Wilhelm Dilthey and Law as a Human Science

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In the German tradition, the human sciences have traditionally been called the Geisteswissenschaften, literally the 'sciences of the spirit'. Despite its slightly misleading Hegelian overtones, the expression became quickly popularized as a general term for the human sciences through the German translation of John Stuart Mill's *A System of Logic*. So in Book VI ('On the Logic of the Moral Sciences', Mill 2011: 473), 'moral sciences' became 'sciences of the spirit'. The term was often used in a negative sense, that is, to include all the disciplines that were not regarded as exact natural sciences, so philosophy, philology, literary studies, law, theology, and history, and, subsequently, even newer disciplines such as sociology, economics, anthropology, and psychology (on the history of the term, see Cohen 1994: 195-196). In short, the term corresponds roughly with the English expression 'humanities and the social sciences' and its French equivalents *sciences de l'homme* and *sciences humaines*.

The unapologetic reference to science is, however, worth noting here, and the keywords are epistemology and method. So not only can the humanities and the social sciences be scientific in this respect, albeit in different ways, but, in response to some sort of 'foundational crisis' in the respective disciplines, they also must ground themselves scientifically if they are to earn their place among the disciplines that can produce valid knowledge about the world that we live in.

It was particularly Wilhelm Dilthey who would use the term Geisteswissenschaft in his attempts to create such a philosophical foundation for the human sciences as disciplines clearly distinct from the natural sciences (on Dilthey’s own reasoning for using the ambiguous term, see Dilthey 1991: 58).¹ Often Dilthey’s arguments resemble

¹ Dilthey’s collected works have been translated into English in selection (Dilthey 1991; Dilthey 2010b; Dilthey 2010a; Dilthey 2010c; Dilthey 1996). The main editor and
Nietzsche’s in that both represent a certain vitalistic philosophical strain, a *Lebensphilosophie*. But whereas Nietzsche in his highly literary style scorns modern society’s infatuation with science as decay and decadence, Dilthey is a moderator with an explicit scientific and epistemological agenda.²

In many ways, Dilthey’s position reflects the crossroads at which legal theory as an academic inter-discipline stands today. Dilthey starts off with a very basic opposition between two different points of departure in the human sciences. One is a rationalistic approach based mainly on Kant’s philosophy, the other an approach that seeks to explain the development of social and cultural phenomena by way of social reality. The first is a theoretical approach grounded in the philosophy of the Enlightenment, the second a more practically oriented approach that Dilthey will often identify with what he calls the ‘Historical School’ (e.g. Dilthey 1991: 79-80).³ Perhaps we can shorthand the two sides of the opposition as the theoretical and the empirical.⁴ Although Dilthey frequently alludes to the superiority of the latter approach, he proposes to address its shortcomings with a reconciliation with the former. The task of Dilthey’s philosophy of science is, then, to validate the human sciences as they have developed since the emergence of the ‘Historical School’ by providing them with a foundation that draws its theoretical inspiration from the epistemological emphases of the Kantians and neo-Kantians.⁵ This task, as conciliatory as Dilthey’s tone always is, does include a polemical element:

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translator of the selected works has written an excellent introduction to Dilthey (Makkreel 1992; see also Rickman 1979).

² Dilthey’s original position, including numerous explicit references to the study of law, is, perhaps, expressed in the most accessible way in the famous ‘Althoff Letter’ a draft of which has been annexed to the English translation of the *Introduction* (Dilthey 1991: 493-496; for the letter itself, see Dilthey 1997: 389-391).

³ With the ‘Historical School’ Dilthey means the historicist tradition more generally, not the narrower definition as represented by e.g. Savigny.

⁴ One should be cautious about the way in which Dilthey understands the empirical here. He rejects the positivist view that misrepresents the dynamism of human phenomena by breaking experience down into atomistic data. Dilthey’s view of ‘experientialism’ (*Empirie*) is, rather, holistic, and it extends knowledge to make the human sciences an ‘unprejudiced empirical inquiry as distinct from empiricism’ (Dilthey 1991: 130).

⁵ Dilthey is a rather versatile philosopher in that one can easily make different readings of him by, for example, emphasizing or downplaying his affiliations with the neo-Kantians (emphasizing Dilthey’s own positivism, see e.g. Habermas 1987: 140-160). This reading, emphasizing Dilthey’s vitalism, is no different.
The nature of knowledge in the human sciences must be explicated by observing the full course of human development. Such a method stands in contrast to that recently applied all too often by the so-called positivists, who derive the meaning of the concept of science from a definition of knowledge which arises from a predominant concern with the natural sciences. (Dilthey 1991: 57)

Two epistemological points worth noting, then. Firstly, the human sciences form distinct and separate categories of knowledge and science that do not and cannot mime those that have been ‘arbitrarily’ adopted by the natural sciences as the ‘so-called positivists’ have done (see e.g. Rickman 1960). And secondly, the human sciences form a unitary whole, an architectonic system where the differentiated disciplines are in clearly defined and logical relations to one another. The first point is Dilthey's soft polemics against the predominance of the natural sciences paradigm and the privileged position that it enjoys in the realm of knowledge, while the second is his critique of the epistemological fallacies of the human sciences as represented in, for example, early romanticism. Once again, Dilthey prefers to act as a moderator between what he regards as two opposite sides in a dichotomy:

The problem of the relation of the human sciences to our knowledge of nature can be resolved only when we have resolved the opposition with which we began, namely, that between the transcendental standpoint for which nature is subject to the conditions of consciousness and the objectivistic empirical standpoint which regards the development of the human spirit as subject to the conditions of nature. (Dilthey 1991: 71-72)

Dilthey's central claim is that, as an object of knowledge, human life and social reality are only accessible through an inner experience that cannot be explained as the causal relations of nature. Indeed, only external nature can be explained; human life is internal and can only be understood:

In nature we observe only signs for unknown properties of a reality independent of us. Human life, by contrast, is given in inner experience as it is in itself. Therefore, only
in anthropological reflection is the real there-for-us in its full reality. (Dilthey 1991: 435)

The individual who experiences and knows itself from within is a constituent of the social body which it inhabits and in which it acts. Further, other constituents of the same social body resemble the individual and are accordingly comprehensible to it. This is how the individual understands social life. The individual is an element in social interactions, a point of intersection where various systems of such interactions meet, and it reacts to the influences of society with conscious actions and intentions. But the individual is also an intellect contemplating and investigating the social complexity of which it is part:

... the play of causes which operate blindly is replaced by the play of representations, feelings, and motives. The individuality and profusion of interactions that emerges here is boundless. (Dilthey 1991: 89)

How to, then, make sense of these interactions in a scientifically valid way? Within the architectonics of Dilthey’s original epistemological aspirations, the only possible foundation for the human sciences is a philosophy which takes the truths of psychology or philosophical anthropology as its basis. Psychology, as Dilthey understands it in his 1883 *Introduction to the Human Sciences*, is the scientific core of the human sciences the aim of which is to develop verifiable ‘first-order’ propositions about the ‘psychophysical life-unit’ in the different social and historical contexts in which it acts. The twist that Dilthey adds to this notion of psychology is that its object of analysis cannot be man ‘prior to society’. Only by first contextualizing man both socially and historically can psychology perform its foundational task and validate the interconnections between the various human sciences which is Dilthey’s objective here. Moreover, for Dilthey, psychology must remain purely descriptive and refrain from assumption-based explanative theories. Explanations, psychological or otherwise, are verifiable only if they are footed in unprejudiced descriptive facts (Dilthey 1991: 83-84).

6 Drawing specifically on Dilthey, Charles Taylor develops his own notion of ‘desirability-characterizations’ and makes a convincing argument on the normativity of all understanding in the human sciences (Taylor 1980).
The scientific foundation of the human sciences is, then, a descriptive psychology on top of which the epistemology of the remaining human sciences must be built. There is no scientifically valid discipline of history, society or culture without a basic knowledge of man as a psychophysical life-unit.

But what is this complex inner experience that cannot allegedly be explained but can only be understood? If we read beyond the Introduction, the more Dilthey becomes aware of the impossible task of harnessing human life with a scientifically valid psychological foundation, the more his vitalistic emphases come to the fore. The experiences of the psychophysical life-unit take on a distinctly conative colour, and this conation becomes ever more difficult to subsume under any descriptive psychology:

The external world expresses itself in life as pressure through the relation of impulse to resistance. Its reality lies only in this life-relationship. Its reality signifies nothing else but these relations to psychic structure within the human sciences. (Dilthey 2010a: 352)

In other words, in the inner experience, man reaches out to the external world through conative urges, through volitive or purposive impulses with which man attempts to appropriate the contextual environment that she inhabits. The limitations of the external world to accommodate her impulses, for their part, introduce resistance. Man as a conative being experiences her external world only as the pressure that builds up between her impulses and the resistance that these impulses encounter:

Now impulse, pressure and resistance are, as it were, the firm components that signal solidity to all external objects. Will, struggle, labour, need and satisfaction are the ever-recurring nuclear elements that constitute the framework of spiritual events. Here is life itself. It is always its own proof. (Dilthey 1990: 131)

At first sight it may seem that Dilthey here simply rearticulates the claim that the external world is only accessible through representations within consciousness, that is, the view of transcendental philosophy that was commonly held by many of Dilthey’s contemporaries and that he himself identified as one side of the original opposition that he wanted to overcome (e.g. Dilthey 1991: 67). But it is the emphasis that he now puts
on life as a vitalistic force that is worth noting. If we accept this vitalistic notion of life as our starting point, then no further proof can be obtained by proceeding from consciousness to some transcendent *noumenon* that may or may not lie beyond it. The only possible preconditions for knowledge about the external world are given in life itself beyond which the human sciences cannot reach. This also renders the foundational task of psychology impossible and returns the human sciences back to the *Methodenstreit* from which we started. As scientific modes of enquiry, the disciplines studying history, society and culture are caught in a vitalistic loop where the human scientist emphatically understanding her fellow human being and the world around her can have no better guarantees about the accuracy of her analyses than the psychophysical life-unit has about its own conative life. Dilthey captures the idea of this vitalistic loop well in his famous motto-like phrase:

Here life grasps life ... (Dilthey 2010a: 157)

The usual way in which Dilthey is introduced into the study of law is through the notion of hermeneutics that he developed as a general method of understanding and interpretation in the human sciences by critically expanding on what Schleiermacher had already done before him. In this way, Dilthey becomes merely a way station between Schleiermacher and Gadamer as one gradually moves towards what is regarded as a ‘mature’ hermeneutical position (e.g. Palmer 1969: 98-123). But despite Dilthey’s rather abundant references to law and jurisprudence, surprisingly little has been written on what he understood as law and its study unless it concerns passing references to issues that relate directly to hermeneutical interpretation and Dilthey’s intermediate position in the development of the theory (e.g. Tontti 2004: 13-14).

This relative lack of interest may at least partly be due to Dilthey’s 19th century sources of inspiration that may from our point of view have little more than historical significance. But perhaps there is something to salvage here, not in the sense of a rehabilitation of obsolete doctrines, but as an attempt to radicalize. Instead of following...

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7 The German words that Dilthey uses for law and jurisprudence are *Recht* and *algemeine Rechtswissenschaft*. The former, unlike its English counterpart, emphasizes the systemic context of all legal norms. The latter, literally the ‘general science of law’, is close enough to the common German expression for the discipline of jurisprudence (*algemeine Rechtslehre*), but once again with the scientific emphasis.
the usual route of hermeneutics and interpretation, what will follow is an effort to clarify Dilthey's notions of law and jurisprudence in the Introduction as mediators between two systemic wholes of a second-order, namely between what he calls cultural systems and the external organization of society, and an illustration of the contextual position that legal theory — or the academic study of law more generally — would consequently have among the human sciences.

In the previous section we noted how Dilthey's original epistemological aspirations were structured around an architectonics where the human sciences would be philosophically founded on a descriptive psychology or philosophical anthropology. This foundation would have provided the 'first-order' truths about the psychophysical life-unit in its social and historical context on top of which the more complex truths of a 'second order' about cultural systems and the external organization of society would be built. Cultural systems are collaborative networks into which individuals enter with the aim of achieving designated purposes that can be either more efficiently or exclusively reached through cooperation. All cultural systems are defined by their purposive character, and they can involve any general aspect of social life, be it political, economic, religious or cultural in the more narrower sense:

The purposive nexus of a cultural system is rooted in human nature; but through the interaction of individuals as regulated by conditions of nature and through historical development, human nature displays itself in more complex phenomena that form the basis of the analysis of such a special system and which are to be distinguished from the fundamental phenomena elucidated in psychology. (Dilthey 1991: 96)

But in addition to such cultural systems that are entered into voluntarily for the sake of purposive cooperation, individuals are also born into existing structures that form the institutional framework of the world that they inhabit. Dilthey calls such enduring institutional structures, like family and the state, the external organization of society, and it provides the framework for establishing and maintaining relations of, for example, power and property:

There is accordingly another theoretical perspective on social life which has its focus in political science. The unruly force of his passions and his inner need for, and feeling
of, community make man not only a component in the structure of cultural systems, but also a member of the external organization of humanity. Over against the structure which shows the nexus of psychic elements in the purposive whole of a cultural system, we now distinguish that structure which arises in the association of men as volitional beings. (Dilthey 1991: 98)

In this way Dilthey’s architectonic vision of the human sciences begins to take shape. Its foundation is a descriptive psychology the aim of which is to establish the first-order truths about the psychophysical life-unit in its historical and social context. Dilthey’s foundationalist aspirations lead, of course, into a cul-de-sac and the inevitable turn towards a vitalistic notion of life. The psychological foundation was meant to epistemologically validate the study of two distinct and systemic wholes and to establish the second-order truths about the individual in its more complex interactions with others, that is, cultural systems and the external organization of society. The former involves the different ways in which the individual enters into voluntary collaboration with others in order to achieve designated purposes, whereas the latter is an always already existing institutional framework that binds individuals together as volitional beings and that often makes collaboration possible to begin with. We could, perhaps, shorthand the former as the cultural and the latter as the political, and in terms of the individual human sciences that these systemic complexes represent, the former would include the more culturally oriented disciplines like philosophy, history and literature, that is, the humanities in the narrower sense, whereas the latter would include political science and its kin.

Now the question that arises and that concerns us here is the position of law. Is law a cultural system among others, or is it part of the external organization of society? Does law as an academic discipline belong to the humanities in the narrower sense or to the political and social sciences? If we reply to the question intuitively from within the legal tradition, we would probably say that it belongs to the latter. And consequently the interdisciplinary affiliations that law would have with the humanities — understood here again in a narrower sense as the disciplines representing cultural systems — would take place through a ’constant cross-referencing’ (Dilthey 1991: 99) that Dilthey sees as essential for the development of all human sciences.
But for Dilthey law has a much more important role to play. To claim that law belongs to both would be an understatement. In fact, law is that ‘constant cross-referencing’, the medium that makes it possible for one half of the second-order truths to communicate with the other and thus to validate the human sciences as a whole:

... the relations between the cultural systems and the external organization of society existing within the living purposive nexus of the socio-historical world point back to a reality which is the condition of all consistent action of individuals and in which, furthermore, both the cultural systems and the external organization of society are inextricably linked. That reality is law. It contains in an undifferentiated unity that which is then later divided into cultural systems and the external organization of society. Thus the law illuminates the nature of the separation which occurs and the various relations between what is separated. (Dilthey 1991: 104)

Such a bold understanding of law compels Dilthey to deal with it from the two angles representing the cultural and the political respectively. Dilthey begins his account with a highly rhetorical stab at the positivistic tradition:

Law is a purposive system based on a sense of justice as a constantly operative psychological fact. (Dilthey 1991: 105)

So law, like cultural systems in general, is a purposive system that exists for the voluntary and collaborative realization of designated aims. The purposive character of law as a cultural system is, in turn, animated by a sense of justice. Dilthey goes to great lengths to emphasize that this sense of justice that transcends positive law is usually counterfactually ‘sacrificed’ in the construction of the ‘conceptual models’ of the ‘systematizing spirit’ unable to realize its own limitations. But for Dilthey the sense of justice is a ‘psychological fact’, and he must accordingly also mean that it is a first-order

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8 Ihering to whose Law as a Means to an End Dilthey also refers (Dilthey 1991: 109-110) claims that the human equivalent of the mechanical cause in nature is the psychological purpose of the will: ‘Freedom of the will, in the sense that the will can set itself in motion spontaneously without a compelling reason, is the Münchhausen of philosophy, who can pull himself out of a swamp by his own hair’ (Ihering 1999: 2).
truth on which the understanding of law as a second-order systemic complex must be founded.

But law is not a cultural system among others. It can only exist in terms of its parallel function of externally binding the wills of individuals into a stable and valid order. The resultant order, in turn, defines the relationships of individual spheres of power to one another and to the collective will. By integrating the wills of individuals into a relatively stable and permanent order, law creates the ‘purposive nexus’ that enables individuals as part of a unified collective will to achieve their legally designated aims. In other words, the purposive system of law is a ‘correlate’ of the external organization of society where both presuppose the existence of the other. Just as law as a purposive system animated by a sense of justice must presuppose a unified will that resides in the external organization of society, the external organization of society, in so far as it must also account for the sense of justice as a psychological truth, must also include within itself law as a purposive system (Dilthey 1991: 105-106). One cannot exist without the other.9

The collective will that is anchored into the external organization of society expresses law as imperatives coupled with the intent to enforce them. But it displays an impulse to enforce its legal imperatives regardless of how well or poorly developed the existing institutional framework may be. Dilthey illustrates the absence of well-developed institutional frameworks with passing references to the common law and to international law. In other words:

... the collective will, which supports the law, and the sense of justice of individuals work together in the development of law. Individuals are and remain dynamic, law-forming forces. On the one hand, law is shaped by their sense of justice, while on the other hand, it depends on the volitional unity which has been formed in the external organization of society. Accordingly, the law has neither wholly the features of the collective will nor wholly those of a cultural system. It unites in itself essential features of both types of social reality. (Dilthey 1991: 107)

9 One source of inspiration for Dilthey must be Otto von Gierke’s notion of a German ‘common law’ tradition where the modern state is seen as a synthetic combination of
Because the position of law is intermediate between the second-order truths of the cultural and the political, Dilthey must also account for law from the angle of the latter, that is, the political, and the individual human sciences that it represents. Although for Dilthey all human action is by necessity purposive, not every purpose requires a systemic association or a purposive nexus in order to be realized. But often the ability to distinguish between cultural systems and the external organization of society is simply a matter of choosing perspective. So, for example, we can satisfy many of our basic needs for nourishment through agriculture, and agriculture can be viewed as purposive action in which we cultivate the soil in order to produce the desired materials. Some tasks like harvesting may be performed more efficiently through collaborative efforts, but this can well be regarded merely as a coordination of activities without the need of a systemic association like a cooperative. But in addition to the hardships of nature, human life is constantly threatened by the contending desires of other human beings. We may, to stick with our example, enter into a dispute about landownership and real property as the neighbouring farmer contests the existing landmarks. Seen from this perspective, a cultural system such as agriculture takes on new meanings:

The unbridled force of human passions does not allow man to fit himself into such a purposive system with deliberate self-control; rather, a strong hand holds each person within his limits. (Dilthey 1991: 126)

This 'strong hand' is the sovereign state. The state is not a voluntary association that would merely contribute towards the coordinated efficiency of individual activities in, say, agriculture. Through its protective function and the enforceability of its laws, it is, rather, the very condition of all forms of association. In other words, law is a function of the external organization of society that guarantees the consistency of all action within cultural systems. It is anchored in the collective will, and it assigns individuals their respective competences of power in accordance with their tasks and positions in the cultural systems.

But because all wills, including the collective will of the state, generate purposive systems, the law, too, is a cultural system. The state may build public roads, or it may
organize health care for its citizens, but it also passes laws for designated purposes. And, moreover, it does so by collaborating with its subjects. But what sets the law apart from other cultural systems is the sense of justice of individuals and its relation to the legal system. The collective will of the state does not create law alone either as an abstract idea or as a specific legal system. Drawing on what he calls the 'profound truth' of natural law, Dilthey paraphrases the theorem, usually attributed to Blackstone in relation to the common law courts, that law is 'not made but discovered' (Dilthey 1991: 127). Regardless of the different historical expressions of this 'profound truth', natural law doctrine generated the idea of a systematic and purposive nexus of law from which the notion of positive law was then separated:

The state of affairs which the idea of natural law thus attempted to express provides the basis for one aspect of the relationship between jurisprudence and political science, namely, the relative autonomy of the former. Law is an end in itself. A sense of justice cooperates with the organized collective will in generating and maintaining the legal system. For this sense of justice embodies a volitional content whose power is deeply rooted in personality and religious experience. (Dilthey 1991: 128)

The failure of natural law theory, as Dilthey sees it, was to consequently transpose the purposive system of law, now understood as an end in itself and founded on the first-order truth of the sense of justice that all individuals possess, beyond historical development. And for the Dilthey of the Introduction, this can only mean a compromise to the scientific status of law as a human science. The only way in which this failure can be rectified is a two-way binding in which natural law theory is first methodologically complemented with the historical and psychological analyses that are common to all the human sciences and, secondly and conversely, the conceptual abstractions of positivism are grounded in the psychological and psychophysical facts thus established. This forced interdisciplinarity leads to a clarification of Dilthey's 'relative autonomy' claim:

\[\text{10} \text{ There is little evidence that Blackstone actually used the 'law found, not made' expression in which the declaratory theory is usually presented. He did, however, claim that the courts are 'not delegated to pronounce a new law, but to maintain and expound the old one' (Blackstone 2002: 69; see also Brewbaker 2006). Here Dilthey expands the declaratory theory to include state legislation.}\]
From this it follows that there is no special philosophy of law and that instead the task of such a discipline will have to devolve on a philosophically grounded system of the positive human sciences. (Dilthey 1991: 129)

Consequently the sense of justice and the fundamental impulses that are related to it are in themselves meaningless unless one can demonstrate how they establish law as an end in itself. This, Dilthey claims, can be done through an historical analysis of how legal concepts and institutions have emerged and evolved from religious ideas. On the other hand, the legal system which orders social purposes and is maintained through coercion is always by necessity a part of the external organization of society. In this sense, law belongs to both the cultural and the political, and every concept of the one can only be explained by way of the other. Schematically:

It is now time to bring the two different perspectives from which we've read Dilthey together and to draw some conclusions. Dilthey's ideal for the human sciences is, without a doubt, holistic. Although he sides with the empirical tradition on many levels, he clearly rejects its tendency of isolating individual phenomena into atomized truths that are unable to understand the richness of human reality. As he polemically asserts, it would be senseless to try to explain Goethe's passions, intellect and artistic productivity from the structure of his brain or his physical properties (Dilthey 1991: 61). Another type of approach is needed:

The bond between the singular and the universal that exists in the 'inspired intuition' of the historian is destroyed when analysis submits a single component of this whole to
theoretical consideration. Every theory arising in this way in the particular sciences of society which we have discussed is a further step in dismantling the universal explanatory framework of all historical facts. This process cannot be stopped. The totality of socio-historical reality must be examined theoretically to determine what can be explained in it. (Dilthey 1991: 141)

Hence a reconciliation of what we earlier called the empirical and the theoretical is needed. Dilthey’s specific aim was to develop this ‘universal explanatory framework’ of the human sciences by, firstly, founding what he often refers to as ‘human nature’ on a set of first-order truths through a descriptive psychology and, secondly, by expanding from that foundation into the second-order disciplines that study the activities of the psychophysical life-unit in its cultural and political contexts. Founded in first-order psychological truths, the second-order disciplines can then provide a scientifically valid understanding of the human world only as a systemic whole where the various cultural systems and the external organization of society are brought together.

But in order to assess what this all might mean for the study of law, we need to backtrack from the second-order disciplines to the first-order foundation.

We shorthanded Dilthey’s two second-order complexes, cultural systems and the external organization of society, as the cultural and the political, and we noted how law plays a curious intermediate role in both. Within the domain of the cultural, law is also a purposive system with which the psychophysical life-unit collaborates with others in order to achieve designated aims. We can, for example, regard an agricultural cooperative as a legally constructed autonomous association with which the collaborative efforts that bring efficiency to farming are consolidated into a more fixed structure. The cooperative clarifies the tasks of its individual members from primary producers to retailers, and it provides predictability in terms of the expected benefits. In this sense it has all the features of a cultural system. But because a cooperative is a legal construct that is defined in state legislation, it also assigns enforceable rights and obligations and, accordingly, functions in the political, as well. Within the political, the law defines what purposes a cooperative can be used for, what a cooperative member is, what individuals must do in exchange for their membership, what they are entitled to expect in return for their contributions, and the general mechanisms for governing the cooperative as well as for monitoring its governance. Seen from the cultural
perspective, the cooperative requires the relevant legal concepts and institutionalized mechanisms in order to function. Conversely, seen from the political side, the legal construct of a cooperative would be an empty and senseless shell without the purposive element of its cultural side.

Perhaps we can make some cautious generalizations from our cooperative example. If the second-order level of human life where individuals interact with each other in a variety of historical and social contexts is seen as the cultural and the political, then law belongs to both but is not completely either.

In other words, Dilthey’s original epistemological project, that is, the task of providing a epistemologically sound philosophical foundation for the human sciences, collapses in its own impossibility. Depending on what aspects of Dilthey’s philosophy we wish to emphasize, we can claim that he either gets caught in the original dichotomy of the theoretical and the empirical from which he started without finding a way out (e.g. Reid 2001), or, alternatively, we can argue that through his vitalistic notion of life, underdeveloped as it may be as an attempt to overcome that dichotomy (on Dilthey’s notion of life generally, see e.g. Owensby 1994: 51-78), he partakes in the anti-foundationalism of, for example, Nietzsche or Bergson as well as more contemporary theorists such as Foucault and Deleuze (see e.g. Nelson 2007; Negri 2001).¹¹

But perhaps this needn’t be an either-or choice. In his excellent analysis, Jos de Mul finds in Dilthey’s attempts to overcome the dichotomy a ‘tragic contradiction between the philosophical desire for universal validity and the realization of the fundamental finitude of every attempt to satisfy that desire’ (De Mul 2004: 154). The tragic contradiction precludes the choice between one or the other. The desire can be neither fully satisfied nor completely denied. The foundationalist desire is always coupled with the inevitability of its anti-foundationalist failure, while any attempt to surrender to anti-foundationalism is still animated by the desire to overcome it. It is this tragic double bind that we will adopt here.¹²

¹¹ Iain Stewart (Stewart 2011) makes an interesting case for how Dilthey was at the centre of a covert political dispute between Sartre and Raymond Aron. Especially Aron’s Marxist reading of Dilthey would seem relevant here.

¹² I have elsewhere dealt with the unsatisfiable desire for truth as a ‘first philosophy of law’ (Minkkinen 1999). I have expanded on the political implications of this tragic contradiction elsewhere (Minkkinen 2010).
What does this mean for the human sciences? The aim cannot be a rehabilitation of Dilthey’s original foundationalist project as an attempt to reconstruct an epistemologically oriented philosophy for the human sciences by rectifying Dilthey’s alleged errors along the way. There is nothing to rectify. It would rather have to be the acknowledgement of his ‘tragic failure’ by embracing the vitalism that Dilthey ends up with. ‘Life grasps life’. The human scientist is no different to the psychophysical life-unit that she studies. She is affected by the same conative impulses and encounters the same resistances as the being whose world she attempts to grasp in her understanding. Indeed, her grasping can itself only be a vitalistic impulse among others, a desire to understand, and her understanding can only take place at the pressure point where that impulse meets its resistant counterpart. And so she is doomed — or more appropriately, perhaps, delivered — to the tragic nature of her task.

Bibliography


