

Axel Hägerström, Max Weber and Michel Foucault

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In order to shed new light upon Swedish philosopher Axel Hägerström (1868-1939), Michel Foucault's key distinction concerning the "*ontology of the present*" appears very promising. Hägerström published a number of books and articles in both general philosophy and social criticism, the former focussing upon ontology and epistemology, whereas the latter contained a painstaking cultural critique, aiming at demystifying the established moral conceptions, the heralded religion and authoritative law.

Keywords: Axel Hägerström; Michel Foucault; Max Weber; Karl Marx; Friedrich Nietzsche; Karl R. Popper; Social Philosophy; Cultural Critique; Deconstruction; Bourgeois Ideology; Morals; Religion; Law; Meta-Ethics; Post-Modernism

Introduction

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 or it may analyse the foundations of society today. Foucault argued in favour of the latter approach as being more relevant than the former. Major philosophers have either concentrated upon the first or the second tasks, with the exception of those few who mastered both (Foucault, 1977; Merquior, 1991; Gutting, 2005).

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 was more original and perhaps 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 how philosophy in an article, called "*Selbstdarstellung*", in a German publication 1929. This publication contained a number of own 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, arguing that he had basically had the same ontology and epistemology since the early 20th century when he abandoned German idealism and Kantianism. His colleagues within the well-known Uppsala School of philosophy questioned whether this self-presentation

was 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.

Now, in Swedish philosophy work is organised according to the Kantian separation between theoretical philosophy on the one hand and practical philosophy 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, 2011). 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 theoretical philosophy 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 "*Selbstdarstellung*": 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 suggest a few of its weaknesses.

Hägerström's Research Paradigm and Programme

Speaking with Lakatos, 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 talk in 1911 on "The Truth of Moral Ideas" that:

(HM) Objective values = Subjective valuations.

This model HM 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 model HM 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 20th 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 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 model HM that was revolutionary in European social thought, Hägerström engaging in deconstruction of established beliefs on a large scale.

It should be emphasized that Hägerström in the 1911 pronouncement of his model HM 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", "right" and "wrong" as well as "just" (Hägerström, 1952).

Yet, it should be pointed out that non-cognitivism is basically a theory in semantics, theorizing the use of words in various contexts. As such, it may be criticized 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 1) denial of existence of objective values, and 2) some form of non-cognitivism 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 model HM has, as a matter of fact, proved to be more confusing than clarifying. Time and again it had to be emphasized 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. 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 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:

(HM) Objective values = Subjective valuations.

The combination of Marxian ideology critique with his own meta-ethical model (HM) 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 heralded 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: p. 63).

This is his basic starting point for his research program. Turning first to ethics, he employed HM 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: p. 60).

This is the foundation for modernist social critique. The given moral beliefs in society *"having social and cultural impact"* have no objective 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: p. 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: p. 62). Realising that values are nothing but valuations would be conducive to a more *"softer judgement upon human conduct"* free from all forms of fanaticism.

As Hägerström continued his research program dispelling *"social superstitious beliefs"* (Hägerström, 1939: pp. 95-120), it became obvious that he looked upon future social change as linked with the emergence of new values with no objective foundation but linked with the true interests of the majority of ordinary people.

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 as being more or less as the tools for the rest, is there really a need for... superstitious legal ideas... in order to prevent that all goes 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: p. 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 superstition, especially when class distinctions were removed. At the same time, he rejected any claim of Marxism to deliver a scientific plan of action.

In 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: p. 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 descriptions of theological notions, which he regarded as basically camouflage for material interests, i.e. power and wealth.

Employing his model HM, 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 baptizing 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 God nature of Jesus" (Hägerström, 1939: p. 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: p. 95), namely legitimating structures of domination, whether politician or economic.

Hägerström became internationally renowned for his studies on Roman culture, where he wanted to show that Roman mythology was employed for the legitimation of Roman law, especially its basic concept of duty, for instance in contractual matter or with regard to the state.

Law

The notion of objective values is to be found not only in ethics or aesthetics, but also in law. The theory of legal order involves a number of moral concepts, such as justice, duty and obligation. And they have been regarded as objective values,

but 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 paradigm HM. He pursued the inquiry into law and jurisprudence in two directions:

- 1) Developing his own theory of law, Hägerström founded the school of Scandinavian realism, as an alternative to natural law and legal positivism.
- 2) Examining a large number of approaches in legal theory, Hägerström came to the conclusion that jurisprudence as an academic discipline was seriously contaminated by 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 paradigm HM 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 statute 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, 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 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 had the metaphor of law as a closed system of norms (Hägerström, 1953). Hägerström never look upon law as logically coherent, instead emphasizing 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. a court establishes so;
- 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 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 legitimization theories, namely the contractarian approach and the historical school. He returned to legal phi-

losophy time and again, analysing contemporary theories of law, such as for instance 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, 1963).

Endogeneity of Rights

This principle is a key implication from Hägerström's approach. Outside of the legal order, rights are duties are moral valuations. They do not exist in 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, & 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 questions. 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, recognizing 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).

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.

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 open up for a democratic decision-making process about the pros and costs of alternative framing of laws, like for instance criminal law.

Legal Validity = Enforcement

Typical of legal realism as well as legal pragmatism is that it tends to deny normativity. Legal norms are not inherently valid due to either reason or on account of any form of command 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.

Hägerström's legal philosophy is a critique of both the natu-

ral 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.

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:

- 1) Nihilism: Denying the objectivity of values, Hägerström would be a forerunner to the totalitarian ideology;
- 2) Academic—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—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 on reservations concerning what was going on in Germany in the 1930s.

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:

- 1) His epistemology—the rejection of subjectivism—was not original, as his colleagues at Uppsala contributed a lot (Oxenstierna, 1938).
- 2) 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.

- 1) Hägerström's own attempts to argue that his concept of reality formulated in 1929 ("Selbstdarstellung") had already been contained in his 1908 publication in the philosophy of science ("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 emphasized, this criticism however justified does not reduce the value of Hägerström's practical philosophy.

- 2) 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 that 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: pp. 42-60):

(T1) "The law of contradiction as the law of reality"

T1 is also to be found in the publications from 1908 and 1909. 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. 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 harmonized 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*) and empirical necessity or mere contingency, probabilities and randomness (*a posteriori*) (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". Theorizing knowledge and reality, it was never clear whether Hägerström spoke about 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 con-

sciousness and “*das Ding an sich*”, excluded any phenomenological approach, as with his contemporary Husserl (Bengtsson, 1991). 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 & Ullian, 1978).

One may point out that Hägerström was NOT well read on contemporary European theoretical philosophy, especially developments after the First World War. Thus, he does not analyse at any length the emerging phenomenological school (Bengtsson, 1991) 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 not 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, 2011).

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, 1965). 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 problems, including:

- 1) What is law: statutes, rulings, reasonable principles, norms as directives or imperatives, values or valuations?
- 2) What makes law binding: reason, command, a basic norm, rules of recognition, courts and the police?
- 3) Is jurisprudence a science or a technique, art or craft?
- 4) 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, 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 criticizing contemporary jurisprudence?

Hedenius argues that Hägerström and Lundstedt confused two different norm sentences:

- 1) “‘Proper’ norm sentences”: A sentence that states what should be done, or must be done, unconditionally or conditionally;
- 2) “‘Improper’ norm sentences”: A proposition that states which real norms above 1) exist where and when, meaning belong to the established legal order of a country.
- 3) 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 scrutinizes 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*” (p. 247).

Kelsen refers to an article by Wedberg from 1951 that parallels Hedenius’ distinction above. Kelsen (1979) comments upon the distinction between 1) proper norm sentence and 2) propositions about the norm sentence:

Wedberg qualifie 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 fondement factuel de la science du droit” (p. 260).

And he rejects the Hedenius’ distinction with the following argument: “Mais l’énocé 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: pp. 463-464).

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: pp. 78-79).

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 model HM.

Swedish society around 1900 was in rapid social change from an agrarian hierarchical structure, dominated by wealthy peasants 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 peasants—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 Protestant 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 until the arrival of the *Arbeiterbewegung*. Hägerström's attack on the established order started a cultural evolution ending with the world famous movies of Ingemar 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 Great War (Foucault, 1977). Hägerström targeted the essential elements in the established normativity and rebutted its core beliefs:

- 1) "Religion is superstition"
- 2) "Morals is nothing but valuations"
- 3) "The duty in conscience is merely a feeling of obligation"
- 4) "Crime only exists in court decisions"
- 5) "Property rights do not exist"
- 6) "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 unravelled. Once his research project-HM-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.

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