

A CRITICAL EVALUATION OF
PROF. ROBERTO UNGER'S
LEGAL THEORY

BY

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1. Prefatory:

There are two general parts to this paper. In the first part I wish to raise some questions relating to Prof. Unger's very general claim about the contingency of knowledge to formative empirical contexts. This part will be my attempt to place in perspective the specific points which I wish to dispute with Prof. Unger. In the second part I wish to deal with the balance where I agree with him almost completely. The parts where I beg to differ with Prof. Unger do not prevent me from accepting his call for programmatic argument, and yet attend upon those parts of his programmatic argument theory which I accept, in a way to modify it from an epistemological point of view. The purpose of my disagreement is not so much the fact that I believe in the contrary, as it is to engage in exploration of an alternate point of view. So in a way, my disagreement is more contrived to support argument rather than to arrogantly dispense with something that I found contingently (!) questionable and debatable for the present purposes in a cavalier fashion. This part is about the issue of variance and invariance of cognitive capacities of the 'self', and I wish to focus on Unger's chapter *The Philosophical and Scientific Setting of his Social Theory: Its Situation and Its Task*, the critical introduction to

his work Politics. Here I wish to critically examine the support that Prof. Unger derives from the philosophical works of W.V. Quine, Hilary Putnam, and Peter Winch, and put up an argument in favour of a theory of invariance of certain kinds of knowledge, especially mathematical knowledge. For this I will depend mostly on my own devices of epistemological argument.

My second part of the essay needs to be introduced as an attempt to outline and delimit areas of knowledge both, pertinent to social theory in as much as these kinds of knowledge are characterized by a contingency to formative empirical contexts, thereby making it still possible for a social theory of the sort that Prof. Unger inspires, and of the kind distinctly different from the invariant kind. The counter-intuitive theory (counter-intuitive to Prof. Unger's epistemology) of the possibility of invariance of certain kinds of knowledge, however, does not prevent me benefiting from the liberating effects of thinking programmatically in the main. If at all, it only tempers my proposed epistemology with a non-trivial, and yet a non-interfering, theoretical constraint of certain kinds of invariance in knowledge that I shall discuss in greater details a little ahead. In effect it is only an attempt to

keep straight a record in epistemology and not to subvert the programmatic argument as a whole

The final sections of this essay are an outcome of inspiration afforded by Prof. Unger's call for liberating ourselves from the shackles of false-necessity, but for my present purposes and for the reasons that would flow from my discussion in my first part, it is a restricted liberation, that is, a liberation from the false necessity of only certain kinds of methods of acquisition of knowledge and not all. An additional feature of what I propose, is that this liberation be constrained by an appeal to pragmatism as well, and therefore be made more meaningful in its avoidance of the irresponsibility of chaos that is concomitant to unrestrained breaking off all bonds with the pre-existent. This will come out more clearly in what is to follow.

2. Some Questions to Prof. Unger:

Living in an ordinary world of common sense leaves us with some habits difficult to overcome. The notion of habit itself evokes a sense of invariance and permanence, and the

experience of the unquestionable fact¹ that there is something as against nothing, ontologically speaking, attests to invariance and permanence of a particular sort. My objective for the present purposes is a proposal to engage in the exploration of the invariant. This is an acceptance of the Ungerian challenge that permanence of any sort is a tissue of metaphysical nonsense, falsely fabricated in imaginative discourses and by delirious minds in search of an anchor. I hope to do this by discussing the special position he gives his social theory in relation to contending epistemological positions of forms of positivism, innatism and philosophical rationalism.

2.1 Discussions relating to the questions:

I have below, a set of interrelated discussions dealing with the concepts of *necessity, contingency, universality,*

¹For questioning itself, to use a developed Cartesian argument, presupposes, not a questioning mind as Descartes would have had it, but a pure 'experience' (I use the word experience here not quite in the sense an empiricist would talk about it, but as a given starting point that could include the possible a-priori as a constituent aspect as well) at least. The 'experience' has an ontological pre-eminence over anything else, including the experiencing object, the subject-object distinction, relations, etc., all of which acquire ontological worth only through a logically subsequent synthetic process of induction. I cannot immediately explain how from this initial ferment of pure experience, the subordinate experiences spring up. But this is my epistemology.

particularity and intentionality in relation to

Prof.Unger's social theory:

1.The first and foremost statement of Unger that I wish to introduce my discussion that proposes a revision of his extreme anti-necessitarianism with, is - "conceptions of necessity and contingency can never be more than abbreviated statements of particular explanations". An immediate objection to this statement may be brought by suggesting that his social theory, which is based on this proposition, is itself not exempt from the rule that it can at best be a set of abbreviated statements of particular explanations, so that what we have in the end is a set of propositions which negate their very own purpose of any universality that they seem to make a claim to. In response to this, Prof. Unger may argue that his social theory does not pretend to have any character of universality whatsoever, so that what he says of his social theory are only particularized in their purpose. But without being absurd in whatever way (after all, philosophy should not be insular to critical inspection at all), this notion of particularity may be pushed to a further point of discussion by raising the question - how

²Roberto Unger, *Social Theory: Its Situation and Its Task* - Chapter 7, pg. 171

particular?...particular to a leibnitzian infinitesimal where the infinitesimal tends to zero, or something less particular than that, so that any communication of what the theory is is possible at all??. Universality of propositions made in any discourse, especially in political manifestos, in some measure at least, is required in order to make available the intent of the discourse across the social contexts of space and time.

Relating to this, one wonders if Prof.Unger's subjugation of the validity of any explanation, to the particularity of experience, as is implied in his extreme anti-necessitarian stance, can ever translate in to the practical need for communication and sharing of information, that both, this stance of particularity seems to preclude at an epistemic level, and that is especially so very important for the consolidation of political will.

2. The second thing in Prof. Unger's epistemology that invites a comment about, is his view on how certain ideas hitherto considered knowledge in virtue of definition receive an empirical interpretation in new physical theories. His example of Riemannian geometry, seems to me, unsuccessful in leading to the conclusion that euclidean.

³It is important to note that the concept of particularity is just as metaphysical as the concept of universality. The notion of particularity implies a pre-defined time-framework for experience. Who defines this time-framework?

geometry is untrue in the face of Riemannian geometry finding application in the Einstein's general theory of relativity. Just as Riemannian geometry was held true definitionally till the traditional correspondence between euclidean geometry and physical reality was proven otherwise, euclidean geometry can be said to hold definitional truth value even though Einstein's general theory of relativity has found a correspondence between Riemannian geometry and physical reality. Whether any adjustments are made or not of the fifth of the euclidean axioms, so as to update the system of geometry to correspond with physical reality, is immaterial to the fact that the geometry's created by such adjustments are true individually by definition.

To uphold the above view of mine against Prof. Unger's view, requires me to argue against a related and a well known argument made by W.V Quine, that analytic propositions, such as the ones mathematical truths are said to be constituted of, are distinct from experientially guaranteed propositions only by a matter of degree. This argument of Quine flows from his attempt to show that the Kantian distinction between analytic and synthetic truths is a spurious one. For this, Quine shows how the problem of

***W.V Quine, From a Logical Point of View Two Dogmas of Empiricism.**

analyticity devolves in to a problem of synonymy. Synonymy, to me, doesn't seem to invoke any floating metaphysical constructions when synonymy is being attempted between object-words representing a single object. This is because, making a speculative jump between the meaning associated with one word to the meaning associated with its so-called synonym is avoided, and hence any reference to the intermediary of inductive experience is avoided. I am here avoiding arguments in favor of synonymy between a general term (such as a predicate of the so called Kantian analytical statement) and a particular term because, as Quine would argue, a speculative deductive leap would be required to progress from the general predicate to the particular in establishing synonymy. But in the case where the object referred to is the very same by the two terms that are sought to be shown in a relationship of synonymy, the problem of philosophical confusion between meaning and naming that Quine talks about, does not arise at all. Likewise, logical truths such as "no unmarried man is married" are true in virtue of the significance of the principle of non-contradiction. This will be dealt with in the next discussion. But for now, I wish to conclude this discussion by suggesting that preserving this specialized kind of analyticity is in itself a good step away from

suggesting that analyticity of whatever kind is impossible, and any statements made to the effect that it is trivial can only be rhetorical.

3. This leads the discussion to a view that analyticity in a restricted form does survive...and this restricted form is closely related to the principle of non-contradiction; in the sense that naming an object amounts to denying its contradiction. Even though some extreme relativists have argued that logical theory, which we shall here identify as being essentially a theory centered around the principle of non-contradiction, is contingent to the ruling ideology of a given culture, it seems to me that the principle of non-contradiction embodies a certain kind of inescapable invariance. It descriptively encapsulates what I earlier on meant by "there being something as against there not being anything" as a starting premise of any ontology. Any refutation of the invariance concomitant to the logical principle of non-contradiction would have no propositional significance for the simple reason that it would fail to say anything meaningful. All forms of communication, as has already been signified in my first question to Prof. Unger in this section, including those forms carrying the intent to refute invariance, would have to depend on a degree of

permanence that follows from finding linguistic atoms in the process of naming and representing.

The above three discussions, I must mention once again, do not in any way completely subvert Ungerian social theory. The arguments made so far have been put up only to rescue a part of analyticity, especially the principle of non-contradiction, which does not in the least seem to me, trivial. If at all it signifies anything, it rescues our ability to communicate and think in the first place, thereby preventing us from becoming extrémé relativists, and thereby hedging the risk of our not being able to state anything of value at all.

3.0 Epistemology of Social Action

3.1 Prefatory:

In this part of my essay I wish to talk about the main tenets of Unger's social theory, especially the modified form of his relativism of his programmatic argument. What I am attempting is a modified version of Ungerian relativism in virtue of the fact that I am of the view, for the present purposes, that not all knowledge is socially or empirically contingent. This is what I meant in my previous section by trying to show that there is a form of analyticity, and hence analytical knowledge, as captured

particularly by the logical principle of non-contradiction, which should be excluded from the empirical contingency of knowledge. Notwithstanding the fact that analyticity occupies a special place in the realm of knowledge acquisition, I make a claim, that generally knowledge is contingent; especially so in relation to social theory. In this part, I make a claim that Prof. Unger is justified in the modified sense, in building up a social theory around the attack on positivist objectivism. Along with my acceptance of the implicit critique of liberal/ positivist methodologies, is also my intended goal to bring in pragmatism to temper the liberating effects of the programmatic argument. This I hope to achieve, by attempting to construct an ontology of legal and political action, on the basis of contingently delimiting and defining the possibility of such an ontology by an appeal to pragmatism.

3.2 Critique of Liberalism:

Questions: Where does all the Ungerian talk of the great divide in contemporary liberal legal philosophy take the discussion for me? How then are these different directions related to the goals and aspirations of the constructive project that I had set for myself in programmatic argument? What statement about a contingently possible ontology of legal and political action can I make by following a typical critical description of liberal philosophy? These

are some of the questions that I wish to address before I state how Prof. Unger's social theory inspires the politician in me.

Even though my inspiration, in the realm of Ungerian social theory, to undertake this particular direction of understanding arose from a desire to answer the question of the relationship of knowledge to social theory, and hence to social action, I beg to place my motivation in perspective by reminding the reader that this preliminary objective of mine transformed and enlarged in scope on my fusing the pragmatic claims of critical jurisprudence to the search for an ontological category that encompasses the meaning of political and legal action. The fusion of objectives is not an uncomfortable mix, given that there is a certain commonality of methods employed in the partial satisfaction of both the aims. While on one hand, the critical unveiling of the dualistic tendencies of liberal thought employs a device of distinguishing between irreconcilable tendencies, on the other, the intended identification of an ontological category in social action to explain political, legal action, and society depends on much the same a critical impulse - but working in the reverse direction; i.e., by attempting a synthesis, which unlike the liberal synthesis that tries to fit the

opposites together, tries to see this ontology from a social theory point of view. Though it might seem a trifle puzzling as to how any examination of liberal doctrine, is related to busying myself with an attempt to make a comment about social ontology, it is not hard to see why, should it be explained in clearer terms, that the criticism mounted against a particular liberal tendency of attempting synthesis of contrary posts and failing always at it, is only the first step in what normally follows in critical jurisprudence - namely, the effort to explain institutional structures such as legal institutions in terms of an ontology, that is arrived at not by a logical synthesis of what are seen as the only two explaining features of any institutional structure or social phenomena such as law, but by starting off from an all encompassing open-ended framework of concepts reflective of social action itself. Synthesis, in this sense, is distinctly different from the synthesis attempted in the liberal sense. It is not an inductive synthesis of the particulars of deontological and consequentialist impulses into something that matches a grand liberal unificatory scheme, but rather is a starting premise itself; a premise that attempts to capture not just deontological and consequentialist ideals in its explanation, but which also contains elements that are not

analytically separable in the positivist way that liberal theory cannot but help being irrevocably attached to and using. It is a premise without pretensions of having a conclusion, but a premise, that, in the spirit of postmodern social theory of Roberto Unger, tries to cut the link between the possibility of social explanation and the denial or downplaying of our freedom..."⁵, and a premise that tries to combine in a undivided form, both explanation and intentional choice in a common sphere of social action. So, it is with the explicit purpose of bringing out the continuity between, on one hand the general critical aspiration of bringing down the liberal methodology that tries to divide and unsuccessfully tries to recombine the components of a dualistic tradition, and on the other, the constructive aspiration of explaining and teasing out the freedom to make choices in an undivided and a common scheme of social action, that I hope to make this statement. Let me, then, show what I mean by the legitimacy of this continuity more clearly by the following:

a) First of all, there is the critical project, as undertaken by the adherents of programmatic argument, which

⁵Roberto Mangabeira Unger, *Social Theory: Its Situation and Its task: Society as Artifact...Here, Unger is trying to make a case for the transcendence of the limitations imposed by the dualism of liberalism.*

tries to show the liberal failure of synthesis in every sense.

b) This should lead to a statement about the constructive part which tries to identify social action as a category that best exemplifies the ontological aspiration of a kind of social theory that the likes of Unger have made the most clear statements about.

It is the second part, the constructive part, which lends that natural continuity to any attempt to unveil the defects of liberal thought.

Ontology and Social Theory; can they be combined?

Just as any mainstream philosophical ontologist is likely to have his/her hackles raised by the suggestion of mixing what seem to be radically different intellectual projects, a social theorist too is equally likely to be aroused to suspicion by any attempt to bring in the dirty (!) word 'ontology' in to the proper domains of social theory. This mutual suspicion is not an accidental outcome of different intellectual circumstances under which each of these approaches to philosophy in general, and legal theory in particular, have been nurtured. In fact, it is interesting to note that the roots of this suspicion can be traced back to the great divide in western philosophy in the two forms that emerged between the transition from Hegel to the

analytical (as heralded in by Russell and Moore) on one hand, and from Hegel to the phenomenological (as brought in by Husserl and Heidegger) on the other. It might even be worthwhile, to risk a sweeping statement by imaginatively suggesting that legal positivism on one hand, and legal realism, including critical jurisprudence on the other, may after all be distinct in consequence of their having been given bases in the alternate strands of philosophy that followed the larger divide in western intellectual history. Recent work in intellectual history, however, has tried to bridge the gap between what are now called analytical philosophy and continental social theory by emphasizing on those particular points where these contending schools of thought diverge⁶.

Even if one were to pass off the exercise of including apparently disparate aims of ontology and social theory in to a common discourse, an exercise that is grounded on the

⁶Michael Dummett, *Origins of Analytical Philosophy*: "A grave historical distortion arises from a prevalent modern habit of speaking of analytical philosophy as 'Anglo-American' Apart from its implicit dismissal of the work of modern Scandinavian philosophers, and of the more recent interest in analytical philosophy that has arisen in a great many other European countries, including Italy, Germany and Spain, this terminology utterly distorts the historical context in which analytical philosophy came to birth, in the light of which it would better be called 'Anglo-Austrian' than 'Anglo-American' ". Dummett, goes on to explain that the ground covered by Frege, Brentano and Husserl have common areas of overlap and have been mutually influential. In that Brentano covers intentionality, he becomes one of the founding fathers of social theory; and in that Frege covers the areas of logic he is deemed the founding father of the analytical school of thought.

basis of a revision of Dummet's claim, as being a very far fetched one, I can still rely on a simple unprejudiced understanding that there really need not be a conflict of interests between an ontological approach and the approach adopted by social theory. But each of these approaches have to be modified by conditions of linguistic pragmatism for one to see, that to look for an ontological category in social theory is not as antithetical to social theory as it might seem. I agree that looking for an ontological category to explain something would require a form of inductive analyticity stretched to its extremes; however, should it be possible to modify the method of ontological abstraction to yield, not a logically closed explanatory universal such as the ones positivists demand, but a conceptual structure which is both, open ended as well as something that modernist social theory can accept, and furthermore, which at the same time preserves a generality and abstractness that an ontological category is expected to exhibit, it should in the end, as a result of this modification, make it possible to 'contain' the open-endedness that the modernist insists as being the case with reality in a linguistic structure that is pragmatically essential for intellectual communication and action.

Disillusionment with the determinacy of positivistic consequentialism or the idealization spirit of deontology is not in conflict with a certain metaphysical persistence to conceptualize explanations. How can, for instance, Unger's use of the word politics or the words 'context' 'structure' or 'framework'⁷, deny the fact that he has indulged in some form of an inescapable ontology? It is quite obvious that whether it be a social theorist or a positivist, his/her very use of explanatory concepts, arranged in a certain implicit order of pre-eminence, whether it be with or without the added qualification that these conceptual structures represent something fuzzy and are, furthermore, contingent to variant social contexts and hence susceptible to shifts, implies an ontological abstraction of a certain degree. The simple fact that words are used and given to hold meaning within a pre-defined time and social context of communication (such as, social theorists writing books on their social theories itself!) and intended action, and that these words are intended to hold an internal relationship of hierarchy, in itself makes a qualified ontology of concepts in social theory

⁷Roberto Unger, *Social Theory: Its Situation and Its Task: Society as Artifact* Here, Unger is trying to give various names to the same common concept in order to refer to something that comprises all the institutional arrangements and imaginative preconceptions

indispensably applicable. To repeat an earlier point again, I do not see any possible conflict between fixing words for a manifesto of action on one hand, and the acceptance of indeterminacy of experientially locating social phenomena, on the other. Experiential indeterminacy in the social sphere, such as in the legal sphere, in no way precludes the possibility of sorting concepts as used in a particular theory, may it be that of a Bertrand Russell or that of a Roberto Unger, in arriving at a qualified ontology.

3.3 Reviewing the internal contradiction of liberalism:

How does it lead to a social theory?

As I have already mentioned earlier on, the relationship that the identification of internal contradictions of liberal thought holds with social theory, suggests that both are complementary constituents of a common program of critical ethical theory in general, and critical jurisprudence in particular. Where one stops the other starts. Though this is the general structure I would assume of any 'critical theory' undertaking, I want to reflect upon the nature of the relationship between the critical part and the constructive part in slightly greater detail. I feel there can be much more to the relationship than mere complementarity. A very good example is

Prof. Unger's social theory again, which as he would like us to understand, tries to incorporate both, the criticism and the constructive part in the same argument, undivided as one might not readily expect.

The primary reason why Unger tries to unify the explanatory with the constructive (which corresponds to my attempt to make a statement about the ontology of social theory by an appeal to pragmatic considerations of information sharing and communication as a basis for political and legal action) is that he wishes to avoid the very positivistic error that he seeks to criticize...that is, drawing lines between fact and value, or the observable and the intentionally valued. In combining the critical devaluation of the pre-existent liberal doctrine with the simultaneous construction of an edifice in social theory, he tries to achieve the eradication of what he criticizes by his method in his project. That being the significance of such a self-consciousness of method of argument building, employed by a social theorist such as Unger, I set for myself the present task of interpreting critical devaluation of the pre-existent in light of the significance of Unger's self-conscious method: in other words, to state in a composite

"Roberto Unger, Social Theory: Its Situation and Its Task- Society as Artifact: "The explanatory view of politics goes hand in hand with a program for social reconstruction. Like the explanatory theory that informs it, the program is anticipated..."

manner, that the criticism of liberal doctrine be viewed in conjunction, and juxtaposed with the currently intended construction of a simple social theory relying on the concept of social action. Restating the above in greater detail, the realization of the incapacity of liberal/positivist epistemology to accomplish the task of harmoniously synthesizing the minor presence of the alternate category (in say the deontological moralist's case⁹, the consequentialist's goods; and say in the case of the consequentialist moralist's¹⁰, the deontologist's right) with the major category of their schemes respectively, be seen as an irreconcilability from the point of view of the fresh social theory that I am attempting. It is not from a general point of view, or even perhaps an Archimedian position that I wish to make this revised interpretation of the debate, but on the contrary, it is from the very vantage point of the upheld position of critical theory of social action, that I now make the qualified assertion that the fact of irreconcilability of the dual concepts of liberal doctrine be the cause and simultaneously be the effect of the new alternative perspective that endeavors to

⁹A good example of such a case in contemporary liberal academia is Charles Fried. Refer to his Right and Wrong for an example of the deontological part of liberal legal philosophy.

¹⁰A good example being Richard Posner, who is an exemplar of consequentialism in liberal legal philosophy.

replace the old order of indeterminate oscillation. Each of the critical claims which descriptively hold that positivism fails in some sense, just as each of those claims which asserted the failure of deontological exposition, be both infused with an interpretation in the light of the composite social theory view we now have at hand, so that while stating the failure in each of those considered cases of liberal doctrine, something more than the failure itself is being said by way of affirming the doctrine of external reference to social experience and imagination.

3.4 Social Theory of Prof. Unger considered generally:

While Prof. Unger's social theory shares the aspirations of achieving democratic liberation with ethical and political philosophy that it paradoxically seeks to destroy¹¹ in method, it sets itself the task of carrying not just an explanatory power, may it be a critical assessment

¹¹Roberto Unger, *Social Theory: Its Situation and Its task; Society as Artifact* - "If society is indeed ours to re-invent, we can carry forward the liberal and leftist aim of cleansing from our forms of practical collaboration or passionate attachment the taint of dependence and domination". Attention must be paid to Unger's usage of the two terms "practical collaboration" and "passionate attachment", both of which stand analogously quite close to the aspirations of the consequentialist and the deontologist respectively. Furthermore, as it will be explicated more clearly in pages to come, escaping the historicist's necessity of dependence and domination, is seen as the basic purpose of building his social theory

of the pre-existing, but also something that simultaneously encompasses the freedom of the subjective experience to imagine and create. The dual purposes of freedom (possibly deontological) and necessity (possibly consequentialist) are done away with as individual concepts, to be replaced by a call for the emancipation of the creative impulse that can co-ordinate the understanding that is required for creativity on one hand, and the intentionality that is required to engage in creative recombination of institutions on the other, in a common sphere of political acceleration.

Unger premises the ambitions of his social theory on the grounds that society is an artifact of the human imagination, and that this tenet be taken to its hilt in a program of an anti-positivistic, anti-reductionist escape from the endless oscillations that characterize the false hopes of liberal doctrine. Modern social theory, he contends, was born "proclaiming that society is made and imagined, that it is a human artifact rather than the expression of an underlying natural order". This in itself has implications in terms of rejecting positivism in the very first stroke. Any consequentialism, which tries to justify an ethical criteria of social action or social construction on the basis of the observed natural order,

would have to be done away with as being inconsistent with the supposition that society is an artifact of conscious human choice and modality. Similarly, deontological speculation would also have to be seen as much too susceptible to internal contradictions and skepticism from without, to be seen as a definitive criterion for the action of planning social relations and society at large. Unger's objections to the positivist method of explanation, save for the exception of the special kind of analytical explanation that I discussed in section 2 of this paper, are very thorough and rigorous. For example, going by this initial defining criteria of Unger's social theory, a consequentialism such as that of Richard Posner, despite all its sophistication and accommodative capacity, would be incommensurate with the explanatory ideal of the programmatic argument, for the simple reason that Posner's observable ends of economic efficiency, just as the consequentialist's observable ends more generally speaking, are deemed to be objects which, first of all are - not only distinguishable from what the human agency creates, but are also deemed devoid of any aspect which the human mind creates . It is a different matter that Posner, or any other consequentialist, would be willing to accommodate the idealizing impulse as an aspect that comes in to the

overall picture, but the important thing to realize here is that they come in to the consequentialist's overall picture, as aspects distinguishable from the positivistically observable aspects. Similarly, the deontologist, such as say, Charles Fried, even though would be willing to accept certain consequentialist ends adjunct to his main deontological aspects in his ethical framework, would nevertheless see his deontological rights as being categorically and ontologically distinct from the consequentialist's goods. Even though in both the deontologist's and the consequentialist's cases, the deontologist's 'rights' and the consequentialist's 'goods' are attempted to be mixed in a common scheme (ostensibly, in unequal proportions), they are nevertheless seen and treated as ontologically distinct.

3.5 Epistemology of Unger's social theory; the idea of society as an artifact as a model ontological category of social theory:

The above examples of Fried's deontology and Posner's consequentialism would be much better understood from a social theory perspective, such as that of Unger's, should certain fundamental aspects of relationships held to exist between the observer of society and the observed social

reality, be brought to the fore. For this I wish to bring out the structure of Ungerian epistemology as is extrapolated in his chapter "Society as Artifact" in his introductory volume of *Politics*.

Consider the statement that he makes about the aim of his social theory (which I think sums up his epistemology in many ways)- "The message of this book is that these [pre-existing liberal and leftist doctrines and institutions] disheartening intellectual and political events tell only half the story, the half that evokes intellectual entropy and social stagnation. *Social Theory: Its Situation and Its Task* deals chiefly with the other, hidden half. It shows how the criticism and self criticism of received traditions of social theory have prepared the way for a practice of social and historical understanding that extends even further than the ambitious European social theories of the past the idea of society as artifact and enables us to broaden and refine our sense of the possible."¹²In these lines of Unger, first of all, there is the part that dispenses with pre-existing theories for having failed in their task of projecting the idea of society as an imagined and a constructed one. He even suggests that over the period of their development, they have more and more given

¹²Roberto Unger, *Social Theory. Its Situation and Its Task* - pg 3

it up to the positivistic tendency to make generalizations of social experiences as if these experiences totally reflected social reality¹³ But the most important bit which puts his entire social theory in a nutshell is the part where he is trying to build up the view that the activity of explanations, by nature, be inclusive of the activity of creativity. This is precisely what he means by the statement - "the explanatory proposals of *Politics* cuts the link between the possibility of social explanation and the denial or downplaying of our freedom to remake the social worlds we construct and inhabit". This part is perhaps the most significant statement that Unger makes about his method of programmatic argument.

To elaborate upon the reason why continental social theory in general, and Unger's above statements in particular, insofar as they both talk about the possibility of knowledge of social reality in a certain way, are significant from an epistemological point of view, I have shown below the structure of knowledge according to social theory in general:

¹³Roberto Unger, *Social Theory: Its Situation and Its Task, Society as Artifact* - " it has been to abandon more and more of the field [social theory] to a style of social science that seeks narrowly framed explanations for narrowly described phenomena. This social science - positivist or empiricist as it is sometimes called - rejects the search for comprehensive social or historical laws in favor of a more limited explanatory task "

The crucial point to be noticed in this structure is that a line of distinction is drawn between 'social reality as is cognitively understood' and 'social reality as is objectified by positivists'...According to social theorists there is only one category - the category of 'society as is understood', implying that the category of 'society as an objective reality' of the positivists does not make much sense to them. In the positivists scheme of the occurrence of knowledge, the relationship between the observer and the observed 'social reality' is one which presupposes the objective nature of 'social reality' without the interference of what the observer brings to bear upon the process of observation. According to them (the positivists), social institutions and their behavior are objective categories and may be observed in much the same way as objects in pre-modern physics. Economic efficiency is an example of one such object that consequentialists like Posner talk about. But for the social theorist, the relationship between the observer and the observed is complicated by the fact that the observed in his/her case is a complex that includes what the observer would have inevitably contributed to, in the making of the observed.

The observed 'social reality' in the case of the social theorist resembles the 'sensibilia' of Russell¹⁴, but it differs in the respect that in the scheme of epistemic relativism I am enumerating, it would include such aspects as the projected political desires and aspirations, pre-conceived notions, culturally trained motives, subjective affiliations, and emotional commitments of the observer as a part of this 'social reality'. In other words, the very process of observation, and hence explanation, in the present model of knowledge, involves the creative participation of the observer in the making of the observed. It may further be necessary to give meaning to the word observer here. The observer is the individual who seeks to understand. Questions about the process by which the observer contributes to his understanding his circumstances and environment are pertinent. Here it must be added, that the way we talk about the process of the individual's contribution to the formation of social reality (as against the special analytical truths that I discussed in section 2), is not quite the same as the way a Kantian would talk about how inherent structures of the individual's mind contribute to the synthesis of knowledge

¹⁴Bertrand Russell, *Mysticism and Logic: The Relation of Sense-Data to Physics*, pg.-143... The concept of 'sensibilia' is cardinal to phenomenism, in that, to the phenomenist it is the only conclusively verifiable constituent of his/her experience.

The work of Jean Piaget on genetic epistemology is instructive of how a child's psychology develops by assimilation and creation of the environment¹⁵, and this has been shown to be of relevance to the epistemology of social theories such as Unger's. It is precisely for this reason that Unger, and likewise I myself in the present scheme, see no necessity to demarcate social explanation and subjective choice making; because the former is directed toward unveiling a reality that the latter is very much a part of.

3. Social action, the category of explanation of the meaning of Political and Legal Action?

3.1 Prefatory:

Following the survey of the general structure of social knowledge in the previous section, what then, one might wonder, is Unger's term for what his explanatory schemes are directed to unveiling? Furthermore, going back to one

¹⁵Roberto Unger, *Social Theory: Its Situation and Its Task: The Philosophical and Scientific Setting*: "Consider the approach to cognitive development pioneered by Vygotsky and Piaget. Their central conception was the idea of the steps by which the fundamental organizing schemes of the imagination develop. They held that the most basic schemes of relations among ideas do not spring completely from the mind and do not emerge, continuously, as the gradual refinement of a single set of organizing schemes of the imagination develop. Instead, there is a series of breaks between different schemes of relationship. The child develops these schemes - ideas of chance and causality, or of the entailment and contradiction, for example - together with his substantive knowledge about the world " Pg 183

of the very first questions that I started off with, what then is that elusive object of an explanation in the social theoretic sense that captures the meaning of political and legal action? The first of these two questions can be answered in terms of what Unger wishes to achieve in his work *Politics*, which sets out to build the programmatic argument. The programmatic argument being the central structure of his social theory, is characterized by its explanatory method, a method by which our understanding of social institutions and society itself is rendered possible, and a method which therefore, includes our capacity to re-imagine society and contribute to its change. Therefore, it can be said that understanding or explanations are both dynamic things. The object of explanation continuously shifts with the process of explanation itself because the process of explanation continuously changes it. This leads us to an important conclusion about the nature of society as a dynamic object, an object that is not tied down to interpretations that are static and paralyzed at a paradigmatic level, but an object that moves in accordance with the programmatic argument itself. It is in this that one finds the capacity to undertake change through conscious experimentalism...a process which I have come to accept as leading to

institutional innovation in the very process of understanding it.

My answer to the second question is influenced by the Ungerian scheme of understanding and change. The category which can serve the purpose of explaining the meanings of political and legal action, or render them amenable to our comprehension, would have to be a method of explanation itself, and yet at the same time, in order to be available to our understanding, would have to change with any efforts at understanding it. I can talk about this in the two following steps:

a) that the category which can serve the purpose of explaining this meaning would have to be a method of explanation

and

b) understanding this method of explanation by another distinct method of explanation would itself contribute and change the meaning of this method of explanation.

In other words, we have a method of explanation that in itself changes as we try to understand its meaning....a category that is subject to variance in correspondence to our perception of it. So what we would end up having is a dynamic category of explanation of the meaning of social

understanding and political action. What does this mean in more commonsensical terms?...It simply means that the method that we want to choose to understand the meaning of the word law, the conceptual structure that can encompass this meaning, is contingent to what we end up making of it. This is a startling conclusion. Compare this method to positivistic attempts to understand the meaning of the word law. In the positivist's story, it is taken for granted that there are immutable and permanent means, such as that of reason or rationality, which can trace the trajectory of the meaning of the word law. But in the case of the kind of a social theory that I have begun to adopt, this is not the case. There is no permanency of method. Even practical reason (with the exclusion of analytical reason of the kind that bases itself on the logical principle of non-contradiction) is, then, susceptible to altering social conditions and changes and the flux of explanation. How, then, one might ask, can there be that permanency and consistency of method, that is so required to establish that a word or form of communication, is a particular category or accepted norm? Is the method by which we explain the method of explaining the word law also susceptible to the same kind of impermanence that we attributed to the method of explaining the meaning of

political action? If so, is there an infinite regress in this continuous transcendence to meta-theoretic levels of theory formation and search for that ever-elusive permanence? These are some of the immediate questions that need to be answered. Unger, when asked whether he holds an Archimedian position of transcendence, and whether he grants to some degree of permanence, from where he sets out his theories, answered in the negative. Going by this, how are we to achieve that degree of permanence of meaning which an ontological category is supposed to exhibit? The question that would follow this is how are we then to call social action a category at all? Is there a single meaning to the term social action at all or is it in itself a 'society' of transforming meanings?

4.0 Pragmatic affixation of meanings? What is a pragmatic meaning of Political and Legal Action?

4.1 Prefatory:

In the social theoretic system that I have just described almost everything comes across as being in a state of flux.

Even language, the extreme relativists such as Rorty say, is continuously changing, so much so, that we can almost never conceptualize the world in the commonsensical way that we imagine we can use. What, then, is to be done to

translate this projected predicament of impermanence and linguistic and methodological indeterminism, in to a form that one untrained in critical thought may understand? Do we accept that everything that we say, including, paradoxically, this very statement that is being made now, is continuously in a state of flux caused by interpretation, understanding and explanation? The answers are not easy, and yet can only be what we choose them to finally be! That is the beauty of the programmatic argument that I wish to capture here. It liberates us from a false sense of objectivity and a sense of serfdom to circumstances. But then, we must also live a life that reconciles the realization of this state of cognitive flux with the practical necessities of life. A balanced amount of pragmatism is perhaps a convenient escape from the permanence of change, that enables us to keep this fundamental realization in mind, and hence reap the benefits of a certain sense of freedom from constraints and shackles, and yet afford to tie us down sufficiently well to a conveniently imagined metaphysical plane of certainty, so that we may continue with whatever we feel to be a good part of the pre-existent liberal instinct. Radical experimentalism, of the Ungerian variety, I think should be balanced with a certain sense of responsibility that we may

borrow from the metaphysical plane of certainty that we contrive, and therefore, exists. Even if the logical principle of non-contradiction can save us from linguistic indeterminacy (as I have argued in section 2 of this essay; as against experiential indeterminacy which I accept to be inevitable), the other kinds of indeterminacy persist. A moderated form of experimentalism is perhaps more desirable than full-fledged experimentalism, and the thing to moderate it is perhaps the criterion of pragmatism. The theory of social action I have in mind is an explanatory system that bases itself on the notion of political action; a system which ought to be, and which therefore can be, localized in the imaginative framework of our collective consciousness. The empowerment of this collective consciousness with the inspiration of political action would, then, have to be the most general goal of a programmatic argument. Should we wish to perceive this explanatory system as something that is a part of the flux, the meaning of the term social action would change. It is useful to apply this model whenever we desire changes in society through appropriate changes in notions of political and legal action... i.e., by participating in a process of creative understanding of what they mean, which in effect would help us to know what society is, and enable it to what

we desire it to be. And should we, on grounds of pragmatism, wish to preserve the meaning of the term in order to effect a preservation of the meaning of the word political action, as is essential in a scaled down time frame work, we must assign a definite meaning to the concepts of political and social action. Otherwise we would irresponsibly create chaos of indeterminacy rather than measured movements of change. Both the options are open to the intellect as well as the civic society.

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