EPISTEMOLOGY AND JURISPRUDENCE

JES BJARUP
Dinamarca

The nature of knowledge has been a central problem in epistemology. The problem is whether we are justified in claiming knowledge of some whole class of truths, or, indeed, whether knowledge is possible at all. My thesis is that the problem of knowledge occupies an important place in most jurisprudential systems. If jurisprudence is conceived as an ontological undertaking, as an endeavour to describe the ultimate nature of law or to say what there really is when speaking of legal rules, rights and duties, it requires a preliminary investigation of the scope and validity of knowledge. This approach is based upon the assumption that only that can reasonably be said to exist which can be known to exist. Another approach is the conception of jurisprudence as a critical inquiry into the preconceptions of legal science, i.e. the discipline dealing with the subject-matter of law. If jurisprudence is a second-order discipline concerned with the claims of various concrete forms of intellectual activity, then it must consider the extent to which these activities issue in knowledge.

Hence the importance of epistemology for jurisprudence, for law and legal science. Epistemological considerations play an important part in the works of the so-called Scandinavian Realists, the Swede Axel Hägerström and the Dane Alf Ross. I shall consider their views concerning three issues, viz. the issue of meaning and truth, the issue of knowledge, and the issue of reality. I shall try to show that although they both agree that metaphysics is nonsense and restrict jurisprudence to analysis of basic concepts they differ in some important respects. For Hägerström the point of analysis is analysis of fact, the clarification of the structure and inter-relationships of facts, and thus of the world. Ross cannot say this, because he is committed to logical positivism, which Hägerström is not. For Ross, then, analysis is restricted to the clarification of scientific language, that is the

language used in legal science. Ross's analysis fails to convince, and so does Hägerström's. But I shall claim that one merit of Hägerström's analysis is the aim to clear up misconstructions of legal language, and the exposition of absurd theories.