GERMAN INFLUENCE ON SWEDISH PRIVATE LAW DOCTRINE 1870–1914

BY

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Academically trained lawyers play an important role in developed societies. This paper pays tribute to their role by discussing some of their concepts and working methods during the transformation of Sweden from a developing country to an industrialized nation between 1870 and 1914.

Sweden belongs to the continental legal tradition rather than to the Anglo-Saxon. During the period discussed here, 1870–1914, France and Germany constituted the two possible rivals for a dominating position as the major sources of inspiration for Swedish legal thinking. This was partly because of their cultural importance in general but mainly because of their position as bearers of great legal traditions. However, throughout the 19th century, German legal science emerged as the more vital and innovative, even before the unification of Germany when there was no common legislation and court system.

In France, on the other hand, since the advent of the Napoleonic Codes, legal science had devoted itself to commenting and interpreting French statutory law (L'École de l'exégèse). In consequence the influence of French legal science abroad was limited. By contrast, German legal science long took a more independent view of statutory law, a fact which added to its intellectually more exciting character. Thus, from having taken their inspiration largely from France, during the 19th century Swedish legal scholars turned to Germany. This development took place at many levels: personal contacts, study tours and finally in legal writing and in the function and development of concepts.

So far there has in Swedish legal science been an undefined, general understanding of the developments during the 19th century and the underlying reasons but no systematic study has been made. This paper, therefore, tries to bridge this gap by discussing theoretical legal thinking around the turn of the 20th century. It is limited to the private law area. For the sake of concretion a straightforward method was chosen, i.e. to follow the intellectual development of eight eminent Swedish scholars up until the publication of their dissertations, and to analyse these. The purpose is to study the formation of their thinking and how this is mirrored in their dissertations. The purpose is to reveal to what extent the eight scholars were influenced by German legal thinking and whether they accepted and incorporated into their dissertations the legal

methods of, primarily, the German Pandektists. Their personal contacts with German legal scholars are also considered.

The following eight Swedish scholars and their dissertations are the subject of this paper: 1. Johan Hagströmer: Om aktiebolag (On Joint-Stock Companies, 1872), 2. Ivar Afzelius: Om cession av fordringar (On Cession of Claims, 1877), 3. Alfred Winroth: Om tjänstehjonsförhållandet enligt svensk rätt (On the Status of Servants according to Swedish Law, 1878), 4. Ernst Trygger: Om fullmakt (On Power of Attorney, 1884), 5. Hjalmar Hammarskjöld: Om fraktavtalet (On Freight Contract, 1886), 6. Tore Almén: Om auktion såsom medel att åvägabringa avtal I–II (On Auction as a Means of Entering into a Contract, 1897–1900), 7. Vilhelm Lundstedt: Avtal angående prestation till tredje man I–II (Contract Performance to a Third Party, 1908–09) and 8. Östen Undén: Kollektivavtalet (The Collective Agreement, 1912).

These eight scholars were among the most important and influential lawyers of their generation. All except one became university professors at a comparatively early age. The only one who did not (Almén), soon turned to law-making activities. He took part in the preparation of proposals on the law of sales and contract law on a common Scandinavian basis. All except two (Hagströmer and Winroth) later worked outside the university, either as high judges (member of the Swedish Supreme Court, President of a court of appeals) or as secretary or member of a royal commission on the preparation of laws; but in several cases also in a political capacity. During different periods of their lives, several of these lawyers were both practical working lawyers *and* politicians. Two of them became prime minister, two secretary for foreign affairs; one the Speaker of the First Chamber of the Swedish parliament and two became party leaders.

The eight lawyers have also been selected with consideration to the time of their scientific work, notably the 1870s and the 1880s. Common features in Swedish legal thinking were developed during this period and it was then that five of these scholars presented and defended their doctoral dissertations. For the following years up to 1914 one lawyer is studied for each decade.

It would have been possible to choose other ways to solve the task of studying German influence on Swedish legal thinking on private law for the period in question. Other approaches would have been possible. For instance, other first rate legal scholars might have been studied, or some who were not quite so first rate, who published and defended their dissertations but who soon afterwards left the university. There are indications that such "second rate" lawyers were even more strongly influenced by German legal science than the elite group was.

Another approach might have been to write a biography of one of the most important Swedish lawyers, for instance Ivar Afzelius or Hjalmar Hammarskjöld (the father of the late Secretary General of the United Nations). Ample sources are available on these two lawyers. However, it seemed important to study not one lawyer but a certain number of lawyers, who, taken together, constitute a group, however small, and thereby give a picture of a common pattern for Swedish legal science for the period under consideration.

A rather large amount of hitherto unused, unprinted material elucidating the scientific development of the eight scholars has been found. The Swedish libraries and archives (*Riksarkivet, Kungliga Biblioteket, Lunds Universitetsbibliotek* and *Uppsala Universitetsbibliotek*) contain a great number of personal letters from German legal scholars, for instance from the German legal historians Karl von Amira, Konrad Maurer and Max Pappenheim, but also some letters from other important German legal scholars such as Emil Friedberg, Rudolf von Jhering, Franz von Liszt, C. J. A. Mittermaier, Wolfgang Mittermaier, Friedrich Karl Neubecker, Wilhelm Reuling, Eduard Simson, Richard Schroeder, Otto Stobbe, Adolf Wach and Bernhard Windscheid. Not all these sources have been used in the present enquiry. However, this source material is available for research in Sweden.

Neither in international nor in Swedish legal studies has it been possible to find a model for a study of the kind presented here. It was therefore necessary to develop new methods. It was above all important to study the interdependence between German and Swedish legal thinking.

For this, a quantiative method has been used. The number of references by a legal scholar to the works of other authors or to German laws, for instance BGB or ADHGB, has been counted. Now, it cannot be concluded that numbers alone count. The number of quotes from a particular work is not necessarily a sign of great influence, because it might perhaps be a standard work, which a scholar cannot in all decency exclude, but with which he does not concur on specific questions. Status may also be involved: a young scholar "has to" quote the works of a certain well-known scholar. Then again, there might be a scholar, whom he reasonably should take into consideration, but who belongs to a different school of research. Beware of quoting that scholar, if you want to stay friends with your tutor! All these considerations contribute to the difficulties in drawing conslusions. Still, the number of quotations is sometimes quite telling.

Serious mistakes can result from considering the *number* of quotes as the only confirmation of one scholar's influence on another. A more

sophisticated method can be to study the basis of a scholar's footnotes from a source, the extent to which a Swedish scholar's reasoning is influenced by a German scholar's arguments. Here one compares the Swedish scholar's account with the German predecessor's text in the field covered by the footnotes. It is sometimes also possible to establish the influence of a German scholar on a Swedish scholar without the help of any footnotes at all.

The traditional view that the breakthrough for German influence on Swedish private legal theory took place around 1870 must be adjusted, because about 1870 one already finds a certain scientific legal tradition associated with two consecutive Professors of Private Law in Uppsala, Knut Olivecrona and Ernst Nordling. Olivecrona began lecturing the law of obligations and things, using a then modern legal method as early as the start of the 1850s. Before this time professors held lectures in the form of a commentary to the Swedish general code of 1734.

A crucial point of principle is the transformation within Swedish jurisprudence of the concept "lagfarenhet", meaning approximately "legal learning" or "knowledge of the laws" to "rättsvetenskap", "legal science". The development of the concept legal science in Sweden parallells the corresponding development of the German term "Rechtswissenschaft", which was first used already around 1790, as has been shown by Jan Schröder. The change in Swedish legal theory, however, occurred much more slowly and later than in Germany: it was not until around 1860 that "legal science" had completely taken over from "legal learning".

From 1870 onwards a clear pattern was developed in Uppsala for aiding young and promising legal scholars. When a talented young man had taken his basic legal examination, money was procured from various governmental sources or stipends for him to go to Germany and study at a university for eight to ten months. He could attend the lectures of important German legal scholars and become acquainted with their writing, particularly with the great number of German law reviews, which were often unavailable in Sweden.

JOHAN HAGSTRÖMER

Johan Hagströmer (1845–1910) published his dissertation *Om aktiebolag enligt svensk lag* (On Joint-Stock Companies according to Swedish Law) in 1872. He later changed to penal law, because he had a chance to become a professor in this field. In 1877 he became Professor of Penal

law in Uppsala, but had no opportunity of an extended tour of study in Germany until 1879. Before that time he had already been for shorter spells in Germany, first in 1872, when he met Konrad Maurer in Munich, and again in 1874 when he got in touch with Rudolf von Jhering in Göttingen. During his tour in 1879 he heard Carl Ludwig von Bar's lectures in Göttingen, and Adolf Wach's and Karl Bindings's lectures in Leipzig. Yet Hagströmer remained fairly sceptical towards the German penal scholars and obviously did not want to become one of their pupils. At the same time his personal letters to his close friend Gösta Mittag-Leffler, Professor of Mathematics in Helsinki and later in Stockholm, witness his deep sense of inferiority towards the German legal scholars.

The professors at Uppsala had a favourable opinion of Hagströmer's dissertation. It was well received by Konrad Maurer in a review in Kritische Vierteljahrsschrift and by Wilhelm Reuling in Zeitschrift für das gesammte Handelsrecht. During an early stage of his research Hagströmer appeared alienated by the "deep obscurity" of the German scholars, while he at the same time expressed his appreciation of the work of French legal scholars. Even so, a thorough analysis of his completed thesis shows that he based his analysis on theoretical opinions developed in German legal writing.

Hagströmer gives an account of different theories about the legal character of joint-stock companies. In one theory, the modern stock company was the equivalent of the Roman societas (Societastheorie). According to Hagströmer the advocates of this theory were Gerber, Pöhl, Savigny and Thöl. Another opinion saw the joint-stock company as a legal personality (Personentheorie). The adherents of this theory were Baron, Endemann, Herrman, Kuntze and Renaud. A third opinion wished to combine Societastheorie with Personentheorie. This Combined Theory (Kombinierte Theorie) was represented by Brinckmann, Jolly, Reyscher and Salkowski. Instead of applying Roman legal concepts to mid-19th century conditions a number of Germanist law scholars such as Beseler, Bluntschli, Gierke and Stahl wanted to use the concept "Genossenschaft" to explain the legal character of the joint-stock company and other types of economic corporations. A fourth theory, which tried to explain the legal character of legal persons and is also applicable to joint-stock companies, was called by Hagströmer the theory of a fortune without a legal subject. The advocates of this theory were Bekker, Brinz, Demelius, Köppen and Windscheid.

Hagströmer accepted none of these theories. He held the view of the joint-stock company as a legal person to be a false one, the entire

opinion that the joint-stock company should be a legal subject separated from its owners was legally impossible. As the company could not be an independent legal person, the shareholders had to be regarded as owners of the assets of the company. As possessors of their current shares they were co-owners of the company's assets.

Nearly all the scholars whose works Hagströmer discussed belonged to German legal science. He might partly or entirely reject their theories, but he always remained within a debate that the eminent foreign scholars—mostly German lawyers—had already started. Even though Hagströmer tried to reach for an independent opinion, he still held on to the legal method current in Germany. He often used expressions like "how you should construct", what "principle for construction you should use", i.e. methodical key concepts in German legal science.

IVAR AFZELIUS

Ivar Afzelius' (1848–1921) career was remarkable and he became one of the leading Swedish lawyers of his generation. He took his basic law examination in 1874 and presented his dissertation in 1877, *Om cession av fordringar enligt svensk rätt* (On Cession of Claims according to Swedish Law). In 1879 Afzelius became Professor of Procedural Law at Uppsala University, later *revisionssekreterare* (civil servant preparing cases for the Supreme Court), member of the Supreme Court, Chairman of *Lagberedningen* (a commission entrusted with the task of preparing new main sections—"balkar"—of the code of 1734), and finally President of *Svea Hovrätt* (the Svea Court of Appeals), the most prestigious post a Swedish lawyer can reach.

Afzelius was also politically active, a member of the First Chamber of the Swedish parliament for many years, leader of the "moderate" party of the First Chamber and then its Speaker from 1911 to 1915. In cultural life he was a member of *Vetenskapsakademien* (the Royal Swedish Academy of Sciences), of *Vitterhetsakademien* (the Royal Academy of Letters, History and Antiquities) and of the Swedish Academy.

During the academic year of 1874/75 Afzelius visited the universities of Leipzig and Göttingen and heard lectures by Windscheid and Jhering. He came to appreciate Windscheid particularly as a university lecturer and he preserved a lasting memory of these lectures. A few years later Afzelius reviewed the fifth edition of Windscheid's *Lehrbuch des Pandektenrechts* (he called it the German lawyer's golden book) in a Swedish law review.

Afzelius and Windscheid also became personally acquainted and exchanged letters for a number of years. In Azelius' personal papers in *Riksarkivet* are to be found eight letters from Windscheid between 1875 and 1891. Most of the letters contain only personal information about career, health and family matters etc. They do not reveal any scientific exchange of thoughts, but they do show that Afzelius also wrote letters to Windscheid. It has not been possible to find these either in Sweden or in Germany, however. No personal papers of Windscheid dealing with Swedish legal science are preserved in Leipzig.

Afzelius also got in touch with Jhering and in 1879 translated "Der Kampf ums' Recht" into Swedish. A letter from Jhering to Afzelius in connection with this translation is available in *Riksarkivet.* In articles in a Swedish law review in 1877 and 1879, Afzelius stressed Jhering's impact on legal theory, on the philosophy of law and on comparative law. He wanted to make Jhering's motto "Durch das römische Recht über das römische Recht hinaus" (through Roman Law and beyond) a programme of legal theory for Swedish lawyers as well. Still, Afzelius seems neither to have taken account of nor interested himself in the older Jhering's criticism of conceptional legal dogmatics (der Begriffsjurisprudenz).

In connection with the Leipzig visit Afzelius also became personally acquainted with Karl Binding, Emil Friedberg, Wilhelm Reuling, Otto Stobbe and during a later visit also with Adolf Wach. During his tenure as professor of procedural law in the 1880s Afzelius contributed to the German law review *Centralblatt für Rechtswissenschaft.* He wrote notices for German readers on new Swedish legal writing. In 1888 he became one of the two Swedish editors of the Scandinavian legal review *Tidsskrift for Rettsvidenskap (TfR).* He kept this job until his death in 1921, thus playing an important role for legal science, even after having given up writing himself. The main editor of the TfR was the Norwegian scholar and Conservative politician Francis Hagerup. Afzelius and he became close friends: both were important for the reception of German legal science in Scandinavia.

Afzelius' thesis related to a very common theme of German legal science, but no Swede had hitherto got to grip with it. His study shows very clearly the strong influence from the German Romanists. In a footnote on page one he mentioned 20 works by 18 authors who had written on cession. Only three of these had written in a language other than German. An analysis of Afzelius' dissertation shows, that he was strongly influenced by German scholars such as Jhering, Mühlenbruch, Savigny and, particularly, Windscheid. Although Afzelius' dissertation

was only 77 pages long, he found reason to refer in 10 footnotes to Windscheid's *Lehrbuch des Pandektenrechts.* It is also possible to establish Windscheid's strong influence on Afzelius on a strictly intellectual level, since by a lucky coincidence it became possible to utilize Afzelius' notes in his own copies of Windscheid's main work and of Mühlenbruch's *Die Lehre von der Cession der Forderungsrechte.*

Several examples of the established influence from the above-mentioned German scholars deal with basic questions of the law of obligations. When there was no Swedish literature on a subject, Afzelius referred exclusively to foreign, mainly German, studies. This exemplifies how his dissertation bears witness to the influence of German lawyers and of German legal method.

ALFRED WINROTH

Alfred Winroth (1852–1914) had a swift academic career. He took his basic legal examination in Uppsala in 1877 and became associate professor in December 1878 with his dissertation *Om tjänstehjonsförhållandet enligt svensk rätt* (On the Status of Servants according to Swedish Law). After he had written a thesis on Roman Law, *Om arvingarnas ansvarighet för arvlåtarens förbindelser* (On the Inheritors' Responsibility for the Testator's Obligations, 1879), he became Professor of Legal History and Roman Law in Lund in January 1880, a post that he occupied until 1892. Between 1892 and 1899 he was Professor of Private Law in Lund, 1899–1907 in Uppsala and 1907–1914 in Stockholm.

In 1879/80 Winroth went studying to Berlin, Leipzig and Paris and stayed for altogether five months, mostly in Germany. In Leipzig he became acquainted with Wilhelm Reuling, Otto Stobbe and Bernhard Windscheid and attended Windscheid's and Wach's lectures. 1884–86 Winroth visited the universities of Copenhagen, Berlin, Göttingen, Heidelberg, Leipzig and Munich. The sources are only sparse on these matters and it is uncertain whether he made any lasting personal contacts with German scholars. Only his contact with Maurer in Munich can be clearly established.

Unlike most of the other lawyers in this study, Winroth remained as a university scholar for all his life. He became something of a fighting oddball. It has been said that he was not considered fit to be a member of a collegial court. Instead he devoted his attention to legal science, becoming the most productive Swedish legal scientist of his time. For more than three decades he was also an important university teacher.

Winroth obviously had a good reputation in Germany as an eminent Swedish legal scholar. At the beginning of the 20th century he contributed a chapter on Swedish family law to part IV of the large handbook *Die Rechtsverfolgung im internationalen Verkehr,* which treated family law in a comparative way. In 1909, Friedrich Karl Neubecker, Associate Professor at the University of Berlin wrote a paper for the *Zeitschrift für vergleichende Rechtswissenschaft,* entitled "Das schwedische Recht und seine Literatur. Eine Gesamtwürdigung Winroths" (Swedish law and its literature. An appraisal of Winroth). Neubecker praised Winroth's capacity as a writer, stressed his productivity and also found his books —with few exceptions—to be works of quality.

Winroth was strongly influenced by German Pandektenwissenschaft in his younger years. Later on, however, he critized younger scholars for over-dependence on their German predecessors. Winroth was not alone in his critical opinion of such early works of young legal scientists, as can be seen from the judgments of other law professors in the records of the Swedish law faculties.

The law faculty at Uppsala found Winroth's thesis exceptionally good. The book was quite original, particularly as a first work; a result of great learning and high scholarly ability. Winroth's dissertation deals largely with legal history and is influenced by Savigny's doctrine of the "Volksgeist". According to Winroth, Scandinavian law developed uniformly in older times. The national separation between law and society occurred only later on. This fits in well with the thoughts on development attributed to the Historical school of law. Even the thesis of common Old Germanic features in South-Germanic and North-Germanic law belongs to this school. The Germanistic branch of the Historical school encompassed such an opinion and Winroth seems to have taken it over. For example, he used as a common expression for the conditions of the oldest times the concept "den germaniska samfundsordningen" (the Germanic order of society) and "de germaniska stammarnas ursprungliga samhällsförhållanden" (the original order of society of the Germanic tribes). This sort of expression fits in well with the efforts of the Germanists to reconstruct a German original law from the dawn of time.

The purely private-law parts of Winroth's dissertation clearly show the imprint of German influence on legal method. He discussed what characterized a servant contract in relation to other similar contracts. He found that the *locatio conductio operis* is the type of contract closest to the servant contract. Earlier Swedish legal scholars had not succeeded in making a systematically correct classification of work contracts. Winroth, on his part, held that it was perfectly possible to make a classifica-

tion that was modern and at the same time typical for Sweden. As a startingpoint for this work he considered its purpose: his concept of purpose is obviously influenced by Jhering's "Der Zweck im Recht".

While it is completely clear that Winroth was influenced by German legal thinking when working on his thesis, it is not so easy to establish the influence by a specific German legal scientist. The influence lies rather on a general scientific level and can hardly be attributed to a particular scholar.

ERNST TRYGGER

Ernst Trygger (1857–1943) became an important specialist in legal science and served as Swedish co-editor of *Tidsskrift for Rettsvidenskap*. He passed his law examinations in 1881 and then went to Germany, Switzerland and France for legal studies. He became personally acquainted with Bernhard Windscheid in Berlin and with Karl Binding, Emil Friedberg, Eduard Simson, Otto Stobbe and Adolf Wach in Leipzig. He also heard the lectures of the latter two scholars. At the same time he studied Jhering's works and Windscheid's *Lehrbuch des Pandektenrechts*.

Trygger published his dissertation *Om fullmakt som civilrättsligt institut* (On Power of Attorney as an Institute of Private Law) in 1884. He then became associate professor in private law and published the monograph *Om skrifliga bevis såsom civilprocessuellt institut* (On Written Edvidence as an Institute of Civil Procedure) in 1887. In 1888 Trygger followed Afzelius as Professor of Procedural Law at Uppsala. He stayed on as a professor up to 1905, when he became a judge at the Supreme Court. From 1907 onwards he devoted himself exclusively to politics and became leader of the Conservative party in the First Chamber of the Swedish parliament. During the 1920s he became first prime minister and later foreign secretary. At the end of his career he returned to academic life. Trygger was University Chancellor between 1926 and 1937. He became famous as a scholar for his commentary on the law of debt enforcement, which was of great practical importance.

Ernst Trygger's thesis was very favourably received by the Swedish lawyers of this time; though much critized by the Finnish scholar Julian Serlachius. The Roman Law part of the dissertation was strongly influenced by the works of the German specialists in this field. The author based his account on the works of well-known specialists such as Bethman-Hollweg, Brinz, Endemann, Gareis, Jhering, Kuntze, Puchta, Sa-

vigny, Schlossmann, Thöl, Windscheid and Zimmerman. Trygger treated Roman Law mostly from the perspective of legal history but at times he also took up concepts from "Gemeines Recht". Yet Trygger seems to have worked independently with the Digest: in no way did he accept uncritically the view of the great authorities in the field, but sought to treat his subject in his own manner.

Trygger treated old Swedish law on the basis of mediaeval Swedish law-books and stated, that there existed a national institute of power of attorney. In the 17th century the scholar Johannes Loccenius, an immigrant from Germany, brought the Roman Law concept *mandatum* into Swedish law. That the national institute of power of attorney was merged with mandatum and interpreted according to Roman legal rules did not please Trygger very much. This broke the promising development of the national institute of power of attorney, he considered, because it introduced principles that contrasted with the people's legal conscience and made distinctions that were unknown to the Swedish people. The very critical Germanists in Germany could not have spoken more harshly against Roman Law than Trygger did on this matter. Trygger's outlook was based on conceptions of the origins of law that Savigny and Puchta had developed, because according to both these legal scholars law originates in the people's legal consciousness (Volksgeist).

In his analysis of contemporary law, Trygger referred to the rules of the Swiss Obligationenrecht as a systematic model. He reported on theories that were being discussed in Germany and took over opinions or part of opinions from German lawyers. When if fitted in with his views, he used arguments that he had found in German scholars' works to refute other German scholars' opinions. Even when Trygger thought that he was putting forward an independent solution to a legal problem, he obviously moved within the framework of the German debate. He used the German scientific legal method. The type of questions he asked and his method of work both show clearly influence of German legal science.

HJALMAR HAMMARSKJÖLD

Hjalmar Hammarskjöld (1862–1953), the father of the late Secretary General of the United Nations, became one of the most versatile lawyers of his generation. Having passed his basic law examinations in 1884, Hammarskjöld received a governmental stipend for studying at a Ger-

man university. On the advice of an associate professor of public law at Uppsala, Hugo Blomberg, he went first to Strassburg. Blomberg had recently been there to attend Paul Laband's lectures. The finest specialist on German public law Laband was at the same time an excellent legal historian and very proficient in private law. Hammarskjöld was above all interested in and impressed with Laband's lectures on private law. He got on well with Laband and during his stay in Strassburg he decided on Laband's advice to write his doctoral thesis on freight contract. It was perfectly natural for Hammarskjöld to consult a German professor and then to decide the theme for a thesis which he intended to present and defend in Uppsala!

In March 1885 Hammarskjöld went to Freiburg i. B., where he got in touch with Karl von Amira. The two scientists became close friends during Hammarskjöld's two month stay. Though they did not meet again, they corresponded for more than ten years. Their letters are to be found partly in Hammarskjöld's papers at *Kungliga Biblioteket* in Stockholm and partly in Amira's papers at *Bayerische Staatsbibliothek* in Munich.

During his stay in Freiburg Hammarskjöld worked on a study of the history of vindication of chattels, which however was never finished. In June 1885 Hammarskjöld went on to Munich, where he got in touch with Konrad Maurer. His return journey took him to Leipzig.

After Hammarskjöld's dissertation in September 1886 he became associate professor and a few years later full Professor of Private Law (1891–93) in Uppsala. At the same time (1886) he became secretary of a governmental commission for the preparation of legislation in the field of company law. The 1895 law on join-stock companies was one result of this work. Hammarskjöld soon turned to new legislative tasks full time, at first (1893–95) in the *Nya Lagberedningen* (New Law Commission); then he became head of the Swedish ministry of justice section for the preparation of laws. In 1901 he became Minister without portfolio, 1901–02 Minister of Justice and 1902–06 President of the Göta Court of Appeals. After the dissolution of Sweden's union with Norway he became Sweden's minister in Copenhagen and was from 1907 to 1930 provincial governor in Uppsala. He was Prime Minister from 1914 to 1917.

During the 1920s he devoted himself mainly to international law and often took part in sessions of the League of Nations in Geneva. In the year of 1918 he became a member of the Swedish Academy.

Hammarskjöld's dissertation *Om fraktavtalet* was well received both by his contemporary Swedish colleagues and by Laband and Amira, but

was heavily critized by the Finnish lawyer Julian Serlachius, who earlier had found many faults with Trygger's dissertation as well. Serlachius was critical of Hammarskjöld's dissertation for being too much influenced by the Allgemeines Deutsches Handelsgesetzbuch (ADHGB) of 1861 and by German legal writing.

Apart from German legal writing, Hammarskjöld also used many French and to a lesser extent British works. But the majority of his footnotes refer to German legal literature and to the ADHGB. The most important German studies that Hammarskjöld used were Lewis' and Schott's contributions to part III of Endemann's *Handbuch des deutschen Handels-, See- und Wechselrecht,* Eger's *Deutsches Frachtrecht* and von Hahn's commentary to the ADHGB. Hammarskjöld also referred on a few but central points to Laband's arguments. However, his footnotes show that these references were sometimes based not on Laband's printed works but on his own notes from the latter's lectures.

In his analysis of the freight contract Hammarskjöld started from the distinction between the *locatio conductio operis* and the *locatio conductio operarum,* in complete agreement with contemporary German legal science. He often based his analysis on German scholars' legal works and loaned specific expressions or interpretations from them. A few examples also show that Hammarskjöld based his opinions and interpretations on the rules of the ADHGB. Where he could not find any Swedish norms, he also had recourse to general principles of law or to foreign laws. In some cases where legal conditions were unclear, Hammarskjöld used ADHGB rules to extend Swedish law. To that end he also used the commentaries of German lawyers on the ADGHB; but seemingly the law in the first place and the commentaries only second. In Hammarskjöld's case German legal science and method was received both from scientific works and from the Handelsgesetzbuch. Hammarskjöld was a distinguished representative of the German legal method in Swedish private law.

TORE ALMÉN

Tore Almén (1871–1919) became a very influential lawyer. After his law examination in Uppsala in October 1895 Almén received a stipend for travelling to Germany. He stayed in Berlin between February and August 1896. The material on his stay is very meagre, consisting only of three letters, which he wrote to an academic friend from Uppsala. However these do give some interesting hints on how difficult it was for

a Swedish lawyer to write his thesis in Germany without access to Swedish sources. It turned out to be completely impossible. At the same time Almén felt it to be of value to have the German law journals and specific legal works at his disposal, so he asked his friend to check whether this material was available in Stockholm or Uppsala.

In December 1897 Almén publicly defended part 1 of his dissertation *Om auktion såsom medel att åtvägabringa avtal* (On Auction as a Means of entering a Contract). During the years 1898–1902 he served as acting Professor for Private Law and part of the time also held the corresponding chair for Penal Law in Uppsala. He then left academic life and became secretary of the Commission on the law of obligations, that had as its task to present proposals for new Scandinavian laws of sale. Famous lawyers such as Julius Lassen from Denmark and Fredrik Stang from Norway worked closely together with him on this project. The result was new and almost identical Scandinavian laws of sale 1905–07 in Denmark, Norway and Sweden. Almén then became a member of *Lagberedningen,* a commission for revising the main sections (balkar) of the code of 1734, during its preparation of a proposal on real property (1906–09). He subsequently became *revisionssekreterare* preparing cases for, and, from 1915, a judge at, the Supreme Court. He was also a co-founder of *Svensk Juristtidning,* the main Swedish law journal.

Although Almén left academic life early, he did not give up legal science; instead he wrote some very important commentaries on laws he had helped into life. The most important one was his famous commentary on the Swedish law of sales, first published in 1906–08, later to be republished in several editions (the last one as recently as 1960!). In 1922 this commentary was translated into German by a professor in Heidelberg, Friedrich Karl Neubecker, most unusual for a Swedish legal work.

Almén's dissertation *Om auktion* was published in two parts 1897–1900. This is a large work of more than 500 pages, quite unusual for a Swedish legal monograph at this time. Contemporary Swedish legal opinion was favourable as was the review by the Professor of Private Law in Lund, C. G. Björling, in *Tidsskrift for Rettsvidenskap* in 1902.

Almén used several German works but also a lot of other sources. The footnotes show, that he often quoted Windscheid's *Lehrbuch des Pandektenrechts,* Regelsberger's *Civilrechtliche Erörterungen* and *Pandekten,* the first proposal for the BGB und als BGB itself. When describing French legal conditions, he also used some French works but mostly referred to

Zachariä's *Handbuch des fransösischen Zivilrechts.* He always quoted papers on French law from journals written in German.

There were no Swedish rules on the legal character of the offer at an auction. Because of this Almén felt it was necessary to refer to general legal principles, as they were put forward in the German legal debate. There were two theories, the "Annahmetheorie" (the theory of acceptance) and the "Angebotstheorie" (the theory of offer). The main representative of the Annahmetheorie was the German scholar Kindervater. According to him the offer of the object to be sold through the auctioneer is a binding offer to enter into a contract, which the bidder accepts with his bid, thereby bringing about the contract. Jhering was the main adherent of the Angebotstheorie: the auctioneer's offer was only a call for an offer, so that only the bidder's bid could be regarded as the offer to enter into a contract.

After a comprehensive survey of the various theories Almén described the legal solutions arrived at in the European countries, Sweden included. At the same time he tested the compatibility of the theories on the legal character of the offer with the laws of the different countries: he compared theory with legal reality. Although Almén tried to work independently, he still went back to opinions and concepts expressed in the German discussion. Well-known German scholars such as Jhering, Regelsberger, Reuling and Windscheid were important in many aspects for Almén's judgment on problems in private law. On several important points of principle he even started with the formulation of a problem that had developed in the German legal debate. When Almén found no Swedish rules and scientific solutions, he took position in accordance with views expressed in German legal science. Examples can be given of his letting himself be governed by German legal rules while interpreting Swedish law.

Up to now Almén has generally been considered as a particularly original scholar, very much independent of German legal science and law. As far as his dissertation is concerned, however, this opinion does not fit in with the facts. On the contrary, his thesis shows that Almén was then strongly influenced by German legal science and legal method. His originality as a scholar must have come later in life, probably in connection with his work as a framer of laws.

VILHELM LUNDSTEDT

Another important Swedish specialist in private law was Vilhelm Lundstedt (1882–1955). His intellectual development up to the presentation

of his dissertation in 1908 is not covered by any unprinted sources such as letters etc. Lundstedt took his legal examination in Lund in 1904. That he devoted himself to legal science seems at least partly to have been a coincidence. When he became qualified, he was too young to start practising in the law courts. The lower age limit for sitting as a presiding judge was 25 and Lundstedt was only 22 at the time. While working on his dissertation between 1905 and 1908 he studied on and off during six terms in Berlin.

In November 1908 Lundstedt presented and publicly defended his thesis in Lund with the title *Om avtal angående prestation till tredje man* I–II (On Contract Performance to a Third Party, 1908–09) and became an associate professor there in 1909. During the following years Lundstedt wrote several books and articles on private law and the law of procedure, which were heavily influenced by German "Begriffsjurisprudenz".

In 1914 Lundstedt became Professor of Private Law and Roman Law in Uppsala. Shortly afterwards he became acquainted with Professor of Philosophy Axel Hägerström and became so heavily influenced by the latter's criticism of legal thinking that he broke completely with his earlier views, feeling the basis of traditional legal science to be untenable. Some years later Lundstedt presented his new views in a book entitled *Kritik av straffrättens grundåskådningar* (Criticism of the Fundamental Views of Penal Law, Uppsala 1920). As a consequence there followed a lively debate between Lundstedt and the famous professor of Penal Law in Lund, Johan Thyrén. With this debate started the Uppsala School in Swedish jurisprudence. Lundstedt became a fighting critic of traditional legal science. He presented his views for an international public with *Die Unwissenschaftlichkeit der Rechtswissenschaft* (The Unscientific Nature of Legal Science) I–II (1932–36) and with the posthumously published Legal Thinking Revised (1956).

Lundstedt also critized traditional concepts of International Law in his work Superstition or Rationality in Action for Peace? Arguments against founding a World Peace on the Common Sense of Justice. A Criticism of Jurisprudence (1925).

Lundstedt was also politically active and sat for many years as a Social Democrat member of the Swedish parliament. In 1948 he published a political pamphlet entitled *Europas demokratier—förenen eder!* (Democracies of Europe—Unite!). That was exactly 100 years after the publication of the Communist Manifesto, and the title obviously paraphrased one of the famous expressions in that important pamphlet. Lundstedt wanted Sweden to participate actively in the Western European cooperation,

that culminated in the formation of NATO. As is well known, Sweden stayed nonaligned and Lundstedt was in this as well in many other questions regarded as an eccentric within his own party.

Earlier Swedish legal scholars such as Afzelius and Winroth always added the following words after the main title: "enligt svensk rätt" (according to Swedish law). Lundstedt's dissertation differed in this respect, being subtitled "en civilrättslig studie" (a study of private law). The change in expression is no coincidence, because he wrote only sparsely on Swedish matters. His dissertation is a book on German private law, based on German legal works, to a limited extent on German legal cases and on a number of paragraphs of the BGB.

Professor of Private Law in Lund C. G. Björling was fairly critical in his official statement to the minutes of the Lund law faculty on the great German influence on Lundstedt's thesis. This influence can easily be established by quantitative methods. Lundstedt's selected bibliography contains 61 works, of which 55 are in German and only three in Swedish. Mostly he used legal monographs, but also the *travaux préparatoires to* the first draft of the BGB and the minutes of the second BGB commission. On the other hand he referred neither to Swedish laws nor Swedish law proposals. Furthermore Lundstedt referred in his footnotes to another 45 works or laws, not mentioned in his bibliography, of which 39 were in German.

There are 194 quotations from German works in Lundstedt's dissertation but only 13 from Swedish *and* Danish together. An estimation has also been made of the proportion of the thesis that is written in German: about 9% of the text of the whole book! Altogether of the 482 footnotes 414 refer to German works. Lundstedt's most important German sources were Hellwig's *Verträge auf Leistung an Dritte,* Gareis' *Verträge zu Gunsten Dritter,* five different contributions from Bähr, two from Zimmerman, Unger's *Verträge zu Gunsten Dritter,* Ehrenzweig's *Die sogenannten zweigliedrigen Verträge, insbesonders die Verträge zu Gunsten Dritter nach gem. und österr. Rechte,* Windscheid's *Lehrbuch des Pandektenrechts* and Lenel's *Stellvertreung und Vollmacht.*

It is a fact, that Lundstedt in his thesis only referred three times to Swedish legal norms and never to Swedish legal cases. Instead he quoted the Digest eighteen times, paragraphs of the BGB thirty times and collections of German cases eight times. The German influence on his thesis is also tangible in regard to its content. Lundstedt's entire survey of the legal problems connected with the contract in favour of a third party remained within the framework of the German literature. However, he seldom linked unreservedly with the opinions of German scholars.

His thesis bears witness to the highly critical attitude he retained all his life. Lundstedt often only partly accepted opinions put forward by German legal scientists. But even when he strove for an independent standpoint, he always moved within the framework of the German legal discussion. Before his scientific conversion, Lundstedt was the most extreme example of German influence on Swedish legal science.

ÖSTEN UNDÉN

Östen Undén (1886–1973) became an important legal scholar as well as a leading politician. He took his BA in Lund in 1905. His subjects were national economy and political science. During his subsequent law studies Undén became very interested in politics and went to the left despite his bourgeois background. Shortly before the General strike of 1909 (*Storstrejken*)—an important event in Sweden's modern political and social history—he joined the Social Democratic party.

After publication of his dissertation *Kollektivavtalet* (The Collective Agreement) in 1912, Undén became an associate professor of private law in Lund. Between 1917 and 1937 he was Professor of Private Law and International Private Law in Uppsala.

Undén was one of his time's most important specialists of private law. He became famous for his two textbooks on the law of things (1927–1941). He was University Chancellor 1937–1945. Undén also played an important political role. In 1917 he became Minister without Portfolio (at the age of 30!) in the Liberal–Social Democrat coalition government that carried through universal franchise in December 1918 and earlier had meant the breakthrough of the parliamentary principle in government. Among other ministerial posts Undén held that of foreign minister 1924–26 and 1945–1962.

Undén early became interested in labour legislation. As early as 1906 he published an article on the collective agreement as an object of legislation. Labour law legislation was a burning question in Sweden at that time. It seemed natural to Undén to choose the collective agreement for his thesis. In his memoirs he remarks that his interest in the labour movement had influenced his choice of theme for his thesis. His experience of the General strike also seems to have played its part.

The General strike began in August 1909 and involved 300 000 workers. It came as a climax to a long period of unrest in the labour market. The strike ended with a total defeat for the workers and the trade unions, seriously weakening the whole labour movement for a time.

Undén took his law examination in January 1910. He then went to Berlin and stayed there between January and May of that year. Although he enrolled at the University, he did not attend many lectures. The only ones he could spare the time for were some by economists. It soon turned out that Undén could not write his thesis in Berlin because he had no access to Swedish sources there and consequently could not use the German sources in a satisfactory manner either. Later on, at a late stage of work with his dissertation, he returned for a few weeks to Berlin.

While in Berlin Undén wrote letter to his fiancée Agnes Jacobsson and to a friend from his study years in Lund, the linguist and later leading Social-Democratic politician Ernst Wigforss (minister of finance 1932–1949). The letters show that Undén's scientific work had close ties with his political interests.

Between 1906 and 1911 Sweden had a Conservative government under the leadership of Prime Minister Arvid Lindman. After the General strike Undén feared that parliament would adopt a law on collective agreement and the institution of a special labour court. The Conservative bill represented a serious risk of being detrimental to the interests of the workers and of the trade union movement. The Liberals, who was by far the biggest party in the Second Chamber of the Swedish parliament, stood in opposition to the Lindman government. However, Undén feared that in the aftermath of the General strike the Liberals would vote for a labour legislation, which they would normally never have accepted.

To counteract a legislation unfavourable to the workers' interests, Undén wrote some articles in the large liberal newspaper Dagens Nyheter and in the scientific journal Ekonomisk Tidskrift (Journal of Economics). Above all he wanted to give the Liberals a better understanding of the fact that the problem of labour legislation was a complex and difficult one and that consequently it was of the utmost importance to postpone a decision. When the Conservative government's bill came up for final decision at the end of May 1910, it was rejected by the Liberals and the Social Democrats in the Second Chamber, and the legislation fell through. The government's arguments had not convinced the Liberals. Undén's fears turned out to be unfounded. Legislation on a special labour court and on collective agreement was only adopted in 1928.

Undén also got involved in a legal case that came about as a consequence of the General strike. The printers' union had taken part in the General strike, although a binding collective agreement obliged them to

keep industrial peace. Undén supplied the printers' legal representative with arguments that he had found in a paper on the General strike in Sweden, published in a German journal by a German legal scientist specializing in labour law.

Undén also wanted to write a popular scientific book in order to inform Swedish workers on labour law. However, he feared that he would damage his reputation with his academic teachers if he wrote too many small papers and popular books instead of finishing his dissertation. He did, however, write a small book on labour law for general consumption, but only published it in 1916. It is quite evident that close ties existed between Undén's scientific and political interest in labour law.

When Undén started work on his thesis, Swedish scientific legal works on modern labour law were virtually nonexistent. He wanted his book to be a preparation for future "social" legislation in Sweden. Swedish lawyers judged his dissertation very favourably as a scientific work.

The two most important German specialists on labour law at this time were Philipp Lotmar with his book *Der Arbeitsvertrag* and Hugo Sinzheimer with his dissertation *Der korporative Arbeitsnormenvertrag*. Although Undén was initially critical of the German specialists on labour law, his completed thesis shows a different perspective. Even though he sought material and literature in other sources, it is obvious that German legal writing was very important for his analysis. Its significance can be traced from the number of footnotes referring to other works. Only the German lawyers are conspicuous among the foreign sources: Undén referred 49 times to three of Lotmar's works, 45 times to Sinzheimer's dissertation, 25 times to five different works by Szymon Rundstein and 18 times to Paul Oertmann. Undén was also strongly influenced by Jhering on a couple of questions. Although he sometimes referred to opinions expressed by French lawyers, Undén repeatedly turned them down as of no interest. Instead, he took over views and concepts expressed by German scholars, at times while arguing and questioning these same views and concepts. Still, he remained within the framework of legal categories that had been developed by German scholars. To support his opinion on what should be regarded as contemporary Swedish law, he would refer directly to the rules of the BGB.

Undén also exploited the concepts developed by German legal science. For instance when treating the basic question of the contracting parties in collective agreements concluded by a legally competent union, he described the three theories developed in Germany, i. e. the *Vertretungstheorie* (Proxy theory), the *Verbandsthorie* (Association theory) and

the *Kombinierte Theorie* (Combined theory). Just as Sinzheimer did, Undén supported the Association theory, which makes the union and not the individual worker the contracting party in relation to the employer.

On several important points of Undén's thought a strong influence from Lotmar is obvious, and can be traced to verbal correspondences between the German scholar's and the Swedish scholar's texts. Yet Lotmar was an adherent of the Proxy theory, and did not consider the union as a legal person. On this point he had no follower in Undén. Also, Undén often used German expressions untranslated in his Swedish text, for instance "anfängliche Genehmigung", "nachträgliche Genehmigung", "Tarifgemeinschaft", "Weigerungsrecht" and "Gewerbliche Friedensdokumente".

Undén's thesis on the collective agreement shows that on important points he followed the thinking of his German predecessors.

Lotmar and Sinzheimer were Social Democrats like Undén. If this common political background contributed to making them into scientific examples as well remains an open question. Anyway, they were the two main specialists on labour law on the German side at the beginning of the 20th century. It was natural for Undén, as for any other Swedish scholar devoted to labour law, to refer to their scientific works.

Undén repudiated conceptual legal dogmatics, in which logical deductions from concepts took the place of the interpretation of existing law, concepts into which contents had been smuggled beforehand. On the contrary, he is a representative of a written-law-based method of legal dogmatics. Although Undén wrote his thesis in a new field of private law, he cannot be characterized as a theoretical innovator. Rather he stuck to the well-known methods of legal analysis. This explains that he used the method of legal dogmatics in only a slightly changed version.

EIGHT SWEDISH LEGAL SCHOLARS

The enquiry into the eight Swedish scholars and their dissertations outlines their personal intellectual development. But it also permits a more general statement on specific tendencies with Swedish legal doctrine for the period 1870–1914.

During that period there were two complete law faculties in Sweden, in Lund and Uppsala; from 1907 one also in Stockholm. For a large part of the period concerned, up to the mid-1890s, Uppsala was the leading

faculty, scientifically speaking. Thereafter conditions became more equal. The faculty in Lund now included several important legal scholars such as C. G. Björling (private law), Ernst Kallenberg (procedural law), Johan Thyrén (penal law) and Knut Wicksell (national economy). The relative importance of the law faculties is mirrored by the selection of the scholars included in this enquiry. The first six were active in Uppsala (Winroth is partly an exception but he never felt at home in Lund). Only the last two scholars, Lundstedt and Undén, were active in Lund during their earlier years.

Only a smaller part of the law students took the more qualified law examination *juris utriusque candidatus*. Roman Law was mandatory for this examination. When a student for some reason awakened his teachers' interest in him and he was considered to have an interest in legal science, the faculty tried to help by procuring a stipend to cover the expenses for an extended stay in Germany. The newly-examined law student was now enabled to stay at a German university for a period of between six months and a little less than a year. As a rule, the budding scholars used their stay for general training in private law methodology and legal thinking. They searched German source material and informed themselves on the scientific situation as far as it related to the problems for their theses.

The period of study of young Swedish legal scholars in Germany was not spent writing their dissertations there. Several examples indicate that these scholar did not think it practically possible to write their dissertations on foreign ground, without access to Swedish source material. Only after returning to their own country could Almén, Hammarskjöld and Undén for instance write their dissertations. This does not mean that they could have dispensed with their stay in Germany. On the contrary, during that time many of them formed strong, often lifelong impressions: Afzelius is a good example. They established personal contacts with important German scholars, they got direct access to the abundant German literature and the copious German law reviews, which would have been almost impossible to find at a Swedish university. If they had not studied at German universities and attended the lectures of eminent German legal scientists, their dissertations would have been entirely different.

Not all the Swedish scholars included in this enquiry were able to go to German universities directly after their basic examination. Hagströmer and Winroth could go only after having finished their dissertations.

What did a period at a German university mean for a young Swedish

legal scholar? What sort of valuable experience and knowledge could he thereby acquire, that he could not get at home? One fact is incontestable; in many cases the Swedish lawyers came from very provincial circumstances to great international cultural environments. The universities of Berlin, Leipzig, Munich and Strassburg had large law faculties, with numerous competent professors and associate professors and many law students. The most important German legal scholars attracted students from many other countries. Ivar Afzelius for instance met a Japanese for the first time in his life during his stay in Leipzig in 1874–75.

The intellectual level of the eminent German legal scholars' lectures was obviously high. Afzelius and Hammarskjöld testify, that Windscheid and Laband held brilliant and inspiring lectures, of which they had never heard anything like it before during their legal studies. Contact with the German scholars did not remain at a purely passive, impersonal level. The Swedish legal scholars also made personal contacts with the German scientists they were interested in. In several cases this led to their establishing friendships, even close like the one between Amira and Hammarskjöld. There are even traces in the source material used for this paper, that such contacts and personal friendships were more common than it has been possible to establish. The source material that has been saved and become available for research is limited and perhaps reflects only a small part of the personal and intellectual contacts actually established. Cooperation could become so natural that a Swedish lawyer might decide on the theme of his thesis on the advice of a German legal scholar. That was the case with Hammarskjöld, whose decision was made after consulting Laband.

German and Swedish legal scholars often sent copies of books and articles to their colleagues and they often helped each other with finding source material. If a Swedish scholar needed help on any question concerning German law, he turned to one of his established personal contacts among the German legal scientists. The reverse also occurred. For example, a German lawyer might want to use his Swedish connections to have Swedish law or literature covered for a German law review. Afzelius and Olivecrona contributed more or less regularly to German law reviews, which also utilized their names in their advertisting. Hammarskjöld got an offer of the same kind, although he probably did not take it up. Vilhelm Sjögren's dissertation *Om rättsstridighetens former* (Forms of Illegality, 1894) was published in a revised German edition in Jhering's Jahrbücher in 1895.

An important by-product of the Swedish scholars' stay at German

universities was that they became well-informed on legal-scientific literature and, not least, the flora of law reviews, often more or less unobtainable in Sweden. Afzelius, for example, during his stay in Leipzig bought a lot of legal literature, much of which is still available at the library of the Faculty of Law in Uppsala. He also urged his University Library to acquire important foreign law reviews. Almén also, during his stay in Berlin, made comments on the need of access to the important law reviews. A general over-view of legal literature and law reviews was of course of vital importance for the Swedish legal scholars, and they could obtain this only in Germany: this was one major advantage of staying at a German university at an early stage of scientific life. On the other hand, it was a considerable disadvantage *not* to get that opportunity.

Despite frequent examples of the Swedish lawyers' appreciation of and admiration for the German legal scholars, this does not mean that they were uncritical. Indeed, a Swedish lawyer might well be strongly positive towards one or a number of German scholars but critical or at least sceptical towards others. Both Hagströmer and Undén expressed at an early stage of their dissertation work a considerable scepticism regarding the quality of German legal science in their specific fields but they later changed their opinion.

It was not a one-sided German give and a Swedish take within the field of legal science. There was also a German interest in Nordic legal science, Swedish included. Several German legal scholars—Reuling, Windscheid—commented on the importance of the contacts between the related German and Swedish peoples.

Legal historians such as Karl von Amira, Konrad Maurer and Max Pappenheim took an interest in Swedish legal conditions. They often reviewed Swedish legal works in the German law reviews. Although they were primarily legal historians, they often wrote on questions of contemporary law, due to the fact that they could read Swedish texts. Several of their colleagues, who were mainly occupied with contemporary law, knew no Swedish; consequently the legal historians had to cover the entire Nordic field. Probably the best example of such an interest on Swedish law on the part of the German legal scientists was the translation of Almén's famous commentary on the law of sales, that was published in 1922. The translator was, as mentioned earlier, Professor F. K. Neubecker of Heidelberg.

Lack of space precludes further discussion of the German scholars' interest in Swedish law. This might well be the topic of a separate enquiry.

A complicating factor is that a considerable part of the original

unprinted material in Germany has disappeared or been destroyed. This was for example the case with Max Pappenheim, Professor of Commercial Law and Legal History in Kiel. Pappenheim had many personal contacts with Swedish legal scholars and many of his personal letters are preserved in Swedish archives and libraries. According to information provided by his daughter, his own papers were destroyed by fire during World War II.

ANALYSIS

As shown above, the Swedish scholars were in some cases strongly influenced by German legal scientists. This was the case with Afzelius, who had been strongly impressed by Windscheid; with Hammarskjöld, who was influenced by Laband on some importants points; with Almén, who was influenced by Regelsberger and Windscheid, and with Undén, who was strongly influenced by Lotmar and Sinzheimer. However, it is often not possible to trace a decisive influence of one or more German scholars on a Swedish lawyer. Instead, there is a general influence of concepts and legal method.

The Swedish legal scholar reports and comments on different theories and proposals for solutions to legal problems; he evaluates and rejects, he loans a line of thought here, an argument there, and finally he makes his own, independent analysis of the problem. This is particularly typical for Hagströmer, Lundstedt, Trygger and Winroth. It also goes for Afzelius, Almén, Hammarskjöld and Undén. Neither procedure need exclude the other; on the contrary they can be well combined. A Swedish legal scientist might be strongly influenced by one or a few German scholars and *at the same time* strive to elucidate the legal problem on which he is working in an independent manner. All the eight subjects of this enquiry were at a level where independent work was a matter of course. That this was really the case might also be deduced from the judgments from the German side on the quality of the Swedish legal scholars' dissertations. These opinions were expressed in their personal letters and/or in their reviews. In addition, the Swedish lawyer who wrote a treatise on, let us say, auction, power of attorney, collective agreement etc., had as his task to state what should be regarded as existing Swedish law within his field. The German lawyer was dependent on existing German law for *his* analysis. This state of affairs must reasonably have led to differences in judging on how concrete problems ought to be solved and how adjustments between different

legal actors ought to be made. However, the German and the Swedish legal scholar could often start from clear and unambiguous legal rules only in exceptional cases. Hence they had to take recourse to other legal sources such as legal usage, legal doctrine and general principles of law.

At least for a part of the period of this enquiry and in certain respects for the whole of it, the Swedish legal scientists had no clear guidance from existing law. In certain cases, legal usage could fill such *lacunae*, but even this was not altogether reliable. To a large extent, the Swedish private law legislation of the period was highly obsolete; it left few or no clues to how a legal problem ought to be solved. In itself this was fully comprehensible, as large parts of the legislation had been unchanged since the adoption of the law of 1734, which in its turn had been no legislation of reform.

Responsible Swedish lawyers were well aware of the need for new legislation, and the entire 19th century was filled with more or less —mostly less—successful efforts to replace the whole of the law of 1734 (or different sections—"balkar"—of it) with new legislation. Although it is possible to explain historically *why* Swedish legislation was unsatisfactory, such an explanation was cold comfort to Swedish legal scholars. Their task of stating what was to be regarded as existing law therefore became more difficult but, perhaps also as a consequence, more intellectually exciting. A comparative way of treating legal matters became natural, it became important to consider the law of other Nordic countries, above all within private law, as well as German legal science and Roman Law.

Although the eight Swedish legal scholars appeared strongly influenced by German legal thinking and they took over the method of legal dogmatics from Germany, there are still examples of their later in life expressing reservations against younger scholars, lacking in independence, mechanically trying to transfer German–Roman legal concepts to Swedish law. A clear case is Björling's statement to the faculty minutes in Lund on Lundstedt's dissertation. This type of reservation becomes very obvious in a similar statement to the minutes of the Uppsala law faculty by Winroth on Nils Alexanderson's dissertation *Bidrag till läran om penninganvisning enligt svensk rätt* (A Contribution to the Doctrine of Monetary Assignment according to Swedish Law, Uppsala 1904). According to Winroth, Alexanderson's thesis suffered from the essential fault that the author had used legal concepts, which ultimately belonged to German law (e. g. prerequisite, negative contractual interest, illegitimate profit and socalled abstract or pure contracts), without making clear that these concepts must on the whole be regarded

as foreign to Swedish law. It might be added that all these concepts except abstract contracts are nowadays regarded by Swedish civilists as perfectly natural within Swedish legal theory.

Gemeines Recht was largely the point of departure in 19th-century Germany for judging central legal problems within private law. Of course, written law or legal usage took over Gemeines Recht in certain cases, and the gaps in the legislation were successfully filled during the century. The enforcement of the BGB (from January 1. 1900) represented the terminal point in this development. With this, it might be said that Gemeines Recht had ceased to reamin in force or more exact, that it had to a large extent been remoulded in the form of the new Civil Code. Hence the study of Roman Law took on a new character within German legal science, now concerning Roman Law exclusively as a historical phenomenon.

This development also had consequences for Swedish private law doctrine. The view of the importance of German–Roman pandect law for Swedish law was displaced. Instead, Swedish lawyers became more and more interested in German legislation on private law, mainly the BGB. "What an excellent law"!, a highly-placed Swedish judge could exclaim in a letter in 1896. When guiding Swedish legislation and legal usuage was lacking within a specific field, it then seemed completely natural for Swedish legal scholars to use German legal rules, German *travaux préparatoires* or even German legal usuage (Lundstedt!) in order to establish what should be regarded as valid *Swedish* law. In this work they often started from German legal writing as far as judging the need of this German material was concerned.

The laws written in German to which the eight Swedish scholars often referred and on which they also based their own standpoint were the ADHGB (1861), Switzerland's Obligationenrecht (1881) and the BGB (1900). However, sometimes the Swedish legal scholar did not find any support for his opinions in German laws or *travaux préparatoires*. He might then look for support in what he called "general principles of law". That type of reasoning was used by e.g. Almén and Hammarskjöld. Starting from such generally accepted rules it could for example confer the right to put stricter demands on the care of an actor who was bound by a contract than on one who was not. In practice, general principles of law often meant drawing an analogy from one field of law, where a solution was already known to another field where a similar problem had not yet been solved. General principles of law should consequently be regarded as a source of law besides law, legal doctrine and legal usage.

At a closer look, it turns out that behind the vague concept general principles of law could lie a clause taken from Roman Law. This was the case with Almén, who argued for a certain solution, starting from the principle "Res inter alios acta aliis non praejudicat" (A legal state between two persons does not affect others). In another context Almén also stated explicitly that support for deduction on the basis of general principles of law could also be taken from a German legal debate that did *not* start from specific passages in the Corpus Juris Civilis.

What was it then that the Swedish scholars, finally, could learn from the German legal scientists? The answer is unambiguous: a strictly logical control over their material. With the support of clearly defined and delimited legal concepts, they should build up a hierarchy of concepts. Through studies of the German legal textbooks and attendance at the lectures in, above all, Pandect law the Swedish lawyer should "... get used to legal abstraction in the school of the Roman masters and learn how to handle a legal task." According to Afzelius, the study of Windscheid's famous textbook on Pandect law should give the Swedish lawyers a methodical example: "There we find approximately the same problems which in daily life is posed to our law, and we can thereby learn how they should be solved from the standpoint of *our* law."

Against this background it became natural that all the dissertations in this enquiry, more or less explicitly included a debate on how to insert one's specific legal phenomenon into the framework of the system of legal concepts. Is this or that type of contract to fit in with one or another superior category of contract? Where *does* it belong? What is specific for just *that* type of contract? Does it have anything in common with a similar category of contracts, where are the similarities, where are the differences? How should the legal "construction" be given its final shape? This becomes especially difficult when the systematics of traditional private law do not fit in with the type of problem you are dealt with. This is particularly obvious in the case of Undén's study on the Collective Agreement, which entailed the formulation of an entirely new category of contract, of a kind that had never existed before the process of industrialisation. Here Roman Law could hardly be of any help to the formulation of a new type of legal concept.

Another type of complication which the use of the legal method entails is when traditional concepts, more or less abstract, collide with legal reality. Almén's thesis bears witness to this. To discuss the question of the auction in connection with the description of the contract of sale might certainly be practically defensible, perhaps even sensible, but

when it conflicted with the construction of legal dogmatics, it seemed to him, purely systematically speaking to be less satisfactory.

Are legal concepts or legal reality the final decisive factor? The question should actually be unaskable, because legal concepts should be based on knowledge about legal reality. It is just that legal reality changes: it might be different in different countries and at diverse points of time. The question then becomes what is included in legal concepts; they cannot reasonably be unchangeable? Legal figures might recur in different circumstances, one might strive for similar solutions to legal problems; but it must be senseless and impossible to maintain that a legal concept can be unchangeable for, say, 2 000 years.

Hagströmer met similar problems in his work. For instance he complained that he could not choose a specific solution because the basic legal concepts were once and for all patterned in a specific way. He did not consider it proper seriously to question these concepts. This might have been because a scholar who was about to present a thesis to the scientific community as a proof of his scientific capability, could not be expected to try to change what must have seemed the foundation of his own science. Even so, scholars within the established scientific legal community appeared not unwilling to consider the necessity of changing traditional legal thinking. It is thus possible to find in official faculty opinions on dissertations expressions such as "... the revision of the basic legal concepts, that modern legal science has made its task".

Another possible conflict, which was at least partly different, appeared when a Swedish legal scholar found difficulties in keeping to "pure" legal aspects of a problem. It must have been easy for a legal scholar to touch on reasonings that approached the borderline to other sciences. Both Hagströmer and Undén commented on the necessity of a strict separation between legal and economic viewpoints when writing on legal phenomena. A lack of stringency in this respect might mean a lack of legal scientific precision. It was necessary to guard the specific identity of legal science. This position became perfectly natural when applied to a strictly positivistic point of view.

Consequently the questions arises: how relevant is the result of the present enquiry for contemporary legal science? Even without systematic study of this problem it can be maintained that dissertations based on legal dogmatics are still being written. The fundamental thought behind the legal method still exists, even though certain aspects were questioned by the Uppsala school of legal science. Axel Hägerström and Vilhelm Lundstedt among others critized traditional law on important points of principle but this does not alter the fact that work within legal

science is still being carried out in much the same way as by the eight scholars of this enquiry. An important difference is, however, that nowadays much more consideration is given to legal usage, and teleological aspects are included in legal analysis. Also, it is also no longer possible for a scholar to devote himself to "Begriffsjurisprudenz": such a line of work would not be accepted by the legal scientific community.

This continuity makes it natural for a modern Swedish legal scientist to refer to a scientific work from the end of the 19th century as merely a scientific work (not as a primary source). New legal rules will of course render an older scientific work obsolete in certain respects, but views strictly concerning principle remain, and can still be of interest. This is very much the case with the formulation of legal concepts. Undén mentioned the proxy theory, the association theory and the combined theory as terms when treating the role of the union in entering into a contract, and this terminology is still being used in Swedish labour law. Another example is Kurt Grönfors' comments on Hammarskjöld's Om fraktavtalet: according to Grönfors this work "... feels vital and is of current value even today: it opens up interesting perspectives for the lawyer dealing with transport law of today. It is so near in time despite its one hundred years."

When the Swedish lawyers studied Roman Law, their studies had a general historical value within their legal education. However, several of the lawyers included in this enquiry felt that the study of Roman Law had a wider value, offering scholars a scientific approach and a methodical way of analyzing legal problems that was also relevant to everyday problems in the law courts. Since most Swedish lawyers did not as a rule study Roman Law, it was felt that they became unhappily isolated from modern legal science, mainly German. On the other hand an increased study and an increased knowledge of Roman Law must mean greater opportunities to get to grips with legal science and its results.

Jhering's programme of "going through Roman Law and beyond" was adopted by Afzelius, and its importance should be seen against the background outlined above. Hagströmer also related to Jhering's thinking in his analysis of the legal method: he was interested in the *young* Jhering's "constructive" thinking, while the Swedish scholars were less interested in the new angles of approach and the attempts at new thinking that the *old* Jhering represented.

The legal method thus became the method of legal dogmatics. With its assistance it became possible to establish what was to be considered as valid law. This method might lead the scholars tending to devote themselves to contemporary law without questioning its foundation. Conse-

quently it would be but a short step for the Swedish scholars to write dissertations *de lege lata* instead of *de lege ferenda*. It is even possible that scholars might come to accept the existing legal order uncritically and thus, indirectly, the existing society. Yet, the foremost Swedish lawyers were not unaware of this problem. Some of the eight legal scholars stayed on at the university (Hagströmer, Winroth) but several left academic life and became high judges (Afzelius, Almén, Hammarskjöld and Trygger), or lawmakers (Afzelius, Almén and Hammarskjöld). Many were long politically active (Afzelius, Hammarskjöld, Lundstedt, Trygger and Undén).

People who took an active interest in lawmaking and in political work could not remain passive in regard to legal conditions. They were certainly in many cases committed to reforming the existing Swedish legal order, quite irrespective of their personal political values. However, this was no task for lawyers as such, although the specialized lawyer could, indirectly play a politically important role.

POWER AND THE LEGAL METHOD

What role could the legal method then have with regard to power in society? Of all the scholars included in this enquiry Undén was the only one who spoke of power in connection with legal activity. A lawyer such as Afzelius, on the other hand, shrank from the question of power in connection with the shaping of a legal order.

A few years ago the German legal historian Dieter Grimm tried in a paper to apply a power perspective to choosing and using a legal method. Very compressed, his thesis runs: a legal norm is not completely defined and filled with content only through its formal entry into force. Only when it is actually applied, will it get its final content. Consequently the rules of application become just as important in a legal order as the legal norms themselves. What happens to these will hence be dependent on the method used, and this will thus be possible to discuss from a power perspective. Grimm took legal positivism in Germany as an example of the importance of a power-related legal method. In a historical perspective existing law easily appears as the culmination of historical development, thus acquiring its own legitimacy. In as far as existing law is also always legitimate, Grimm maintains, Savigny's Methodenlehre functioned as a support for contemporary German society. The method of legal dogmatics rather implied a material decision. It was an option for the status quo.

The question might then be asked: does the method of legal dogmatics always mean a choice in favour of the status quo? And assuming that the answer is 'yes', what function does such a legal method then have? If in practice it means guarding the status quo, does that then imply that the group or groups controlling power in a society can also control the formulation and the application of the legal norms? Grimm gives an example of such a perspective, where the legal method was used in order to keep a status quo in the interests of the earlier powerholders. In this context he relates to the situation in Germany in 1918–19, when the country passed from Empire to the Weimar Republic.

Interestingly enough, the status quo does not always *have to* have the significance that Grimm here gives it. Undén felt that a consistent application of legal method could represent an important protection for outsiders, the weaker party to a conflict. Swedish workers could adduce strictly legal arguments to defend their interests against the employers and the Conservative Lidman government's actions after the General strike of 1909. Undén's evaluation showed both the importance of the formation of legal norms and the importance of the application rules. At least temporarily, it became more important to *avoid* strict regularization; a law was not in the interest of the weaker party, i.e. the workers. Defence of the striking printers, however, necessitated recourse to a strictly legal analysis of what might be regarded as permissible acts according to existing law.

Analysis of the method of legal dogmatics from a power perspective shows that it does not necessarily tend to defend the status quo. Instead, the new underdogs in a changing society might benefit from a strictly legal analysis according to the method of legal dogmatics. The method in itself need not be inconsistent with a striving to change existing society and its legal norms. At least seemingly value-neutral, the legal method might then function both in connection with keeping the status quo *and* with changing society.

The influence of German legal theory and the reception of the method of legal dogmatics remain as a lasting result of a cultural influence for the period under enquiry. The way of thinking and arguing of Swedish lawyers, and their method, have been strongly influenced by this transfer of a scientific view from German legal science to Swedish. In this shadow we still live today.