
Alf Ross 1899–1979: A Biographical Sketch

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Alf Ross was born on 10 June 1899 in Copenhagen, the son of a civil servant in a government department. He graduated from high school in 1917. His first choice was to study at the Technical University, but he left it after one term and turned to law. He finished his legal studies in the summer of 1922 with remarkable results, obtaining the rare distinction then called *laudabilis et quidem egregie*. Following graduation, he took up employment in a barrister's office, but the practical occupations of a trainee did not satisfy him and he preferred to devote his time to further studies in law. Ross was well deserving of the scholarship he received from the Law Faculty for studies abroad. These awards would normally enable a young lawyer to spend about two years in foreign universities, usually in Germany, France and England. In 1923, Ross set out on a study tour which lasted two and a half years. In this same year he married Else-Merete Helweg-Larsen, a student at the Faculty of Humanities, who later became a high school teacher. She was a member of Parliament in 1960–73, representing a small liberal party which held considerable influence over the formation of political majorities after general elections.

Ross' journey took him to France, England and Austria. He may have gone abroad, as many young people did, without a detailed plan of study, but rather with an open mind to learn all he could from foreign law, court visits and perhaps from discussions with professors. In any case, he must have intended to make plans and collect materials for a dissertation. From information given by Ross himself, it seems his interest in the philosophy of law arose during his trip, and he was particularly inspired by Professor Hans Kelsen in Vienna. The result of his studies abroad was the treatise *Theorie der Rechtsquellen*. Ross had worked with energy and speed, so much so that he did not come back to Copenhagen with a heap of notes and drafts awaiting a stage of new reflection and elaboration, but with a finished manuscript. The same year, 1926,

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he submitted this work as a doctoral dissertation at the University of Copenhagen, but it was not accepted.¹

While the Faculty's decision was obviously taken in good faith, one may rightly describe it as an act of injustice. It ought to have been evident that Ross' analysis of French, English and German doctrines on the sources of law was a remarkable intellectual achievement, and that Ross had raised questions of jurisprudence which were often raised in Continental Europe and could well bring about a much-needed revival of Danish legal theory. What mattered most to the committee of experts appointed by the Faculty was probably the fact that Ross had formulated a problem which he had not solved, at least not to their satisfaction.

Alf Ross did not receive this decision as a defeat. He contacted the Faculty of Philosophy at the University of Uppsala in Sweden, drawn by the name of Axel Hägerström, professor of Practical Philosophy. He spent 1928–1929 in Uppsala, and was awarded a doctoral degree in philosophy there in 1929 for his treatise 'Theorie der Rechtsquellen'. It was published the same year in Leipzig and Vienna in Hans Kelsen's series 'Wiener Staat-und Rechtswissenschaftliche Studien'.

Ross' approach to the concept of law was based on literature concerning the sources of law. He engaged in a study of the philosophical question of *Sein* and *Sollen* in law from this angle. When his book was published, he wrote in the Preface, dated 8 April 1929, that he had not made any changes to the text since the time of writing three years earlier,² as external circumstances had prevented him from returning to the manuscript. He added that his views had changed in relation to certain points, not on the basic ideas themselves, but on their formulations. One may wonder whether a more important development was at hand, more so than what Ross admitted to. Another passage in the Preface seems to indicate that Ross continued to work his way through problems step by step. He refers to the method he pursued, along with a historical method, defining it as 'die immanent-kritische Methode' (in contrast to 'die transzendente'), and professes doubt as to whether he has been successful in pursuing such method.

Articles reviewing *Theorie der Rechtsquellen* were published by three professors of the Copenhagen faculty, including Poul Andersen, a pioneer in Danish Administrative Law and, later, Ross' predecessor in Constitutional Law. Andersen presented a detailed analysis of Ross' reasoning,³ commenting that: 'At this point, where the author has come to the end of the normological line, he is very close to the right conclusion: Law has — like morals — no other "validity" than an empirical one.' This seems to indicate that some lawyers might find the conflict between *Sein* and *Sollen* less troublesome than Ross had assumed.

¹ The story of adversity in Ross' early academic life has been told by Sverre Blandhol, *Juridisk Ideologi* (Legal Ideology) (1999). This is a fine analysis of Ross' philosophy of law, concentrating on his criticism of natural law, by a young Norwegian lawyer. See also by the same author, a postscript to a selection of essays by Ross: I. Foighel, H. Gammeltoft-Hansen and H. Zahle (eds), *Ret som teknik, kunst og videnskab* (Law as Technique, Art and Science) (1999).

² It is possible that the book had already been sent to print before Ross went to Uppsala.

³ Andersen, 'Ugeskrift for Retsvæsen' (Weekly Journal of Law) (1930), at 71.

Ross not only obtained his doctoral degree in Uppsala, he also completed a degree in practical philosophy. He subsequently found it difficult to distinguish specific elements of insight and methodological skill, which he owed to the presence of Axel Hägerström, but he knew that the influence of this professor on his work was great. We must conclude that Hägerström and his academic environment became a decisive force for Ross, who might otherwise have feared being confined to solutions which did not satisfy his quest for true knowledge. During his stay in Uppsala, or soon thereafter, Ross developed an ambitious plan which highlights his courage in building systems. The plan comprised four volumes.⁴ From his anti-metaphysical starting-point, Ross would first turn to moral philosophy in order to create the foundations for the next step, leading him to a clear understanding of the concept of law and the tasks of legal science. Two of these volumes were completed and published; they were monumental and impressive. The first was *Kritik der sogenannten praktischen Erkenntnis* (1933). Subtitled 'Prolegomena zu einer Kritik der Rechtswissenschaft', the volume was dedicated to Axel Hägerström. Ross' goal in this work was to demonstrate that normative statements in morals and law could not be the expression of cognition, a knowledge of truths. Ross saw them as assertions on values, derived from human attitudes, wishes and emotions, presented in traditional literature under a camouflage of objective conclusions. Moral philosophy could be a science *about* values, but not a science which established values.

The next book, in Danish, was entitled *Virkelighed og Gyldighed i Retslæren* ('Reality and Validity in Jurisprudence') (1934). Here, Ross turned to basic concepts in jurisprudence and sought answers to questions such as the following: What are the consequences of traditional legal science holding that law belongs to the spheres both of reality and validity? How may jurisprudence be reorganized if there are concerted attempts to make it an area dealing with social facts? How can one explain the idea of validity in empirical terms? Ross' answer took the form of a historical socio-psychological model of the phenomenon of law. In a given society, a centre of power will exert force over certain types of behaviour displayed by individuals in the community. This force may include, in our language, sanctions such as punishment, restitution and prohibitions; this again will produce an interested or selfish desire to avoid sanctions in individuals. Formation of habits means that this self-centred obedience will turn into a disinterested, or 'objective', belief in an authority vested in those who exert force, and respect for their power to establish valid rules of conduct. The validity of law is not a quality belonging to the realm of *Sollen*, to be distinguished from that of *Sein*. Validity itself is part of reality, because the mechanisms of the system attribute the power of creating validity to those who exert force and issue general rules.

Hans Kelsen was mentioned in these two books, but only briefly. It appears that Ross had dismissed the idea of building on Kelsen's work. He refers to Kelsen's attempt at uniting the categories of *Sein* and *Sollen* by giving them a common neutral characteristic. This 'Substratum' is, according to Ross, an impossible construction, an

⁴ A. Ross, *Kritik der sogenannten praktischen Erkenntnis*, at 12.

attempt at inventing a category which can include both *Sein* and *Sollen*, a category whose philosophical meaning Kelsen did not explain.⁵ Ross' final reckoning with Kelsen's 'Grundnorm' appears in his volume on the philosophy of law.⁶ A shorter version of *Virkelighed og Gyldighed* was published in English in 1936 with the title *Towards a Realistic Jurisprudence*. New to this edition was an account of the American authors who had followed in the path of Oliver Wendell Holmes, especially John Chipman Gray and Jerome Frank.⁷ Had it not been of vital importance to Ross to settle his score with the Continental metaphysical tradition, the American and Swedish authors might have been a natural starting-point for his own reshaping of jurisprudence.

Virkelighed og Gyldighed earned Ross a doctoral degree at the University of Copenhagen, and when a readership became vacant there in 1935, he was appointed to it. Ross' main task was to lecture on Constitutional Law; there was no opening for him to teach Jurisprudence. He did not apply for a professorship in the Law of Procedure in 1935, nor for an appointment in Public Law in Aarhus when a new law faculty was founded there in 1936. He probably hoped to become soon a professor of International Law in Copenhagen, and he was appointed to that position in 1938.

When Ross became a member of the faculty in 1935 he was certainly seen as a strange, but colourful bird in the quiet garden of legal science. At the same time, some must have known or felt that this was a scholar promising something new. In its report on the applicants, the faculty was wise enough not to depict Ross as a writer sending half intelligible messages from his ivory tower. They noted with satisfaction that Ross had striven to free himself of Kelsen's and Hägerström's influence and had demonstrated a constant effort to address problems of law and to purify the methods of legal theory.⁸

Ross was, however, not entirely unconnected to the best traditions in Danish law. In his 1934 dissertation he had paid tribute to the founder of Danish legal writing, Anders Sandøe Ørsted (1778–1860).

A. S. Ørsted had chosen a different course to that of the law faculty. In 1801, at the age of 23, he was appointed as judge to the Copenhagen City Court, and later became a Supreme Court justice. From 1813, and for 35 years, he held a high-ranking post in a government department, and might well have been the most influential administrator under a king who, until 1848, was the ruler of an absolute monarchy. A prolific legal writer, Ørsted became the greatest figure of all times in Scandinavian law. He was trained in philosophy, and, as a judge, civil servant and scholar he became familiar with all branches of law. Natural law had no place in Ørsted's jurisprudence. To him, law was a phenomenon of this world, determined in its substance by time and place, embodied in statutes (Danish law had for centuries been basically a statutory legal system) but interpreted and enriched in numerous points by court practice, and

⁵ *Ibid.*, at 51.

⁶ A. Ross, *Virkelighed og Gyldighed* (1934), at 65, *Towards a Realistic Jurisprudence* (1936), at 39.

⁷ A. Ross, *Towards a Realistic Jurisprudence* (1936), at 57.

⁸ *Aarbog for Københavns Universitet* (Annual Report of the University of Copenhagen) (1934–1935), at 58.

based on a consideration of the needs of society and ideas of justice and moral values. These were points that Alf Ross' work obviously took up from.

But there were also differences between the two. One can hardly imagine more diverse paths to wisdom and recognition in the field of law than those taken by Ørsted and Ross. One cannot read Ørsted without observing the immense influence his activities as a judge had on his perception of the nature of law. Ross never entered the school of life in this manner. When his studies abroad came to an end in 1929, he remained in his study with his head in his books. Until 1935 he had modest and, professionally, rather unrewarding jobs, such as assistant at the law library or secretary to the National Council of Child Welfare. He also received a scholarship granted by the Carlsberg Foundation to the University of Copenhagen.

Closer contact with the Law of Contracts and other branches of private law might have been to Ross' advantage. These, after all, are the fields most suited to giving a feeling of the nature and growth of law. On the other hand, it must be noted that he was, for more than 40 years from 1935, a highly respected legal adviser to the Danish Chamber of Commerce. His dissertation, *Virkelighed og Gyldighed*, contained chapters of great interest to lawyers dealing with private law. Some of these presented Ross' contributions to the analysis of concepts such as 'obligation' and 'right'. Others — left out in the 1936 English version — dealt with a question which, strangely enough, had occupied Scandinavian authors for several decades: Is it possible to develop a formula of 'unlawfulness' ('*Rechtswidrigkeit*'), which encompasses the conditions for all legal sanctions such as punishment, restitution, prohibition etc? During the early twentieth century, there had been growing scepticism towards a theory of this kind and, after Ross' analysis, there was not much left of it. In 1935 Ross published a remarkable book entitled *Ejendomsret og Ejendomsovergang* (The Transfer of Property Right).

The difference between Alf Ross and his future colleagues lay to a large extent in the type of language they used to express their ideas. In practically all of Ross' writings up to his first textbook, he had found it necessary to use language which was somewhat removed from the actual law of the land. There is no reason to believe that his mode of expression was very different from that of other university teachers when he started lecturing on subjects like Constitutional Law. There are other indications that even in matters of a theoretical or jurisprudential nature there was no great gap between them. We have already noted what Professor Poul Andersen had to say on the problem of *Sein* and *Sollen* when Ross' first book was published.

Professor Julius Lassen, an authority on the Law of Contracts, retired from his chair in 1918. In his farewell lecture, he made some remarks on how he viewed his work as a teacher and author: not to express what the professor himself found the law to be, or what he thought ought to be the law, but to state as clearly as possible the rules on which the Danish legal system was based — the rules applied by courts and other competent authorities.⁹ Ross quoted these remarks to explain his own views on statements of Danish law: that such statements were the expression of what could

⁹ J. Lassen, *Ugeskrift for Retsvæsen* (1918), at 79.

with certainty or some degree of probability be expected to be the results in legal practice. Lassen's successor, Henry Ussing, expressed similar views. On one occasion he wrote that

the majority of Danish lawyers in our time will, if they reflect on what they call positive law, probably come to the conclusion that this is something of a purely juridical nature. In my opinion they do not in that concept include anything to the effect that the rules of law have a metaphysical validity, or, more particularly, that the rules are ethically binding. . . . I would call a rule an existing and valid one when it can be expected that courts and other authorities in the legal system will make it the basis for their decisions.¹⁰

When Ross published his *Om Ret og Retfærdighed* he did not comment on Ussing's book; he simply noted that Ussing was among the authors who had followed the path of Oliver Wendell Holmes.¹¹ One may wonder what reasons Ross would have given for the distance which he briefly alludes to, between himself and Ussing.

Ross was not new to International Law when that subject fell into his hands in 1938. Eight years earlier, he had published an essay in response to the then current problems surrounding the Covenant on the League of Nations and its limits on the member states' freedom to act. This had spurred Ross to take a critical look at the basic concept of state sovereignty.¹² Aside from this article, Ross had not published anything on International Law, but there is no doubt he had been a keen observer of International Law during the 1930s. He had seen the open and latent contradictions between written legal rules and political realities in the international community. He became professor in a field which he believed to be in a state of bankruptcy.

It was the alpha and omega to Ross' jurisprudence that the concept of law be insolubly linked to the enforcement of norms through the apparatus of force of the public authorities. It was somewhat paradoxical that Ross now taught the legal discipline which contained less enforcement mechanisms than all other branches of law. In 1942 Ross published his *Lærebog i Folkeret* (Textbook on International Law). It appeared later in many editions and was translated into English and German.¹³ Ross pointed to the fact that large areas of International Law lacked clarity and distinctiveness as far as the substance of the norms was concerned. No authority had the power to bring conflicts to an end and give binding force to a decision stating the limit between lawful and unlawful action. Perhaps Ross was somewhat evasive when he asserted that the question of whether International Law could rightly be called law was only a matter of terminology. On the other hand, he pointed out that International Law was considered a legal order with a stamp of validity, containing norms analogous to those in national law, especially *pacta sunt servanda*. International Law was described by Ross as 'a conventional, non-coercive order with a secondary stamp of law'. He added that this applied to International law in its current shape.

¹⁰ H. Ussing, *Retstridighed* (1949) at 12.

¹¹ A. Ross, *Om Ret og Retfærdighed*, at 89.

¹² Ross, *Statsvetenskaplig Tidsskrift* (Journal of Political Science) (1930) at 414, also published in German and French in respectively *Zeitschrift für öffentliches Recht* (1931) at 441 and *Revue de droit international et de législation comparée* (1931) at 652, (1932) at 112.

¹³ A. Ross, *A Textbook of International Law* (1947); *Lehrbuch des Völkerrechts* (1951).

According to this concept, International Law was an order between self-governing societies which might very well be equipped with organization, authorities and means of force.¹⁴ A development of this kind was highly desirable and became of renewed concern in the years after the Second World War.

The dream of a true law was not entirely fulfilled, but many changes occurred in the years during which Ross was active in International Law. He had left the discipline when challenges later appeared in the newly emerging field of European Law, but an assignment was given to him under the new legal framework for the protection of human rights. From 1945 onwards, the United Nations stood at the centre of International Law, and Ross published two books on the subject. The first was *Constitution of the United Nations* (1950). Since the Organization had only existed for a few years, Ross' book had the limited scope of presenting an outline of the structure and function of the United Nations, but he did so in a remarkably clear and well-written manner. Ross remained a keen and increasingly sceptical observer of the United Nations' role and achievements in the international community. In 1963 he published a book in Danish, *De Forenede Nationer*, which was released in English three years later as *The United Nations, Peace and Progress*. This volume provided a comprehensive analysis and evaluation of the UN as a political phenomenon.

Alf Ross served as a judge on the European Court of Human Rights from 1959 to 1972. These were not busy years in the Court, since very few cases were referred to it by the Commission of Human Rights. Ross was critical of this practice and wrote an article on it. However, a colleague on the Court persuaded him not to publish the article and it thus exists in a limited number of private reprints.

A member of the Commission was another distinguished Danish professor of International Law, Max Sørensen. He was by far the most outstanding scholar to be inspired by Ross' contributions to legal studies. Ross' views on the sources of law had led the way to Sørensen's remarkable doctoral dissertation 'Les sources du droit international' (1946), a study of the practice of the Permanent Court of International Justice. He became a professor at the young University of Aarhus and was a member of the Commission of Human Rights from 1955 to 1972, its President from 1967 to 1972, and subsequently a judge on the Court of the European Community. Max Sørensen was Alf Ross' equal as an expert in International Law, with the advantage of having a diplomatic career and serving as adviser to the Danish Ministry of Foreign Affairs.

Teaching International Law was, for nearly 14 years, Alf Ross' platform for dealing with general problems of legal theory and methodology. As an author he was free to write on whatever subject he wished. He thus produced a wealth of articles, which were later included in one form or another in his main book on jurisprudence. As a

¹⁴ The problem was addressed again later in *Directives and Norms* (1968), at 95, with this passage: 'International law governs the society of states. There exist institutional procedures both for the establishment of general norms and for the judicial decision of disputes. On our definition of law, therefore, international law is indeed law. But it has, like the laws of associations, no institutional provisions for the exacting of sanctions by physical force.'

lecturer, he had to build up his influence through Public Law, occasionally giving lectures on jurisprudence, and in some university terms he offered seminar discussions on the philosophy of law. In 1944–1945 he lectured on a book by Karl Olivecrona.

One of Ross' older colleagues, Frederik Vinding Kruse, left the faculty in 1950, and Ross took over the instruction of Jurisprudence from him. This biographical sketch would be incomplete without an account of the conflicts between Vinding Kruse and Ross. Vinding Kruse (1880–1960) had been a professor since 1914. His main field was Property Law, on which he published *Ejendomsretten* 1–5 (1929–1933). Part of this work was translated. He achieved considerable influence in the 1920s by drafting a law on the registration of property rights. His personality, rhetorical skills and wide range of interests made him gain the admiration of many law students. A lecture by Vinding Kruse on the rights of coast-owners — among these, the right to use eel-traps in the water — developed into a colourful account of one of nature's wonders, the migration of the eel from Danish waters to the Sargasso Sea and back. Vinding Kruse was also in charge of Jurisprudence, a minor subject in the law curriculum. He seems to have done little to keep that discipline alive in lectures or writing. He was the leading authority in the faculty in 1926, when it was decided not to award a doctorate to Ross for his 'Theorie der Rechtsquellen'. Eight years later he agreed with his colleagues to accept Ross' Danish dissertation. However, he voted against Ross, along with one other colleague, when a readership became vacant in 1935. There was no opposition from him when Ross was appointed as professor of International Law in 1938. Vinding Kruse and Ross were worlds apart in all respects, but that did not prevent them from falling into conflict on several occasions.

In 1943 Vinding Kruse published *Retslæren* (Jurisprudence). Arguably, the two volumes did not enrich legal literature, and some of Vinding Kruse's colleagues wrote sharp reviews. Alf Ross published his review under the title 'A Jurisprudence from the 19th Century'.¹⁵ Vinding Kruse's basic idea was that careful studies of legal phenomena had enabled him to build up a system of 'natural law', the best of all legal systems that could be imagined. Believing he could make law an empirical science of jurisprudence, he detailed his personal opinions on the proper form of government and the structure of a society. Ross wrote that Vinding Kruse 'made an attack on democracy and recommended the introduction of a dictatorship'. These words were too strong. On the other hand, Vinding Kruse's political views were, to put it mildly, incompatible with ideas of democratic values which had grown in strength during and after the Second World War.

In 1953 Ross published a book *Om Ret og Retfærdighed* (On Law and Justice), the opus magnum of Danish jurisprudence. He wrote, appropriately so, that the discipline of jurisprudence or legal philosophy had long played a poor role in the teaching of law. This book was intended to be a textbook for law students, but proved to be far more than that. It was not easy reading for university students, but it had the advantage of sharpening their perception of the sources of law, of legal interpretation and of basic

¹⁵ Ross, *Tidsskrift for Rettsvitenskap* (Journal of Legal Science) (1945) at 273.

concepts like ‘right’ and ‘obligation’. The volume offered a historical introduction to natural law over the centuries, as well as a criticism of the implications of that type of law and of metaphysical thinking. One must admit that Ross occasionally saw a metaphysical ghost where there was only a lamp post. An English version of the book appeared in 1958 under the title *On Law and Justice*. At that time, the English-speaking world of lawyers had long known that there was a Scandinavian school of realistic jurisprudence, and that this school was related to American literature. Ross did not agree with the Americans, who proclaimed that law was nothing but the sum of all court decisions. In Ross’ opinion, there were legal rules, which consisted in the complexity of meanings and motivations alive in the minds of judges, created by statutes, precedents, and so on. Books and essays on the positive law of a state describe norms which can be expected to determine the outcome of cases brought before the courts. Therefore, statements on positive law are predictions, or prognoses, of how courts and other authorities will state the legal consequences of a given set of facts. The texts of statutes and precedents, even the arguments and conclusions of learned individuals, may add to the sources of law, but are not the law itself. This is the natural understanding: there is always an element resting in the future — an element of expectation — in the statement that a legal solution is part of positive law. This seems also to be the essence of formulating a law of nature in a discipline of exact science: that a phenomenon has not only been observed repeatedly, but that it must be expected to occur under certain conditions. The element of prediction or expectation does not preclude authors from stating legal rules in the present tense: ‘The legal rule on situation X is A; there *are* two exceptions to this: in situations X + Y and X + Z the result *is* (will be) B’. Statements on positive law may be expressed with varying degrees of certainty or probability. Statutory rules and court decisions have both a clear scope of application and an area of doubt (what H. L. A. Hart calls ‘the fringe of vagueness’ or ‘the open texture of law’).¹⁶ When court proceedings are faced with a case containing rare circumstances, it is not only the application of substantive law that may cause doubt. The legal counsel may also have to inform his client that it is doubtful whether they will be able to prove the facts of the case as they view them. This may depend on the court’s assessment of probabilities, but also on its perception of the law governing the burden of proof.¹⁷ Since the very words of ‘prognosis’ and ‘prediction’ have been used to deprecate Ross’ theory, it is interesting to compare his theory with the one presented by H. L. A. Hart. According to Hart, ‘predictions of judicial decisions have undeniably an important place in the law’.¹⁸ Hart adds that ‘the basis for such prediction is the knowledge that the courts regard legal rules not as predictions, but as standards to be followed in decision’. This is exactly what Ross was aiming at. To him, the prediction was not the rule itself, but a statement of such a rule. Such statements rest on the assumption that a rule to that effect can be expected to be

¹⁶ H. L. A. Hart, *The Concept of Law* (1961), at 120 and 124.

¹⁷ The fact-finding aspect of law caused Jerome Frank to develop the idea of ‘rule scepticism’ into an extreme ‘fact scepticism’.

¹⁸ Hart, *supra* note 16, at 143.

the motivating factor in the judge's mind. It might be added that there is an element of prediction in decisions, at least for the majority of judges. They feel it is necessary to know the practice of Courts of Appeal and the Supreme Court, as they do not want to run the risk of having their decisions reversed.

Ross' view on the rules of law made room for the well-known distinction between statements on positive law (*de lege lata*, dogmatic law, 'Rechtsdogmatik') and statements on how the law ought to be (*de lege ferenda*, policy-making, 'Rechtspolitik').¹⁹ This was the distinction between the 'expositor' and the 'censor' of law used in 1776 by Jeremy Bentham to explain the difference between William Blackstone and himself,²⁰ a distinction which, as we know, led Bentham and Ross in different directions. Ross' way of explaining the relation between the two is not altogether convincing, but the trouble may to some extent come from a matter of terminology. Only one problem of language will be addressed here, namely the prominent role allocated to 'the sociology of law'. From Ross' point of view 'legal policy' is simply 'applied sociology of law'. It seems strange that Ross should make sociology of law a key concept in his arrangement of literary activities in the field of law, considering that this branch — apart from criminology — was and is virtually unknown in Denmark, and does not have significant influence on the constant process of reshaping the law.²¹ After Ross' days the sociology of law was introduced as a discipline in legal education, a subject without substance. Ross was well aware of the fact that this was a topic offering very little work by way of empirical research. Perhaps he wanted to outline an ideal model of two types of legal science working together. Perhaps he just needed a convenient label for all the elements of empirical knowledge that ought to go into efforts at reform, if they were to deserve the name of legal science. It must be added that Ross was naturally aware of the multiple forces at work in all debates on law reform: noble and less noble moral feelings, empirical knowledge, guesses and hunches, common sense, compromises reached in a committee with mixed composition, and so forth.

In 1959–1960, at the age of 60, Alf Ross published his *Dansk Statsforfatningsret* (Danish Constitutional Law). He had been in charge of that part of the curriculum since 1958 when a colleague retired from the faculty, and had lectured on the subject on many occasions. His book *Hvorfor Demokrati?* (Why Democracy?), published in 1946 and then translated into five languages, had displayed a keen interest in the ideological basis for a democratic form of government. In the years after 1946 he had served as a legal adviser to the Constitutional Committee, whose report led to the *Grundlov* (Constitutional Statute) of 1953. In his 1959–1960 textbook Ross developed

¹⁹ Between the two Ross places a third one: a legal writer's statements *de sententia ferenda*, i.e. his advice or proposal concerning the solution of a hard case where the outcome *de lege lata* leaves considerable doubt.

²⁰ J. Bentham, *A Fragment on Government* (1948 edition), at Preface, Section 13.

²¹ Ross' extensive debate with the German-born Danish sociologist Theodor Geiger (1891–1952) has nothing to do with the empirical contributions of the sociology of law, but is a more abstract debate on the concept of law. Geiger's principal work in this field is his *Vorstudien zu einer Soziologie des Rechts* (1947).

his interpretation of the written constitution and the relationship between law and political principles and practice with great clarity.

After the publication of this book, Ross did not set himself the task of preparing a revised edition of *On Law and Justice* in the 1960s, even if such a volume would have been welcomed by his readers and admirers. There was a feeling that, while radical changes in Ross' basic views could not be expected, a revised edition might be more accessible, presentation-wise, to future generations. There had been several indications that his mode of expression had become plainer, without losing any of its precision. As co-author of a small introductory book for law students, published in 1956, he had written a 70-page chapter outlining his ideas on the concept of law and the sources of law.

In his widely admired essay *Tû-tû* (1957),²² Ross produced a witty fable of a primitive society, where individuals acquired the negative quality of being 'tû-tû' by various deviant acts and have to bear the unfortunate consequences. Ross explains in plain words how this imaginary quality illustrates a general feature in legal language: firstly, that words like 'property right', 'obligation', etc., have no semantic meaning in themselves; and secondly, that such words perform a meaningful and useful function by serving as brief expressions of a legal connection between an act (e.g., buying or inheriting something) and a variety of legal consequences (e.g., that such person can claim that something from the possession of a third person, or claim restitution from someone who destroys it).

Ross' last major contribution to the philosophical foundations of jurisprudence was his book *Directives and Norms* (1968). This is primarily a study in deontic logic, where the reader will find the concept of a norm among the key themes of discussion.

In its choice of certain types of literature and authors as starting-points, partners and counterparts, *On Law and Justice* would probably have gained by leaving out some of the old-timers and including a selection of those better suited to represent the current situation. To mention only one example: H. L. A. Hart had, in 1961, published his book *The Concept of Law*. In his review of Hart's book,²³ Ross had concluded that there was virtually no disagreement between Hart and himself. As far as the relations between morals and law were concerned, there existed a broad consensus between them. As Hart himself clearly stated,²⁴ it is useful to distinguish between several questions, among which: Is there an old and ongoing influence on law by morals? Is there an inverse influence? Does some reference to morality or *Sittlichkeit* by necessity feed into the definition of law? How can moral arguments be a basis for a criticism of the law? Can concepts like 'just' and 'justice' have different connotations in morals and law? Is it the task of law, under certain circumstances, to enforce moral principles irrespective of the utility or lack of utility of the rule thus established?

A fundamental agreement between Hart and Ross could be seen in the way that they both — in their efforts to clarify the concept of law — drew a distinction between

²² Ross, *Harvard Law Review* (1956–1957), at 812.

²³ Ross, *Yale Law Journal* (1961–1962), at 1185.

²⁴ See also H. L. A. Hart, *Law, Liberty and Morality* (1963), at 1.

two kinds of rules: Hart's 'primary and secondary rules', and in Ross' terminology, 'rules of conduct and rules of competence'.²⁵

There was a slight tension at the end of Ross' review article over the fact that Hart had been reluctant to appreciate the similarities between the Oxford approach and Scandinavian Realism.²⁶ Frankly, one may be tempted here to suggest a weakness in much of what Ross himself had written. He was always inclined to insist on the points from which his own analyses and terminology started, and had led him. Ross' writings belied a tendency to dissociate himself, in the name of precision, from authors with whom he was fundamentally in agreement. Who knows whether his principal work, in a revised form, might to a large extent have represented a brotherhood whose endeavour was to overcome the effects of darker ages in jurisprudence?

However, it is not for us to speculate on what Ross ought to have written after the age of 60. Each of his major works had been a tour de force. He may not have wanted to take on the intellectual strain and burden of the writing process involved in revising *On Law and Justice*. Furthermore, Ross may have assumed that the essence of his jurisprudence was easily accessible to all who read him with an open mind. Such assumption is not always well-founded. Ross did live long enough to witness some of the setbacks which followed on his home ground, though not all of them.

In the 1960s and 1970s, Ross returned to aspects of criminal law which had captured his interest at an early age. In 1970 he published *Skyld, Ansvar og Straf*, dedicated to his wife 'in fulfilment of a promise made 45 years ago'. The English translation, published in 1975, was entitled *On Guilt, Responsibility and Punishment*. The relationship between moral and legal judgments had caught Ross' attention. In six essays, he analysed the various meanings which may be contained in words such as 'guilt', 'responsibility' and 'the aim of punishment', etc. He criticized the idea of abolishing punishment — an idea which had first been introduced by the 'positive' or 'Italian' school of penal policy, and which had a more modern follower in the English author Barbara Wootton. It is interesting to note that this book also has its counterpart in the writings of H. L. A. Hart. In a series of essays, collected in the book *Punishment and Responsibility* (1968), Hart presented a wide range of contributions to the theory of criminal law. Another collection of articles produced by Ross was entitled *Forbrydelse og Straf* (Crime and Punishment) (1974). The subjects discussed in this book were less philosophical, and focused on the theory of general conditions of liability in criminal law: intention, knowledge, negligence, attempt, complicity, mental normality, etc. Ross primarily wanted these essays to provide a clarification of familiar basic concepts, for 'reformatory' purposes; in other words, to make proposals to improve the general part of criminal law. In many ways, these essays were clearly

²⁵ Hart, *supra* note 16, at 78 and 238; Ross, *supra* note 23, at 1185; Ross, *On Law and Justice*, at 32; Ross, *Directives and Norms* (1968), at 118 and 130.

²⁶ Hart had reviewed Ross' book *On Law and Justice* in *The Cambridge Law Journal* (1959), at 233. In this article several passages showed an appreciation of Ross' book, for instance: 'Ross is less tortuous and obscure than Hägerström, less naive and professorial than Lundstedt; and richer in illuminating examples and concrete detail, if less urbane, than Olivecrona. He writes in a clear, interesting and at times racy style ...'.

not suited to the task of influencing opinion among experts in criminal law. Furthermore, Ross' texts contain surprising violations of principles that he himself formulated, principles concerning the methods of analysis and the use of language. Statements on positive law and, on the other hand, definitions and rules which Ross recommended for adoption through legislative reform, are not always sufficiently distinguished. It is difficult to avoid the impression that his explanation of words like 'intention' and 'complicity' leads him to believe that he has identified their true meaning — in spite of the fact that his previous writings had demonstrated that his understanding of the flexibility of words was basically a sound one.

Ross published many articles in newspapers and journals, especially following his retirement from the faculty in 1969, on subjects as varied as euthanasia, pornography, domestic and world politics, war crimes, and the concepts of normality and disease in medical science. Some of these articles were collected in a small volume called *Demokrati, Magt og Ret* (Democracy, Power and Law) (1974). Ross seems to have enjoyed turning his hand to the brief and more relaxed style of commenting on current issues. These essays gave a more varied impression of what occupied Ross' mind as a private person, a citizen and an observer of the world around him. Indeed, some readers may well have been surprised at times by his point of view.

In 1974 Ross wrote an essay called 'Credo'.²⁷ It was inspired by a question asked by a newspaper to a number of prominent people: 'What do you believe in?' With distinct satisfaction, Ross lets his readers know that he has no beliefs whatsoever in a religious or metaphysical sense. He finds it meaningless to maintain a belief which finds no support in strong reason. Ross' Credo is a set of humane values and, at the same time, a scepticism towards some aspects of human nature. He believes in 'the creative force in thought, imagination and will as expressed in science, art and politics'. Quite aware that this may sound lofty, he wanted it to be understood that what he had in mind was a creative faculty which all human beings possess, although there may be obstacles to its realization. Ross believed in democracy and in a liberal economy. He never played an active part in political life. In 1945 he had proclaimed unreserved support for the Social Democrats and a belief in socialism without Marxism and communism. Twenty years later he declared himself unable to vote for that party because he feared it would enter a coalition with the smaller and more leftist Socialist Party. Although the author has no solid information on this point, it seems likely that Ross' political sympathies moved to the direction of his wife's liberal party.

One element of Ross' 'Credo' of 1974 is a belief in man's unbounded egoism and desire for power; as a consequence, he would not count justice and love as principal virtues in social life. However, he did have a high opinion of the will and capacity to seek justice in judicial functions. He believed in man's ability to create his own life and personality, to do so freely and with a corresponding readiness to acknowledge responsibility for what the individual is and does. Although Ross' ideal of a science was pure positivism, he was not a positivist in the full philosophical sense of the word. He did not pay homage to a deterministic '*Weltanschauung*'. His 'Credo' therefore

²⁷ A. Ross, *Demokrati, Magt og Ret* (1974), at 124.

contains a passage in praise of ‘the inner freedom, our moral self-determination which no one can take away from us’. When the public first noticed Ross, he was quite wrongly classified as a moral nihilist by some. This came as a result of his endeavour to separate moral principles and teaching from true scientific knowledge. It became increasingly clear that a belief in the value of cultural traditions and in the necessity of moral norms and judgments were essential elements of Ross’ understanding of the life of law and the life and world of human beings: ‘Moral notions of patterns of behaviour, demands and duties, moral feelings of guilt, responsibility and reactions in the form of disapproval, anger, indignation and punishment pervade the totality of our lives and all our social relations. Without disapproval, no norm, and without norms, no human society.’

The author has a recollection of a summer’s day more than 30 years ago. My wife and I had been invited to spend a weekend at the Ross’ summer house at the seaside. Since Mrs Ross did not walk well, Alf Ross took us for a stroll about the neighbourhood. He set out a remarkable speed, as he entertained us by discussing a novel he had just read. I forget the details, but the substance of the novel was the moral dilemma of a man whose job, in a critical situation, leads him to a choice between two courses of action, both of which will involve a risk of sacrificing human lives. It was no easy task for this visiting couple, more than 20 years younger than their host, to keep pace with him and, at that speed, to enjoy the beauty of the surrounding nature, grasp the essence of the novel’s moral problem, as well as offer plausible solutions to it.

It was indeed a privilege to be a colleague to Alf Ross. Whatever his influence on future generations may be, he is a writer to be remembered for his versatility in law and his constant efforts to ensure the purity of legal scholarship. He set high standards of thoroughness, clarity and honesty.