pre-scientific, common notions (of time, knowledge, etc.).

**Einar Tegen (1884–1965)**
Strongly influenced by Hägerström and Phalén. Author of major works on the nature of will and selfhood. Professor of practical philosophy in Lund, 1931–37 and from 1937–51 in Stockholm. Tegen played a significant part in promoting nascent sociology in Sweden. He was a close friend of the Myrdals.

**Herbert Tingsten (1896–1973)**
A leading public intellectual in Sweden in the 1950s and 1960s. Studies in political science in Uppsala under Rudolf Kjellén, whose politics and attitudes, however, he did not share. After having been professor of political science in Stockholm, he left the chair to become editor-in-chief of *Dagens Nyheter*, the leading liberal newspaper in Sweden. One of his favourite themes was “the end of ideology”. He advocated Swedish membership of NATO. He left *Dagens Nyheter* after confrontations with the owners. He was influenced by Hägerström’s value-philosophy, although an essay of his, published in 1941, criticised Hägerström’s view of social progress in history.
Östen Undén (1886–1974)
Professor of law at Uppsala University. *Rector Magnificus* at Uppsala University, 1929–32. Member of the Social Democratic Party; long-serving minister of foreign affairs. Main architect of Swedish neutrality policy. Influenced by Hägerström’s legal realism.

Anders Wedberg (1913–1978)
Wedberg studied under Hägerström and Phalén. After gaining his doctorate, he spent a few years at universities in the United States in the early 1940s. His earlier philosophical outlook was considerably modified by influences from the development of modern logic, which he was the first to introduce in Sweden, and linguistic philosophy. He was professor of philosophy in Stockholm, 1949–1975. He ventured to offer critical analyses of classical philosophical theories in his *History of Philosophy* (3 vols, 1978).

Edvard Westermarck (1862–1939)
Swedish Finlander and a pioneer of sociology in Finland. He was also a philosopher (professor in practical philosophy in London, 1907–30) and anthropologist. He spent long sojourns in Morocco, resulting in *Ritual and Belief in Morocco* (2 vols 1926). Other important works are *The Origin of Human Marriage* (1899) and *Ethical Relativity* 1932. His most important work, *The Origin and Development of the Moral Ideas* (2 vols, 1906–8) was discussed by Hägerström at the time and inspired him to produce a less implausible version of emotivism.

Knut Wicksell (1851–1926)
An important political economist whose influence on such topics as the principles of taxation continues. He was a prominent radical and neo-Malthusian, pioneering enlightenment about contraceptives, etc.
**About the Authors**

**Torbjörn Andersson** *(born in 1963)* is Professor of Civil and Criminal Procedural Law and Dean of the Faculty of Law at Uppsala University. He produced his dissertation in 1997, was appointed professor in 2001 and held the Jean Monnet Chair as Professor of European Community Law, 2002–2007, all at Uppsala. His latest academic contribution of some magnitude is the project “Parallel and Conflicting Enforcement of Law”, from which a book was published in 2005.

Finn Collin (b. 1949) His degrees include the mag. art. in philosophy, Copenhagen University, a Ph.D. University of California at Berkeley in 1979, and a Dr. phil. in philosophy, Copenhagen University in 1985. He has been Professor at Institute for Philosophy, Pedagogics and Rhetoric at Copenhagen University since 1998, and is currently editor of the Danish Yearbook of Philosophy.

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The index does not include some very frequent names and terms, such as Hägerström and Kelsen, and non-cognitivism, nihilism, Boströmianism, etc.

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This major volume of studies of Axel Hägerström (1868–1939) presents contributions by leading international scholars to a 2011 symposium on the only Swedish philosopher of international significance for social thought. Axel Hägerström, in contrast to his contemporaries, rejected the reality of values, and then applied this rejection by reinterpreting legal theory. His influence was enormous for the school of “Scandinavian legal realism” which includes Gunnar Myrdal, Karl Olivecrona and Alf Ross, and had a formative influence upon Swedish political culture and Scandinavian social science.

“This is a book of cultural importance. A multi-faceted, internationally situated anthology presenting and analyzing the early 20th-century Swedish philosopher Axel Hägerström, moral guide of Gunnar Myrdal and other intellectuals, and of the radical 20th-century transformation of Swedish society.”

—Göran Therborn, University of Cambridge

“Scandinavian legal realism, a sophisticated legal theory in sharp contrast to its American counterpart, enjoyed a good bit of attention in its heyday. Standing behind the movement and informing its work is the remarkable philosopher Axel Hägerström. These new essays, devoted largely to Hägerström’s philosophy, are therefore most welcome.”

—Stanley L. Paulson, University of Kiel, Washington University in St. Louis