

Vilhelm Lundstedt – a Biographical Sketch

Jan-Olof Sundell

Vilhelm Lundstedt (1882-1955) was one of the leading legal thinkers that belonged to the Uppsala school of Jurisprudence.¹ He had a middle-class background and was raised in Gothenburg where he took his student examen. After working for a short period in a pharmacy he then at an early age both started and finished his law studies at the University of Lund. As he then was under 25, which was the minimum age for serving in the law courts, he was persuaded, more or less willingly, to turn to legal science. He became doctor of law there on a very traditional thesis in 1908.² After serving as an associate professor in Lund for a couple of years he then in the spring of 1914 became professor of Private Law at the University of Uppsala, a post he kept until being formally retired in 1948. Early on in Uppsala he got in touch with the professor of Practical Philosophy Axel Hägerström, that became a dominant influence on him. It led to a basic change in his views on law and to a highly critical perspective on the traditional legal thinking of scholars both within Swedish law and on an international level. He has himself stated that he now – as a professor - actually started afresh with his legal studies, in order to acquire a correct perspective on law. He regarded it as a lucky coincidence that he by this time already was a professor, because he felt that he would never have got a professorship on scholarly works of the sort that he started to publish after 1920; he claimed, he would never have been paid a penny for this type of scholarship, but the beggar's staff would have been his lot.³ When Lundstedt met Hägerström, he underwent a spiritual experience similar to the one that Saul had

¹ For a short description of Lundstedt's life and activities see Karl Molin's article in *Svenskt Biografiskt Lexikon* Vol. 24 p. 376 ff.

² For a description and an analysis of Lundstedt's doctoral dissertation cf. Sundell, Jan-Olof, *Tysk påverkan på svensk civilrättsdoktrin 1870-1914* (Lund 1987) p. 253 ff. A short version of this dissertation is available in English in *Scandinavian Studies in Law* vol. 35 (1991) p. 235 ff., with the section on Lundstedt on p. 251 ff.

³ For Lundstedt's dependence on Hägerström, which he often mentioned, see his partially autobiographical work *Det Hägerström-Lundstedtska misstaget* (Uppsala 1942).

as he travelled to Damascus and then was transformed to one of Jesus' disciples under the name of St Paul.

Both Hägerström and Lundstedt felt that all type of scholarly work should deal with society as it is and as it actually functions. Many traditional legal concepts had according to them no basis in fact, and they should consequently be regarded as a kind of legal metaphysics. In 1920 Lundstedt started a never ending kind of legal crusade against traditional legal thinking through a criticism against his own former teacher at Lund Johan Thyrén, who was a highly regarded specialist in criminal law.⁴ As he later stated, he held that traditional jurisprudence was "...unworthy of being called a science" and his purpose was precisely "...to make of jurisprudence a science."⁵ The basis of the legal order according to Lundstedt was the concept of what he called "samhällsnyttan", which we can verbally translate into English as what is useful to society or as "the social utility", although he seems himself to have had some trouble in translating his "samhällsnytta" into proper English.

Both the Uppsala School in general and Lundstedt's legal thinking in particular have been widely studied by legal scholars both in and outside Sweden. What is less publicly known is the role Lundstedt had as a politician and as a highly conscious and committed citizen in Sweden and the relationship between his three public roles.⁶ The purpose of this paper is to give a short biographical sketch of Lundstedt as a politician and a citizen. He very often based his political points of view on his views on law, and it is my intention to try to show something of the connection between them. The paper is actually a preparatory study for a biography on Lundstedt that I hope to be able to write in the coming years. He was a prolific writer and in the two personal bibliographies covering his public activity there are mentioned no less than 541 items.⁷ Among these are books, scholarly articles, but also political articles and pamphlets and interview statements to the press, speeches in parliament, private bills et. cet.

Although Lundstedt obviously early on had his political sympathies to the left,⁸ he concentrated on his scholarly tasks according to his natural leanings and it took some time for him to really take an active part in politics. However, his interest in politics increased with his active role in the "treason case" in 1916

⁴ Lundstedt, *Föreläsningar över valda delar av obligationsrätten*. I. Principinledning. Kritik av straffrättens grundåskådningar (Uppsala 1920). Lundstedt dedicated this work to his friend Karl Schlyter, who also happened to be Thyrén's cousin!

⁵ Lundstedt, *Legal thinking revised, My views on law* (Stockholm 1956) p. 5 f.

⁶ Staffan Källström touches however on some of the aspects treated here in *Den gode nihilisten, Axel Hägerström och striderna kring uppsalafilosofin* (Kristianstad 1986) and *En filosof i politiken – Vilhelm Lundstedt och äganderätten*. Idéhistoriska uppsatser 23 (Uppsala 1991).

⁷ *Vilhelm Lundstedts bibliografi. Förteckning över Professor Vilhelm Lundstedts intill den 11 september 1942 utgivna skrifter* av O. Holm (Stockholm 1942) and Bokelund, Curt, *Vilhelm Lundstedts Bibliografi 12.9.1942 – 11.9.1952* Sv JT 1952 p. 775 ff.

⁸ In 1905 he held a speech in Lund against a then current governmental bill on limiting the rights of the workers to strike. In this he was inspired by his friend Karl Schlyter, *Libertas* nr 1 1941 p. 10. The text of the speech is in an article in *Arbetet* 22.4.1905 (Klasslagarne inför juristerna).

(more about this further on in this paper).⁹ Lundstedt was politically active for the social democrats; he was first a councilman in Uppsala (1919-1929) and then a member of the Second Chamber of the Swedish Parliament, between 1929 and 1948. He was persuaded to stand as a candidate for parliament, although he originally was quite unwilling and seriously ill at the time.¹⁰ He later used to say that he represented the workers in parliament.¹¹ For a long time (1928-1945) Lundstedt also was a member of the board of the radical student federation Laboremus in Uppsala.¹² In many ways he was an odd person as a politician and never really fit into the usual party fold. I will here only give a few striking examples of his various fields of interest and of his independent positions in controversial questions. He very often based his political positions on his legal thinking.

Lundstedt took several unconventional initiatives in different directions, as the following examples will show. For instance, he criticized the traditional legal concepts enshrined in International Law and also the use of these at the League of Nations and published a book in English on this theme in 1925 under the title “Superstition or rationality in action for peace?: arguments against founding a world peace on the common sense of justice: a criticism of jurisprudence”.

During the festivities in commemoration of the 300 year jubilee of the first doctorate in law at the University of Uppsala in December 1929 he publicly praised the former Prime Minister Hjalmar Hammarskjöld (1914-1917). Hammarskjöld, an earlier professor at the faculty of law, had been heavily criticized during the First World War for his policy of neutrality between the warring powers, that according to many led to hardships for the Swedish Common Man. As a consequence he got the nickname “Hungerskjöld” and the criticism was particularly hard from the left. Now Lundstedt very positively judged Hammarskjöld’s steersmanship during the World War. Many social democrats must have raised their eyes in surprise over his praise of Hammarskjöld’s feat as the leader of the government during hard times, although the party leader Per Albin Hansson in an article in the daily *Ny Tid* commented favourably on Lundstedt’s statement.¹³

In 1933 Lundstedt submitted a private bill in parliament on legalising homosexual acts between consenting adults. His bill, that was also published as a small book of about 100 pages,¹⁴ had the heading “Fornication against nature”, that was a quote from the relevant paragraph of the Swedish Penal Code from

⁹ Lundstedt, *Hågkomster från förräderimålet* in *Festskrift för Zeth Höglund* (Stockholm 1944) p. 101.

¹⁰ Landquist, John, *Vilhelm Lundstedt 70 år* in *Stockholms-Tidningen* 10.9.1952.

¹¹ Hilding Eek about Vilhelm Lundstedt in *Stockholms-Tidningen* 21.8.1955, reprinted in Höglund, *Vilhelm Lundstedt – tänkare och kämpe*.

¹² Skoglund, Crister, *Vita mössor under röda fanor. Vänsterstudenter, kulturradikalism och bildningsideal i Sverige 1880-1940* (Stockholm 1991) p. 174 n. 3.

¹³ *Uppsala Nya Tidning* 2.12.1929 and Isaksson, Anders *Per Albin IV. Landsfadern* (Stockholm 2000) p. 122 f. Per Albin Hansson later became the highly popular leader of the social democratic party and prime minister 1932-1946. He led the four party Coalition Government during World War II.

¹⁴ Lundstedt, *Otukt mot naturen. Bör den vara straffbar?* (Stockholm 1933).

1864, Chapter 18, Paragraph 10. Lundstedt's parliamentary initiative in this field was a bold step for his times and came long before the Penal Code was duly changed in a more liberal direction, that took place in 1944.

In 1948 Lundstedt was one of the two social democratic members of parliament who proposed that Sweden should join the military cooperation between the states of Western Europe and the United States,¹⁵ that the following year led to the formation of NATO. (The other one was another odd politician, the writer Ture Nerman, who once had been a communist but later as a social democrat became the most outspoken opponent of the Swedish government's policy of cooperation with Nazi Germany during World War II.) This proposal went totally against the then social democratic Government's policy of sticking to the traditional Swedish policy of neutrality, a policy that actually went back far into the Nineteenth Century.

A few years later Lundstedt wrote a letter to the editor of a big Swedish daily, in which he criticized a governmental appointment of a professor of theology at the University of Lund, with the headline "Governmental dictatorship".¹⁶ This was admittedly done after Lundstedt had left political life, but he still criticized the government of his own party in this very harsh and uncompromising way, very typical for his extreme independence of mind.

Although Lundstedt was very much a typical theorist, he at least once made an earnest effort to change course and thereby to leave his professorship in Uppsala. In October 1933 he wrote a letter to his old friend Karl Schlyter, who was now minister of justice in a recently formed social democratic government. Lundstedt now wanted to be nominated as a judge to the Swedish Supreme Court (Högsta Domstolen). He stated that he understood that such a nomination would only be possible under a social democratic government but that he would regard it as an unmotivated slight to him, if the government would not nominate him to the Supreme Court. From an other letter that Schlyter wrote a few years to a common friend of them both it is clear that Lundstedt deeply resented being bypassed, that the minister of justice had not wanted him as a member of the Supreme Court.¹⁷ Schlyter, who had served as a president of a court of appeals, obviously felt that Lundstedt would not fit in well in a collective team of judges in the Swedish Supreme Court.

Let me now give an early example of how Lundstedt combined his legal analysis with his political standpoints. When prohibition became an important political issue in Sweden around 1920 he fought this idea, because he felt that it would be detrimental for the cohesion in society to prohibit the consumption of alcohol. The basis for criminal law according to Lundstedt was his concept of social utility, that he always applied to all legal matters as a basis for the legal order. Although he up to this time only most unwillingly wanted to take part in a political debate, he now felt it to be imperative to put forward his opinion with an article in his party's magazine *Tiden*.¹⁸ In a later pamphlet against prohibition

¹⁵ Lundstedt, *Europas demokratier – förenen eder!* (Stockholm 1948).

¹⁶ *Regeringsdiktatur* in *Stockholms-Tidningen* 15.5.1951.

¹⁷ Vilhelm Lundstedt to Karl Schlyter 22.10.1933 and Karl Schlyter to Karl Olivecrona 15.4.1937 in Sundell, Jan-Olof, *Karl Schlyter – en biografi* p. 168 f.

¹⁸ Lundstedt, *Förbudsfrågan ur rättslig synpunkt. Genom lagstiftning bör rättskulturen*

published in 1920 he started in a very typical manner with giving the reader a short version of his then current criticism of Thyrén's thinking and he then turned to the question of what "samhällsnyttan" demands with regard to the function of penalty within the society. In Lundstedt's opinion we have the most important law-abiding factor in the formation or in the feeding of a general feeling of duty among the citizens against penalized actions. In comparison to this factual state of affairs the concepts of deterrence or retribution are hardly worth mentioning according to Lundstedt: "Now pay attention to the fact that I have consequently shown both these things: on the one hand that the penalty in order to fulfil its task in society must have as its main function to educate a common morality against crime, and on the other hand that the actual existing state of affairs exactly, that penalty above all has the consequence, that the feeling of duty of the individuals against criminal actions generally reaches such a height, that such an act only rarely will be executed."¹⁹

Obviously normally law-abiding citizens, that want to drink a schnaps or a glass of beer or of wine to their meals, would not obey a ban of sale on alcohol, according to Lundstedt. If prohibition would be instituted in Sweden, like earlier in the United States and Finland, it would not be generally accepted. Some citizens would after much mumbling accept it and abide by such a law, but many others, those normally law-abiding people would seek and also find a way to get their alcoholic beverages, even if it would be against the law. The likelihood of many citizens breaking such a law would probably become so numerous that only a tiny portion of these actions could be legally prosecuted. According to Lundstedt, this state of affairs would have a fatal influence on the initially law-abiding majority of citizens: "And you don't have to be a particularly brilliant psychologist to realize the extremely dangerous situation that now would be created, *normally completely loyal and honest citizens would be brought the idea, that on the side of laws worthy of respect there existed other laws, that should not be obeyed.*"²⁰ To carry through a ban against alcohol would therefore have a disastrous result not only in regard to this particular law but to the general attitude of the Swedish citizens to accept and to uphold the law in society. A referendum on prohibition was then held in 1922. The result was that the Swedes could go on drinking legally, although the decision only was taken with a small majority.²¹

One of Lundstedt's most controversial standpoints, both legally and politically, referred to his denying there being any rights of the citizens, that existed irrespective of what was established in statute law. This became particularly irritating and political questionable to his political opponents in the bourgeois parties of Sweden, when Lundstedt took up this theme in an election speech during the campaign preceding the elections to the Second Chamber in 1928. By the way, this election campaign was one of the roughest during the 20th

upprätthållas och icke undergrävas (Stockholm 1920) p. 13 and *Ibid.*, Kan ett s. k. totalförbuds införande försvaras ur straffrättens synpunkt? in *Tiden* vol 12 (1920) p. 5 ff.

¹⁹ *Ibid.* p. 18 f.

²⁰ *Ibid.* p. 29 f. The text is spaced out in the original.

²¹ The background of the referendum in Carlsson, Sten – Rosén, Jerker, *Sveriges Historia 2* (fourth edition, Stockholm 1980) p. 538.

Century in Sweden. The conservative party pursued a very forceful and efficient campaign and among other things produced a very effective and later infamous election poster of a Russian cossack threatening the Swedish citizen, which referred to a traditional fear of Russia, that now was increased due to that this country now had become the Soviet Union. The Cossack poster was at the same time perceived as a symbol of socialism threatening the Swedish citizens' property rights and right of inheritance. The election was a success for the conservative party and at the same time a defeat for the social democrats. In his election speech Lundstedt's main focus was on the right of property, he characterized this as a fantasy product. His reasoning followed from his basic view on law founded on historical and social reality: "If you looked at the historic development you could find certain factual consequences of the legal order, certain safeguarded positions. These type of positions the citizens have raised into rights, which should belong to them as a power founded on natural order, to which the legal rules then must be adapted. The real situation, however, is, as earlier implied, that the so called rights only constitute certain advantageous situations, arisen as a consequence of the application of the legal rules. But due to this you must also be able to understand, that the talk that a new law would be able to violate the right of property is just as meaningless as the chatter of a parrot."²²

Vilhelm Lundstedt was a social democrat, but it is entirely reasonable to ask what kind of socialist thinking that he actually represented. He has been characterized as being influenced by Marx' thinking., by among others his friend Zeth Höglund in his obituary over Lundstedt, where he considered him to be completely permeated by the opinion that it is important not only to interpret the world but to change it. According to Höglund Lundstedt belonged to those politicians that fought for a new kind of social order.²³ In a speech on May 1, 1921 in Lund Lundstedt finds that the strong antagonism in contemporary society between labour and capital is a threat to the peaceful evolution of society. It is important to find a more timely order of production, in which the increasing weight of the working class is mirrored. Such a demand can also be justified on the basis of "samhällsnyttan". However, the ruling classes can still not be regarded as having achieved the social morality and solidarity feeling that the evolution of society demands. The question that Lundstedt then asks becomes: How shall it then be possible to make these classes realize that they must strive for the general good and to disregard class egoism? According to Lundstedt it should be possible to influence the capitalist class on moral grounds in an altruistic direction just as well as in an egoistical one. A new society demands a new moral, a change in attitude is to be expected from the ruling classes, because the moral has evidently always changed with regard to the society's development.²⁴

²² Lundstedt, *Det borgerliga rättssamhället en vidskepelse* in Social-Demokraten 10.9.1928.

²³ Zeth Höglund writes on Lundstedt in *Vilhelm Lundstedt – tänkare och kämpe* (1956). Marx's words that Höglund refers to is the well known place in Theses on Feuerbach: "The philosophes have only in various ways explained the world, but what is important is to change it."

²⁴ Källström, *Den gode nihilisten* p. 55 f.

There is according to Lundstedt, however, a problem with the traditional legal concepts of absolute rights. All groups in society are being hurt by this outmoded, metaphysical thinking. The legal order constitutes a basis, that is an absolutely necessary condition for the society in which we all live and through which we alone may progress above the animals' level. "It should not be possible to show any grounds, why human beings through such a general perspective would be less willing to accept the legal order, it is rather the other way around. And this fact should perhaps be the greatest blessing for humankind in common both within the nations and in the great international community. Thereby a détente in the opposites between the property-owning and the labouring classes would be achieved in a quieter and less devastating manner. The property-owning class should realize that such things as the right of property, the right of inheritance, the right to use its capital only for its own benefit etc. are no once and for all given entities but that on the contrary it must suffer such an adjustment, that is required by 'samhällsnyttan', i. e. what according to the ruling assessment in society is necessary for the common welfare from an economic and humanitarian perspective. The workers must at the same time realize that there are no absolute rights given to them either, neither for equal distribution nor for anything else, but that their demands towards the other groups in various phases have to be adjusted so that their practicability should not make the machinery of the society get out of order or to make it squeak too much, whereby everybody, the workers not the least, would suffer."²⁵

At the same time Lundstedt was also active on questions of civil rights. If he found that a Swedish Citizen was harmed by what he felt to be a legal injustice from the side of the authorities he obviously felt it to be his moral duty to devote himself to correct this wrong through intervening publicly in various ways, sometimes directly in legal cases. He always did this without any personal consideration and without taking into account whether his action might harm his own position in any way. It also did not matter to him, whether the person he wanted to help was a radical socialist or a leading capitalist; if a person had been wronged by the Power Holders of the Swedish society – and in particular by the law courts - then Lundstedt felt it to be his moral obligation to come to the culprit's rescue. To his villa in Uppsala came a constant stream of letters from persons needing help and advice.²⁶ In several cases he actually devoted an enormous amount of time and work to assist such a person. In this regard he obviously was guided by a deeply idealistic attitude during all his life.

Because of space I will only here dwell on three of Lundstedt's most famous legal cases, two of which have become well known in Swedish legal and political history, the so called treason case of 1916 and the Högbroforsen case in 1933.

²⁵ Lundstedt, *Samhället och rättsordningen. En revolt mot rättsskolastiken* in *Tiden* 1922 p. 150.

²⁶ Hilding Eek in *Stockholms-Tidningen* 21.8.1955, reprinted in Höglund, *Vilhelm Lundstedt – tänke och kämpe*.

Let me start with the treason case of 1916.²⁷ This must be set in its historical perspective during the First World War, in which Sweden with a considerable effort managed to avoid being embroiled. The times were characterized by strong political tensions in Sweden between the forces of the left and the right and this was also shortly before the total democratization of political life, that took place in November-December 1918, after the German Empire had collapsed. The leftist parties, the liberals and the social democrats demanded a full democratization, general suffrage for both men and women and that the King (as head of state) should accept the parliamentary principle when appointing the members of his council of ministers. Up to this time the King had always felt more or less free to personally choose his advisers, the members of the King's Council (Statsrådet). In 1908 the then conservative government changed the voting rights, so that general suffrage for men was instituted – with certain limitations – in the elections to the Second Chamber. After the first elections under the new system were held, the parties of the left gained a large number of seats. The conservative government resigned and the King now had to accept a liberal government that was formed in 1911. Under these years immediately before World War I the most important political issue dealt with the question of the extent in which to strengthen the Swedish military forces. The liberal government was pushed into accepting more and more increases of military spending but the conservative groups would never be satisfied. It was forced to resign in February of 1914 due to the fact that the King took a stand in a public speech to 30.000 farmers, collected at the inner courtyard of the Stockholm castle, against the government's policy regarding how large the military sector should be. The text of the speech was written by two private advisers of the King, which actually was contrary to the rules of the Swedish Constitution. He was not supposed to have other advisers than those constituting the King's Council.

At the start of the First World War all political parties united in supporting the new rather conservative (although not party constituted) government's effort to keep Sweden neutral, with Hjalmar Hammarskjöld as premier. However, there were several groups of people, that soon wanted Sweden to join Germany and the Central Powers in the war, and as was stated in the text of a political pamphlet published in 1915, to "courageously join in on the side of Germany". Most of the so called "activists" came from rightist groups but there were also a couple of important social democrats that took sides as co-writers in the earlier mentioned pamphlet. Their stand was not accepted by the social democratic party leadership and they were excluded from the party.²⁸

Other more radical forces on the left, mainly the social democratic youth organisation, who earlier had taken a clear antimilitarist stand, wanted to oppose the activist propaganda and the feared efforts of activist groups to change Sweden's political line of neutrality through the arrangement of a peace

²⁷ The general political background can be found in Carlsson – Rosén op. cit. p. 471 ff and more specifically in part 1 of Anders Isaksson's biography of Per Albin Hansson, *Per Albin I. Vägen till folkhemmet* (Stockholm 1985) p 324 ff.

²⁸ The pamphlet had the title *Svensk utrikespolitik i världskrigets belysning* " , also Carlsson – Rosén op. cit. p. 480, Isaksson op. cit. p. 316.

conference, that took place in Stockholm in March 1916. Very radical demands of proposed opposition against the authorities were discussed at this conference. Among the proposals taken up in this there was the idea of a general strike in the case of Sweden being dragged into the war on Germany's side. A manifesto was adopted that not only proposed such a general strike but combined this through an appeal to the Swedish citizens with a concurrent refusal of taking part in the military mobilization of the Swedish armed forces in such a situation. The motto of the conference was "Peace at any price". As proponents of these actions three people, who took a leading part as speakers in the conference, were then indicted at the City Law Court (Rådhusrätten) in Stockholm accused of incitement (conspiracy) for treason; they were the chairman of the social democratic youth organisation mr Zeth Höglund, a representative for another socialist organisation mr Ivan Oljelund, and Dr. Erik Hedén, the cultural editor of the "Social-Demokraten", the main newspaper of the social-democratic Party. There was a distinct difference of opinion between the Höglund group on the one hand and the Social democratic leadership on the other. The social democratic youth organisation had particularly before the war agitated against the military system as a form of class oppression of the people, they regarded themselves and were also regarded by many within the Right and also the liberals to be anti-militarists. Höglund had already in the autumn of 1915 met with Lenin in Zimmerwald in Switzerland and after the first Russian Revolution in February 1917, when the latter passed through Stockholm on his way (in the sealed train) to Russia they met again. Shortly after this the Höglund group broke out of the social democratic party and founded a left socialist party that later developed into the Swedish Communist party in 1921.

Although many people were highly critical against the stand of the social democratic youth at the conference and the statements made there in March 1916, they were also appalled by the rapid action of the public prosecutor in Stockholm to bring an action for treason against Höglund, Oljelund and Hedén according to some sections of the Penal Code. Although Vilhelm Lundstedt certainly had social democratic sympathies he had up to this time not taken an active part in political discussion. He had concentrated on his scholarly work and was actually in the midst of changing his entire perspective of law. At this time he did not personally know Höglund (they later became close personal friends), although he had met Hedén. He did not approve of the antimilitarist line, instead he strongly supported a Swedish defence force at this time; he still did not want Höglund, Oljelund and Hedén convicted for treason against the Swedish state, a charge which he found to be deeply unfair and legally indefensible. Lundstedt was asked to support the three accused men and he wrote a plea to the court, arguing against the indictment. The court still convicted them for an attempt to beguile to treason according to the Penal Code, 8:8 compared with 8:3 and 8:6 section 3, and sentenced Höglund to three years of hard labor, Oljelund to one year and six months of hard labor and Hedén to one year of hard labor.

The verdict was appealed and Lundstedt continued to write opinions to support the accused men. The case was taken up first by the Svea Hovrätt (the relevant court of appeal) and later also by the Swedish Supreme Court. The sentences now became successively lighter, the three men were now absolved of the charge for treason but instead two of them (Höglund and Oljelund) were

condemned to short prison terms according to the Penal Code 10:14 for trying to entice the soldiers not to obey to be called into active service in case of war and to organize a general strike shortly before or at the time of a war breaking out. The entire case smelled of political justice, and this not only according to the opinion of the social democrats but also of many liberal newspapers at the time. On the other hand many people on the right and among the leading circles of big business probably thought it only proper to put these dangerous people in prison.²⁹

Lundstedt wrote several articles in periodicals criticizing the law courts entire handling of the case, he also gave several interviews to the daily newspapers telling about his opinion. In all this effort he obviously did not think about the possible consequences for himself for intervening in this highly controversial legal case. The fact was that Lundstedt's personal financial situation was in quite a critical state at this time. He had like many other scholars at the time borrowed heavily to finance his long legal studies. He owed more than 48.000 swcr at the beginning of 1917, an enormous sum of money at the time. A fairly decent yearly salary was about 2.000 swcr. at this time. Karl Schlyter, who was one of his close friends and a fellow social democrat and a judge, was just at this time through his personal connections trying to arrange for economic support for Lundstedt from persons within Big Business, so that the law professor could avoid being personally bankrupt, there was a considerable risk of this at the time. And just when Schlyter was diligently striving to make this come through, Lundstedt had the audacity to intervene publicly in the notorious treason case! Even so Schlyter later succeeded in achieving his goal, a few years later Lundstedt could become free from his heavy debts,³⁰ but the interesting thing here is that Lundstedt never would contemplate what effects his actions might have for himself. When he had to act, he had to act, and damn the consequences!

One other famous law case that Lundstedt became involved in the Nineteen Twenties dealt with the murder in 1913 of the pharmacist at the pharmacy in Hammarby, that was situated some 30 kilometers north of Stockholm, along the main road to Uppsala, and also quite close to the railway station at Väsby. The murder case got a lot of publicity at the time but seems to have been badly handled by the police, the first two prime suspects, two vagabonding Italians were fairly soon cleared of the charge for murder. The case remained unsolved but lingered on in many peoples' mind. In 1924 the author Are Waerland published a book, with the title "När länkarna brista" (When the links break) in which he pointed out a Dr. Birger Dahlén as the perpetrator. Dr. Dahlén had a drug problem at the time the murder was committed and he was suspected of stealing drugs at the pharmacy and of being caught on the spot by the pharmacist, who was then murdered. Dahlén brought a charge against Waerland for libel, who was convicted in the following press-law suit and sentenced to three months in prison; he also had to pay damages for 10.000 svcr. and the

²⁹ The case can be found in NJA 1916 s 483. See also Lundstedt's own later reflections on the case in *Hågkomster från förräderimålet* in Festskrift till Zeth Höglund (Stockholm 1944) p. 101 ff and Per Eklund, *Rätten i klasskampen, en studie i rättens funktioner* (Stockholm 1974) p. 155 f.

³⁰ Sundell, Jan-Olof, op. cit. p. 166.

court costs for both parties and the book was impounded. But the suspicions against Dr. Dahlén still remained; nobody was however ever tried for and convicted for the murder and this fact hurt his extensive medical practise in Stockholm.³¹

Lundstedt wrote several articles in the newspaper Social-Demokraten in February and March 1925 on the Hammarby case, in which he criticized the police authorities' handling of the case, and later he published a pamphlet of more than sixty pages, where he held that there was a lot of circumstantial evidence tying Dr. Dahlén to the murder, but his main purpose was actually to criticize the police and the office of the public prosecutor for mishandling the case. According to Lundstedt it was no longer not only a question that an individual law official might commit a legal impropriety, which he felt had been the case here. It was important for the democratic development of the Swedish society that this was combined with an increased general respect for the legal system and for the principle of everyone's equality of the law. "But from where would such a respect derive its nourishment, if the laws were not differently respected by its guardians than has occurred in this sorry business?" It was necessary for upholding a common moral that required that on certain actions a penalty would follow with a necessity similar to a law of nature: "The danger for a loosening of the moral concepts relevant here is particularly great in a case like this, where improprieties have not only appeared to the general public but where the authorities seem to be unmoved by the public's attention of the matter at hand."³²

In the case it was established that Dr. Dahlén only a short time after the murder was committed indisputably boarded the train for Stockholm at the nearby Väsby railway station. According to the police it would have taken him too long time (17 minutes at a forced foot-pace) to move from the murder scene in the dark to the railway station for him to have committed the crime; he therefore seemingly had an alibi. However, Lundstedt found this judgment to be questionable; he himself at 44 walked the distance in 11 minutes and 51 seconds. Another younger person jog-trotted it in 8 minutes and 55 seconds. Two other persons test walked the distance in 12 to 13 minutes. Thereby Lundstedt felt that Dr. Dahlén's alibi did not hold water.³³ His interest in the case was apparent, he did not only write several articles and the long pamphlet on the case, he visited the scene of the crime and he had to personally walk on foot and to time the distance between the pharmacy at Hammarby and the Väsby railway station!

Lundstedt's most well known legal case dealt with his efforts under a number of years to legally assist mr Torsten Kreuger, who was a successful businessman and the owner of several big daily newspapers. However, he had the bad luck to be the brother of the well-known international financier Ivar Kreuger. After the latter's suicide in Paris in March 1932 his international financial empire collapsed in a big crash at the top of the Great Depression. Many Swedish people lost a lot of money, there was a frenzy in public life and a number of legal cases, in which several of Ivar Kreuger's associates and business partners

³¹ Lyttkens, Yngve, *Hammarbymordet* (Stockholm 1952) p. 107.

³² Lundstedt, *Hammarby och lagarnes helgd* (Stockholm 1926) p. 13.

³³ *Ibid.* p. 59 f.

were tried and convicted, in a later perspective often on rather loose grounds. The Kreuger case also indirectly became a moral issue in politics. The then liberal prime minister C. G. Ekman was found out of having received money for political purposes from Ivar Kreuger and he had to resign a month before the general election in September 1932, that the bourgeois parties lost and the social democrats could now form a new government.³⁴ In fact this constituted the beginning of a long uninterrupted power period for the social democratic party, that lasted until 1976.

Although Torsten Kreuger was dragged down with his brother, he seems not to have known very much of Ivar Kreuger's financial dealings,³⁵ and he also lost practically all he owned. After being indicted for 26 different offenses he finally ended up being convicted by the Swedish Supreme Court for one crime (in March 1933), fraud against buyers of debentures of the Högbroforsen industrial company, and he was sentenced to a prison term of hard labor for one year.³⁶ After Kreuger was released he succeeded with luck and economic skill to get his papers back and also most of his lost fortune. Rather reluctantly at first, Lundstedt became Kreuger's legal aide in order that the latter should be granted a new trial. He wrote a plea claiming that Kreuger had been innocently convicted by the Supreme Court.³⁷ Despite four consecutive tries Kreuger never succeeded in getting a new trial. Lundstedt helped him with the legal work in the first two of these appeals. It should be pointed out that Lundstedt obviously never received any money from Kreuger for his work,³⁸ among them a book of more than 300 pages on the law of appeal, which was published in 1939.³⁹ He was later deeply bitter that all his efforts in the case did not bring any concrete results, as he mentioned in a personal letter to his old friend Karl Schlyter, "On what lines should a person, that realizes that we do not act rightly, if we are not working according to our ability for our democratic society, devote his activity, if fairness or unfairness are regarded as being an indifferent matter?"⁴⁰

Although Lundstedt's actions as a sort of a people's tribune and as an unofficial "Ombudsman" therefore would seem to be morally highly commendable, the odd thing is that his behaviour in this field was in total contrast to his legal thinking as a member of the Uppsala School. As a scholar and as a legal philosopher he felt himself to be governed by the search for truth. This led him to the thesis that the valuation we pronounce when we call something fair and another thing unfair can not lay claim to be said to be true, nor can it be called untrue; it has no support in actual fact, that may exist irrespective of our personal tastes and of our personal, more or less well understood, interests. The dream about an idea of abstract justice to Lundstedt is just a dream, a chimera.

³⁴ General historical background in Rosén – Carlsson, op.cit. p. 550 ff.

³⁵ Thunholm, Lars-Erik, *Ivar Kreuger* (Stockholm 1995) p. 282.

³⁶ The Högbroforsen Case is well-known in Swedish legal history. The Kreuger Crash led also to a new Swedish company law, that was adopted in 1944.

³⁷ Lundstedt, *Torsten Kreuger oskyldigt dömd*. Utlåtande (Stockholm 1934).

³⁸ af Trolle, Ulf, *Bröderna Kreuger* (Stockholm 1989) p. 269.

³⁹ *Resningslagen och Högbroforsdomen. En rättsvetenskaplig undersökning* (Uppsala 1939).

⁴⁰ Vilhelm Lundstedt to Karl Schlyter 12.4.1941, vol. 43 Karl Schlyters Archive, Riksarkivet.

However, the paradoxical thing is, the thought-provoking and worrying fact is, that each time that Lundstedt feels himself obliged to take position as an active and committed citizen, then his second obsession comes in and controls him completely. He then becomes the school book example of being exactly the protagonist for the legal pathos, the blind faith in the idea of absolute justice, that he was rejecting as a scholar and that he as a legal philosopher had pointed out as being the root and origin of all evil! Consequently there is – at least seemingly - a contradiction between Vilhelm Lundstedt the legal scholar and Vilhelm Lundstedt the committed citizen and politician. It does not quite add up – but a human being can never be equivalent with a mathematical equation; human nature is complex and some times self contradictory.⁴¹ In many ways Lundstedt was a man of extremes. He went from one extreme standpoint in his views on law to another, equal extreme, that was deeply antagonistic to the first one. Because of his criticism of traditional legal thinking he wanted to abolish international law, because this was based – falsely according to his view – on exactly this traditional thinking. These among many other reasons makes Vilhelm Lundstedt a very intriguing and interesting person, a subject well worth of a biographical study.

⁴¹ Cf. the obituary of Ivar Harrie in *Expressen* August 22, 1955, reprinted in Höglund, *Zeth Vihelm Lundstedt – tänkare och kämpe* (Stockholm 1956).