The Neutral Law? Essays in Honour of Johanna Niemi

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1 Introduction

Daniela Alaattinoğlu, Kevät Nousiainen & Amalia Verdú Sanmartín

Johanna Niemi, currently the Dean of the Faculty of Law of the University of Helsinki, is a legal scholar whose research and teaching has been crucial to the development of procedural law, law and gender, and insolvency law, particularly in the Finnish and Nordic context. Her contribution is not only intellectual, but also practical, particularly since her research has had a significant impact on the development of legislation and legal practice, most importantly within the fields of Finnish criminal and procedural law. In addition to this influence, her long-standing engagement with legal teaching has inspired a new generation of critically thinking legal academics and practitioners. This edited, multivocal and multidisciplinary volume is both an intellectual and a personal celebration and engagement with the legacy of Johanna Niemi.

This book has been edited by three feminist and gender scholars of different backgrounds and generations, who have met and worked with Johanna Niemi during different periods. The authors, similarly, are people whose work Johanna has impacted, in one way or another.

Daniela

I first met Johanna around fifteen years ago, when I was a law student at the University of Helsinki's Vaasa unit, where Johanna held a professorship. At the time, I was seriously considering leaving law school to pursue other subjects. Much of what I had encountered in my studies felt very distant from the things that had initially drawn me to law: a deep interest in social justice, equality and the power structures which shape society.

That changed when I took my first course with Johanna, a course in the sociology of law. For the first time, I felt I might be in the right place. It was, as I recall, the first course where we seriously reflected on what law actually *is*—this thing we were all there to study—and what its role in society is and ought to be. It was also the first time during law school when my many questions about the law did not seem out of place or legally irrelevant. On the contrary, they were welcomed—and even valued.

During my time as a law student, first in Vaasa and later in Helsinki, I took several of Johanna's courses. She introduced me to the field of gender and law, and she also supervised my LLM thesis. Having a professor who was not only a woman, but a feminist who was actively researching questions about gender, was deeply influential—for me and for many other students.

I still remember discussing Johanna's book from 2004, entitled *Rikosprosessi ja parisuhdeväkivalta* (which can be translated in English as *The Criminal Process and Intimate-Partner Violence*) with a friend of mine who had never identified as particularly feminist. She described the book as a revelation—especially in the way it exposed how the law, under the guise of neutrality, systematically discriminated against victims of intimate-partner violence. Later, when I read the book myself and attended Johanna's lectures, I also found it profoundly illuminating. As such, it is a work I continue to return to, and one I still often recommend to my students (after two decades, it is still timely!).

With this kind of scholarship shaping my legal education, feminist thought and law—though often in tension—never seemed incompatible, or mutually exclusive, to me.

Johanna was also the first person to ask me whether I had ever considered a career in research or academia. Being seen by someone in a senior position whose work I deeply respected meant a great deal to me. While I was eager to spend time outside of Finland and learn from other contexts—eventually pursuing my PhD abroad—Johanna and I stayed in touch. In 2019, I returned to Finland, again through Johanna's initiative, as we, together with Heini Kainulainen, began a research project on rape in the Finnish criminal process for the Ministry of Justice.

I am just one of many people Johanna has influenced. I know that she has had a profound impact on countless others as well. That is one of the reasons this book came into being—even though *Festschriften* are nowadays often viewed as an awkward genre in academic publishing, rarely boosting citation counts or generating institutional funding. But if anyone deserves a commemorative volume, it is you, Johanna.

Kevät

This is a good time to look at the long-term impact of legal feminist studies in Finland. Johanna has been an important actor in the field which has a long international and national history. Johanna became a feminist law scholar at a theoretically interesting point of time. The first wave feminists had demanded equal rights for men and women. The second wave feminists acted in a world of formal equality of the sexes and faced de facto inequality. Gender equal or neutral legislation had not brought along de facto equality. Gendered cultural patterns and social structures were firmly in place despite formal legal equality. How could a legal scholar meet the challenge? By and large, the answer was to focus on real life outcomes and consequences of legal norms. To introduce better legal policies, we needed to know the impact of legislation on different groups of people better. No wonder we were drawn to socio-legal studies for that purpose. Criminal law was an area where gender neutral rules sustained and hid deeply gendered, detrimental patterns. Domestic violence and marital rape were specific instances of a more general social disparity, which made criminal law a deeply gendered field.

Violence against women was a key issue for second wave feminists in the western world. Shelters were established, and criminal law reforms demanded. Johanna and I both found the Finnish response to violence against women conspicuously weak. It has required great endurance and courage to analyse criminal law critically and propose amendments as Johanna has done for decades. The work started to have an impact in Finland quite late in a European or western comparison. International law was late to develop state obligations to combat violence against women, and Finland has been late to embrace those obligations. Johanna has been a key figure in the ongoing struggle against violence through dark decades of denial, derision and ignorance of the fact that Finland is an underachiever in combating violence against women.

We second wave feminists lacked concepts for the work against inequalities that seemed to lie beyond the boundaries of law. Such concepts were established in many contexts, adopted and developed further. Discrimination as a legal concept entered the Finnish legal discussion slowly. The US Supreme Court recognised in 1971 indirect discrimination or the 'disparate effect' of legal rules: applying the same rule to everyone may disadvantage some groups of people. Feminists in the 1970s and 1980s noted the need to develop equality law, despite

feminist ambivalence towards the concept of equality. Law appeared to 'uphold traditional male hegemony in society', as Tove Stang Dahl wrote in her foreword to the book *Kvinnerett I* in 1985. Attempts to weaken such hegemony raised strong reactions. Once you understand the gendered aspects of law, you see that they are present in all of its fields. An immense field of work opens for legal scholars.

Looking back at the time when 'women's law' was introduced in Finland, the changes that have been achieved may not be as far-reaching as feminist lawyers might have hoped. Still, it is difficult even to imagine the world of legal studies as it was in the 1980s. Finnish law faculties were practically all-male panels. In 1996, when I was appointed professor, I calculated the ratio of women among law professors in Finland: there were 72 law professors in the country at the time, but only four were women. Johanna is not someone who dwells on the hardships she encountered in her career. Yet courage and endurance were undoubtedly in high demand in the work of a feminist legal scholar.

In the 1980s, there was little support from international human rights for feminist lawyers. The case altered rapidly in the 1990s, when violence against women became defined as gender discrimination. Finnish accession to the European human rights instruments and to the European Union provided new legal instruments to work with. The third wave feminism, on the other hand, changed the feminist agenda and theorising profoundly. Kimberlé Crenshaw coined the term 'intersectionality', and Judith Butler's *Gender Trouble* (1990) brought poststructuralism and queer theory to the frontline of feminist discussions. Our Nordic variety of feminism which relied on welfare state and a rather uniform idea of women needed to take a good and broad look at diversity and language. We had to position ourselves regarding gender, social structures and various aspects of disadvantage.

Johanna's academic and social impact demonstrates her ability to meet both the theoretical and practical challenges in our field. The thematic and theoretical richness of the contributions in this book reflects not only the scope of the challenges feminist legal studies have faced, but also Johanna's extraordinary capacity to address them. The breadth of the texts in this volume shows that Johanna has engaged with a wider range of issues than most legal scholars would even dream of—and she has inspired others to do the same. Well done!

Amalia

By chance, fate, magic or simply the ongoing becoming of the world, I found myself in gender and law studies, even though I knew nothing about it at the time. I was again on the move, relocating not just belongings, but myself to the land of Father Christmas. Then, Johanna came along. We come from different generations, different cultures and different lived experiences. And yet, we clicked.

She welcomed me into a world I had never imagined myself being part of: academia, gender and law. I was lost, searching for something I did not yet understand, and she offered me the space and the time to learn, to explore, to question, and to challenge. I learnt that it was not just about knowledge: it was about culture, resilience, choices and the quiet strength it takes to hide within, while resisting and fighting the trolls.

As this book shows, I am not unique in this experience. I am one of the many who encountered her and were inspired by her work, and by her unique way of motivating others. Mentoring, supervision, inspiration. These are not always conscious skills, however, sometimes they are embodied and shimmer, lighting the path of those who encounter them.

Johanna has a curious singular kind of mentoring and inspiration. She does not tell you what to do or think. She simply creates the conditions where minds awake and confidence can grow.

Working with Johanna meant learning how to live within a world that often speaks of equality but rarely delivers it. As the chapters in this book show, it is not just about knowledge. It is about the real impact we can have in shaping a more just world when the individual matters, even while acknowledging the posthuman conditions of our times.

Like many of the contributors to this book, I received from her something far beyond academic knowledge. For those who have worked with her on insolvency, widely recognised as a 'serious' matter, she has inspired them to think beyond the normative. For those of us who worked with her on feminism and gender, for her students, she reminded us that the work is far from done. She quietly, yet powerfully, motivated us to keep fighting. It was never just about women, feminism, or the law. It was about the entanglement of everyday realities of life.

The claim that feminism and gender are now fully embedded in law is, in many ways, a comforting lie, which many of the contributors also show. The absence of dedicated courses, let alone departments, in most law faculties, is painful evidence. Diversity, equality and inclusion may be 'politically correct buzzwords', supposedly 'mainstreamed', yet they remain marginal in legal education and practice. Johanna knew this. She understood that the struggle is ongoing, a quiet war waged in classrooms, in research, and in everyday institutional life. But she also believed in resilience.

She believed that what we were doing mattered, and that eventually, light would shine through. This belief is what we can see between the lines of the chapters in this book. Many of the chapters of this work show that change happens slowly, step by step and that hope, even in silence, is an act of resistance. She witnessed some of that change. This book is evidence that her work taught us that we are not just observers but agential seeds, meant to be watered, to grow, and to help others flourish.

The Book

This volume is divided into five sections, each reflecting the broad range of Johanna's scholarship, work and impact. The **first section** bears the title *Towards Gender Equal Criminal Justice*, bringing together chapters which engage with Niemi's feminist and gender critique of the criminal justice system. In this section, Marjo Rantala and Heini Kainulainen, in their chapter *The Finnish Rapporteur on Violence Against Women – Challenging Gendered Norms and Inequalities in Criminal Law and Beyond?* return to many central questions in Johanna Niemi's work. In this chapter, Rantala and Kainulainen discuss Johanna Niemi's impact on feminist legal scholarship in Finland, particularly her insights regarding how criminal law often fails to address violence against women, especially intimate partner violence. Despite various reforms, the authors argue that legal structures remain largely intact. However, they suggest that the National Rapporteur on Violence against Women offers a promising avenue for challenging these gendered legal dynamics—provided the role embraces a feminist legal critique and bridges key legal divides.

The following chapter, *Chronotopes of Criminal Law – On time, Place and Sexual Molestation*, by Ulrika Andersson and Linnea Wegerstad, builds on Niemi's work by adopting a chronotopic approach to analyse how the definition and regulation of sexual

molestation in Swedish law are influenced by time and place. In their analysis, Andersson and Wegerstad, inspired by Johanna Niemi's work on power, gender, and the contextual understanding of sexual offences, conclude that criminal law and doctrinal approaches to law benefit from a chronotopic analysis of sexual offences.

The final chapter of the first section, *CEDAW and Its Contribution to Gender Equal Criminal Justice Systems* by Lourdes Peroni, examines how the CEDAW Committee has advanced gender equality in criminal justice systems—an effort that resonates strongly with Johanna Niemi's work challenging the myth of legal gender neutrality. Drawing on General Recommendations from the past 25 years, the chapter highlights the Committee's impact in three key areas: integrating intersectionality into access to justice, addressing gender stereotypes in legal systems, and promoting gender-sensitive criminal procedures. In doing so, the chapter honours Johanna Niemi's significant scholarly contributions at the intersection of gender, justice and criminal law.

The **second section,** *Law, Gender and Power,* addresses the relation between legal structures, gender and power dynamics. The first chapter, *Pathways to Feminist Law: Remembering Personal and Political Experiences of the Quest* written by Kevät Nousiainen offers a reflective narrative on the development of feminist legal studies in Finland. Tracing its roots to the 1970s, she recalls personal and collective experiences shaped by evolving academic structures. While Niemi and Nousiainen followed distinct paths, both were influenced by socio-legal perspectives, interdisciplinary dialogues and alternative academic spaces which enabled the growth of gender studies in law. The chapter highlights how shifts from traditional to reformed academic systems facilitated feminist scholarship and provoked resistance, shaping the trajectories of scholars like Niemi.

The concluding chapter of this section, *Breaking the Glass Ceiling in 'Gender Equal' Finland* by Daniela Alaattinoğlu, examines gender representation among senior legal professionals and knowledge producers in Finland by focusing on the Supreme Courts, law professors and law firm partners. Building on a discussion started by Johanna Niemi and Daniela Alaattinoğlu, the chapter questions why gender and representation remain underexplored in Finnish legal academia and practice, despite the country's reputation for gender equality and growing numbers of women in the field.

The **third section**, *Changing Insolvency Law: Comparative and National Perspectives*, reflects on another of Johanna Niemi's areas of expertise: insolvency law. It starts with Iain Ramsay and Bill Whitford's chapter entitled *Comparative Consumer Insolvency and Debt Adjustment*, acknowledging the influential role of Johanna Niemi's work in shaping the field of comparative consumer insolvency. Their chapter examines the development of personal insolvency law as a key area in comparative legal scholarship, especially in the aftermath of the 2008 financial crisis. Their analysis explores how different countries have crafted distinct approaches to consumer bankruptcy in response to globalised credit and deregulated markets, revealing both convergence and divergence patterns.

In his chapter *Personal Insolvency in Spain: Pending Challenges*, Francisco Javier Arias Varona reviews the current state of Spanish personal insolvency law. He identifies key challenges such as limited creditor participation, an overburdened judiciary and the controversial handling of public debts. Drawing on Johanna Niemi's work, the chapter calls for reforms that balance creditor rights with meaningful relief for honest debtors. Ultimately, it advocates for increased creditor involvement, more efficient court procedures and a fairer approach to public debt.

In his chapter *Roaming along the Stony Road: Absolute and Relative Priorities in Corporate Restructuring,* which concludes the section, Tuomas Hupli critiques Finland's corporate restructuring framework, noting its lack of reform since Johanna Niemi's 1995 thesis and highlights concerns about shareholder protection at the expense of creditors. The chapter underscores Niemi's view that insolvency law impacts people, not just finances, and explores the legal and moral implications of priority rules in insolvency, particularly in light of EU flexibility and Finnish case law. Doing so, the chapter also evaluates the potential for reform through current initiatives like the debt-to-equity swap project, while recognising the limits of existing law.

The **fourth section** goes by the name *Legal Symbols, Language and Experiments*, bringing together diverse discursive engagements with the law.

In the first chapter of the section, *Becoming a Judge – Symbols, Strategies and Support in Perceived and Performed Lived Autonomy*, by Moa Bladini, Wanna Svedberg Andersson and Sara Uhnoo, honours Johanna Niemi's influential work on understanding how legal concepts, like autonomy, are lived and practiced in everyday legal settings. Drawing on Niemi's work on professional identity, the chapter explores judicial autonomy from an embodied, everyday perspective, focusing on trainee judges in Sweden. Building on Niemi's legacy of highlighting how legal frameworks shape lived experiences, the authors deepen the conversation on judicial independence by shifting the focus from the abstract constitutional principles to the daily lived realities of legal practice.

In the second chapter of the section *The Human Body in Market Capitalism: Nothing More than a Commodity*, Eva-Maria Svensson takes inspiration from Johanna Niemi's critique of commercial language around sex work. In the chapter, Svensson examines subscription-based platforms where women trade sexual content as a form of self-commodification, arguing that this phenomenon reflects broader capitalist structures that reduce the human body to a marketable asset, undermining intrinsic human value. In so doing, the chapter considers whether such practices constitute exploitation and violations of human dignity.

The final chapter of the section, *Before and After the Law – Experimenting with Law, Violence and Autofiction-Ethnography* by Anis Minari, alias Kati Nieminen, Sanna Mustasaari, Kristiina Koivukari and Iiris Tuominen challenges traditional academic writing to critique how law reproduces interpersonal violence while simultaneously claiming legal and moral responsibility for it. Using autofiction-ethnography, the authors reflect on their legal training, research, and personal experiences to creatively analyse the discursive mechanisms of violence in law. Their approach is inspired by Johanna Niemi's pioneering work on law, gendered violence and the discursivity of law.

The **fifth and final section** bears the title *Personal Encounters.* In the first chapter under this section, *The Queen of Interdisciplinary Dialogue*, Päivi Honkatukia reflects on collaborative research experiences with Johanna Niemi, highlighting her exceptional ability to foster interdisciplinary dialogue and supportive academic communities. Through her open-mindedness, courage, and care, Johanna has created spaces that combine rigorous scholarship with emotional and embodied connection, inspiring collective work on gendered violence. Her efforts have been instrumental in enabling researchers to thrive and contribute to interdisciplinary knowledge production on gendered inequalities.

In the second chapter, entitled *On Female Academic Bonds*, Katarzyna Sękowska-Kozłowska highlights the profound academic and personal influence of Johanna Niemi. As a feminist legal scholar and mentor, Johanna has not only offered intellectual companionship and

solidarity but also created concrete opportunities for scholarly collaboration and belonging, particularly for researchers from less privileged backgrounds. Her support exemplifies how feminist academic networks can foster inclusion, transnational dialogue and resilience in times of political and institutional backlash.

In the third chapter, *Episodic Encounters with Johanna Niemi and her Scholarship*, Juho Aalto traces the personal and intellectual influence of Johanna Niemi through a series of episodic moments. The chapter highlights her critical engagement with feminist legal theory, interdisciplinarity, and commitment to inclusivity and social justice. In his personal essay, Aalto also reflects on the future of legal scholarship, particularly in relation to new materialisms and the challenge to binary frameworks of sex and gender.

In the final chapter, *Johanna Niemi: The Academic Midwife*, Aleida Luján Pinelo and Amalia Verdú Sanmartín highlight Johanna's impact as a feminist academic mentor, focusing on her role in shaping postgraduate education through relational and epistemically plural approaches to supervision. By tracing a shared academic journey between Niemi and her supervisees, the authors foreground the transformative potential of tutoring as a collaborative and embodied process of 'becoming together'. Niemi's legacy thus extends beyond traditional academic outputs, offering a model for inclusive and reflective mentorship in global academia.

Section I: Towards Gender Equal Criminal Justice

2 The Finnish Rapporteur on Violence Against Women – Challenging Gendered Norms and Inequalities in Criminal Law and Beyond?

Marjo Rantala & Heini Kainulainen

Abstract

Since the 1990s, Finnish feminist legal scholars, with Johanna Niemi in the forefront, have demonstrated how the Finnish Criminal Code and criminal legal proceedings fail to address violence against women, particularly intimate partner violence. The Criminal Code has, since then, undergone several reforms, many supposedly aiming at improving the recognition of violence against women. However, it seems that feminist critique of criminal law, mainly due to its marginal position in legal academia and legal institutions, has not succeeded in challenging the foundations of modern law and Finnish society, which are based on male norms and masculine agency. Thus, the power hierarchies and structural inequalities between men and women largely fail to be legally acknowledged and addressed, especially in the field of criminal law.

In this chapter, the authors claim that by establishing a new, independent, and autonomous authority, namely the National Rapporteur on Violence against Women, a new possibility arises to pinpoint and challenge gendered relations in law. This can be done successfully if the Rapporteur sustains a feminist critique of the law and manages to bridge the public/private and the criminal law/non-discrimination law divides.

Introduction

The fewer battered women, the fewer women who see no exit from an abusive relationship. Better recognition of, and responses to, intimate partner violence in the national legal system. A strong political commitment to address violence against women as a serious problem in Finnish society. All of these are enlisted, outspoken goals in Johanna Niemi's research outputs and on the agenda of the Finnish Rapporteur on Violence against Women.

Niemi's book on criminal legal procedure and intimate partner violence, *Rikosprosessi ja parisuhdeväkivalta*, published twenty years ago, was the first extensive analysis in Finland on how legal procedures reproduced gendered power relations and sustained women's inferior status to men in the realm of criminal law (Niemi-Kiesiläinen 2004a). Even Niemi herself was surprised by the extent of gender bias she found, not only in the case law she analysed, but in the whole legal system and legal scholarship (ibid: 19, 79, 112). Tellingly, in the foreword to her book, she stated that intimate partner violence would not decrease without an overall reform of the criminal justice system (ibid: 19). In her conclusions, she affirmed that the fundamental requisite for the reform would be a change in attitudes towards intimate partner violence (ibid: 385).

Since then, many of the concrete amendments proposed by Niemi have taken place. For instance, the legislator has started to identify the victims of violence in close relationships as in need of legal protection when deciding that assaults in private premises and in close relationships should not be complainant offences anymore (Act 578/1995; Act 712/2004; Act 1082/2010). Also, the introduction of the Act on Restraining Orders (898/1998) has improved

the protection against violence, stalking has been criminalised, and the right to sexual self-determination has been improved since nowadays the lack of consent constitutes the essential element for rape. All of these reforms strive to address violence which women are particularly victimised by. However, the shift of paradigm which Niemi strived for, and saw signs of already twenty years ago (Niemi-Kiesiläinen 2004a), has not fully materialised, as the Criminal Code (39/1889) has not been comprehensively scrutinised from the point of view of gender equality and violence against women.

The prevalence of intimate partner violence against women shows no steady decrease, and according to the latest EU-wide survey, Finland is in the top tier of the most violent countries for women in Europe (FRA 2014; Attila et al. 2023). In this chapter, we align with Niemi's observations on how violence against women remains a blind spot for Finnish gender equality law and policies, and how feminist critique on law has not succeeded in transforming mainstream legal thinking (Niemi 2019: 81; Niemi 2020: 87–89; Alaattinoğlu & Niemi 2019). We agree with Niemi on the notion that law, and criminal law in particular, is a powerful discourse constructing reality (Niemi-Kiesiläinen 2004b: 168; Niemi 2019: 94–96). Depending on its use, law may enhance the existing hierarchies, or it may be a useful tool to dismantle power relations.

In this chapter, we discuss how the new Finnish Rapporteur on Violence against Women ('VAW Rapporteur', or 'Rapporteur') participates in the legal discourse, and ponder on the possibilities of the Rapporteur to contribute to the transformation of law. A full transformation would require bridging the public/private divide prevailing in criminal law, especially related to intimate partner violence. Moreover, the distinction between criminal law and gender equality policies should be viewed more critically. The Rapporteur's mandate is directly linked to the Council of Europe Convention on preventing and combating violence against women and domestic violence ('the Istanbul Convention', or 'the Convention'). The Convention asserts historically unequal power relations between women and men as the root cause of violence against women and refers to violence against women as a form of discrimination against women. We argue that the already existing premises of gender equality legislation could help to approach gender-based violence in a more comprehensive manner, and to put VAW more firmly on the political agenda.

The Istanbul Convention: Reinforcing VAW as a Public Matter?

As mentioned in the introduction, Niemi demonstrated in 2004 how the Finnish criminal justice system is gendered—following the tradition of modern law and its hidden masculinity. According to Niemi, the most gendered aspect of the system concerns the fact that most women are exposed to the criminal legal system only as injured parties, especially in violent crimes (Niemi-Kiesiläinen 2004a: 81). She also noted that legislative choices dealing with violence depend on whether the issue is considered to belong to the private or public sphere (ibid: 115). She further analysed amendments to the Criminal Code from the point of view of domestic and intimate partner violence and observed a clear bias, as the law puts women at a disadvantage. Niemi concluded that as long as the Finnish legal order and criminal justice system give priority to other offences, such as economic offences, instead of violent crimes, a systematic legal gender bias remains, regardless of individual amendments (ibid: 385–386).

Since the 1990s, the Finnish legislator has taken steps to restrict the impunity surrounding intimate partner violence. First, assault in private premises was brought under an official public charge in 1994. At the time, the Government observed that intimate partner violence

and domestic violence take place in a private setting, but that it should no longer be a private concern. According to the 1993 Bill, the reconciliation between the parties is often the result of pressure, which is a continuation of the use of intimate partner violence. Thus, the Bill acknowledged the imbalance of power relations in close relationships in which violence occurs (Government Bill 94/1993 vp, e.g.: 15, 91–92, 100).

In 2004, the former provision in the Criminal Code, according to which the prosecutor could decide not to prosecute a reported case of assault if the injured party requested it based on her own 'stable will', was abolished. The relevant Government Bill (HE 144/2003) pointed out that the opinion of the injured party and her request to the prosecutor had been given too much weight in the prosecutors' consideration of the charges. In the Bill, it was once again highlighted that intimate partner violence is not an internal, family conflict, but something which needs public intervention. By amending the Criminal Code, an effort was made to improve the legal protection of the victims of the crime of assault in private premises. By repealing the provision, the defendant's possibility to influence the prosecutor's decision and the possible criminal sanctions was expected to decrease (ibid: 7, 13–16).

The Criminal Code was again amended in 2011 regarding minor assaults. Prior to the reform, all types of minor assaults were complainant offences, while the police and the prosecutors had had difficulties in practice in identifying domestic and intimate partner violence, with the result that acts of IPV were often considered as only mild assaults, and thus bringing charges depended upon the injured party. The reform made minor assault in a close relationship subject to official charges. The Government Bill argued for the need to scrutinise violence in close relationships by the criminal justice system, even when it may be assessed only as mild. Extending the official scope of the public prosecution to mild violence, i.e. minor assaults, in intimate relationships also meant the authorities needed to intervene in mild abuses (HE 78/2010 vp: 10–11, 14–15, 22).

Overall, international human rights treaties have influenced criminal law reforms, including some amendments to the Criminal Code, but these reforms have not stemmed from a shared understanding of violence against women as a widespread, serious and harmful social problem and a human rights issue (Niemi-Kiesiläinen 2001; Kotanen 2018; Kainulainen & Niemi 2017). Efforts to place VAW on the national criminal policy agenda have faced important challenges (Kainulainen et al. 2021). Amendments to the Criminal Code have instead been sporadic, without a comprehensive gender-impact assessment. Essentially, the Criminal Code still emphasises gender-neutral language and relies on formal equality, giving no recognition to women's inferior status or different life experiences—for instance regarding sexual crimes—compared to men. Furthermore, criminal law leans on the idea that criminal offences are singular acts or omissions, ignoring vastly typical dynamics of intimate partner violence, which tends to be continuous (Niemi-Kiesiläinen 2004a; Hong 2019).

Human rights law, such as the UN Convention on the Elimination of all forms of Discrimination against Women ('CEDAW') and the case law of the European Court of Human Rights (ECtHR), with their doctrines on due diligence and positive action to combat violence against women, went largely unnoticed by Finnish criminal law scholars until the 2010s, including Niemi. However, the Istanbul Convention, accepted in 2011, changed the game.

In the Finnish context, Nousiainen and Pentikäinen were among the first scholars to notice the Convention, as in their analysis on the CEDAW's impact in Finland, they stated that the CEDAW Committee's concerns for Finland had pushed for policy programmes addressing VAW, but the legislative measures had left much to be desired (Nousiainen & Pentikäinen

2013). However, in their analysis, Nousiainen and Pentikäinen showed optimism, since they predicted that the recently negotiated and adopted Istanbul Convention would keep VAW on the political agenda (ibid: 583–584).

Nousiainen and Pentikäinen were right, since the binding obligations of the Convention, ratified by Finland in 2015, gave the long-awaited final push to set a clearer legal basis and financing of shelters, the national 24/7 helpline, and the network of Support Centres for Victims of Sexual Violence. The Convention also caught feminist legal scholars' attention (Niemi, Peroni & Stoyanova 2020). To unleash the Convention's full potential and to avoid lurking pitfalls, Niemi et al. stressed the importance of an extensive front, comprising different social and legal actors to support the transformative power of the Convention (Niemi et al. 2020: 11–12). Furthermore, the body of independent experts monitoring the Istanbul Convention, GREVIO, plays an important role to keep VAW on the national policy agenda (Niemi & Verdu 2020). Due to GREVIO's monitoring practices, Finland is continuously obliged to reassess and develop its anti-violence work (Leskinen 2020).

The Non-Discrimination Ombudsman as the National Rapporteur on Violence Against Women

To fulfil the obligation under Article 10 on national coordination mechanisms of the Istanbul Convention, Finland established the Committee for Combating Violence Against Women and Domestic Violence (NAPE). The NAPE Committee comprises representatives of ministries and their subordinate administration. Despite the establishment of the new Committee, NGOs kept advocating for a national monitoring body, separate from the executive branch. Support for a new independent human rights body was first included in the Human Rights Delegation's statement in the fall of 2018, and then, in the Ombudsman for Gender Equality's Report to the Parliament, which highlighted deficiencies in national policies preventing VAW just prior to the parliamentary elections (TAS 2018). When the Parliament discussed the Report, it required the Government to investigate the possibilities of appointing an independent body to monitor and evaluate the implementation of the obligations of the Istanbul Convention (EK 49/2018 vp; TyVM 16/2018 vp).

The head of the Social Democrats, Mr. Antti Rinne, the winner of the 2019 Finnish parliamentary elections, declared his new Government feminist. These elections were a historical moment, since women won almost half of the seats in Parliament; 94 out of 200. The Prime Minister agreed on establishing a new independent rapporteur on VAW in his Government Programme. The legal provisions regarding the rapporteur were later drafted and accepted during the Government of Ms. Sanna Marin, who replaced Rinne after his resignation. Prime Minister Marin led a coalition of five political parties, all famously led by women, declaring their gender equality policies intersectional (the Government Action Plan on Gender Equality 2020–2023: 9, 12).

The Finnish Rapporteur on Violence Against Women was established in 2021 by an amendment to the Act on the Non-Discrimination Ombudsman (1326/2014), extending the list of tasks to include issues related to violence against women. According to the Act, the Ombudsman:

[...] assesses measures and policies targeted to prevent and combat all forms of violence covered by the [...] Convention, by means laid down in Article 10 of the Convention.

The Ombudsman acts jointly with the NAPE Committee. In practice, the Ombudsman has had a representative in the Committee as an expert member, whereas other formal and informal ways of cooperation depend on the discretion and willingness of both bodies. The Ombudsman was granted a budget allocation of EUR 200,000 per year as of 2022, and as of now, they have appointed one permanent Senior Specialist and one fixed-term and part-time Senior Researcher supporting the work as the Rapporteur. We, the authors of this text, work in these positions for the Ombudsman.

During the planning stages for establishing a new national actor combating VAW, its institutional location was unclear. The Ombudsman for Gender Equality had refused the task, stating that the office's resources are very scarce, and the Ombudsman feared the negative effect on existing duties had they accepted the new task, considering how widespread the problem of violence against women is in Finnish society (HE 123/2021 vp: 21). It should be noted that the Ombudsman for Gender Equality was established already in 1987 to supervise compliance with the Act on Equality Between Women and Men (aka 'Gender Equality Act', or 'GEA'), and the GEA has been silent about gender-based violence against women. The Gender Equality Ombudsman, nevertheless, had raised violence against women as one of the most pervasive problems of gender equality in Finland in their first-ever report to the Parliament in 2018, and advocated strongly for the establishment of a rapporteur (TAS 2018: 13–14, 104–107; TAS 2021).

The Non-Discrimination Ombudsman was willing to assume the new mandate, leveraging their existing role as the National Rapporteur on Trafficking in Human Beings. The Non-Discrimination Ombudsman had been established following the constitutional reform in 2001, as the Ombudsman for Minorities, with a mandate to prevent ethnic discrimination and to promote the rights of ethnic minorities and foreigners (660/2001). Since then, the Ombudsman's task list has grown, and today the Ombudsman monitors compliance with the renewed Non-Discrimination Act (1325/2014)—encompassing a broad range of discriminatory grounds—promotes the rights of foreigners, supervises the removal from the country of foreign nationals, and acts as the National Rapporteur on Trafficking in Human Beings, and as the Rapporteur on Violence Against Women.

Each year, as prescribed by law, the Ombudsman submits a review to the Government, and every four years they hand in a more thorough analysis with recommendations to the Parliament. The Ombudsman takes initiatives, makes statements, gives advice, and conducts and commissions studies. As the Rapporteur, the Ombudsman shares their observations for public debate and is expected to give policy recommendations for the Government and the Parliament (HE 123/2021 vp).

From the point of view of the need to recognise gender inequality as the root cause of violence against women and as a form of discrimination against women, this institutional arrangement introduces a challenge, as the national Non-Discrimination Ombudsman's mandate excludes gender-based discrimination, whereas the Ombudsman for Equality works explicitly against gender-based discrimination. Interestingly though, the Non-Discrimination Ombudsman does have the power to consider cases of discrimination based on multiple prohibited grounds, including sex/gender. This may turn out to be an asset if the Ombudsman succeeds in integrating an intersectional approach to VAW, noting different vulnerabilities and risk factors for different women to be exposed to violence and abuse.

During their first year, in 2022, the Ombudsman reached out to researchers and civil society organisations concerning their expertise in combating violence against women. The Ombudsman organised meetings for these groups with the aim of identifying the most

pervasive problems and understanding stakeholders' expectations of the Rapporteur. Several concerns emerged from the discussions. Participants highlighted the insufficient understanding of VAW by Finnish authorities, which has led to inadequate access to services and access to justice for women victims of violence. Attention was drawn to how different groups of women are vulnerable and have specific needs at the intersection of sex/gender and other factors, such as women with disabilities or women with a migrant background (YVV 2023a: 63). In 2023, the Ombudsman convened a roundtable discussion on violence against marginalised women with the aim to share expertise and good practices on promoting their rights (YVV 2024a: 64).

The Ombudsman observed that NGOs showed willingness to cooperate with the Rapporteur and to provide information on the women-specific activities they organise (YVV 2023a: 63). Since then, the Ombudsman has continued dialogue with different stakeholders, focusing on a selected topic at a time (YVV 2024a: 64).

The Rapporteur at the Intersection of Human Rights Law, Gender Equality Policies and Criminal Law

International human rights, national gender equality legislation, and criminal law have developed at different paces, constituting distinct fields of law with varying traditions of legal scholarship. The Istanbul Convention, nevertheless, brings these three together—and so does the work of the Rapporteur.

The Gender Equality Act (GEA), as the cornerstone of national gender equality legislation, was enacted in the late 1980s when Finland ratified CEDAW. Finland's accession to the European Union in 1995, along with the new Constitution (731/1999), then anchored the primary focus of gender equality efforts in working life. The GEA affirms that its objective is "to promote equality between women and men, and thus to improve the status of women, particularly in working life."

So far, few Finnish academic voices have advocated for bringing equality legislation and criminal law closer together. On the one hand, the lack of references to gender-based violence against women in the GEA has not been widely criticised, but rather accepted as a matter of fact. On the other hand, feminist legal scholars focusing on criminal law have generally not considered gender equality legislation particularly relevant or useful in addressing the systemic shortcomings of criminal law in protecting women.

Niemi has pointed out that gender equality legislation—based on the recognition of women's lower status relative to men—has never referred to violence against women (Niemi 2020: 87; see also Nousiainen 1999). The opposite is also true: criminal law has resisted acknowledging the differences between women's and men's experiences of violence, relying instead on formal notions of equality and gender-neutral language. Nevertheless, Niemi and her feminist colleagues have consistently argued that criminal law continues to ignore women (Alaattinoğlu & Niemi 2022; Alaattinoğlu et al. 2020; Rantala 2018; Kainulainen & Niemi 2017; Niemi-Kiesiläinen 2004a; Piispa 2002). Although contextual approaches have become more prevalent in case law, they remain limited and fail to fully centre the perspectives of women as victims of intimate partner violence (Alaattinoğlu & Niemi 2019: 126–127).

The GEA explicitly recognises women's inferior status relative to men and prohibits various forms of discrimination, including sexual and gender-based harassment. It also imposes duties on public authorities, educational institutions, and employers to actively promote

gender equality. The Act permits positive action and temporary, systematic measures favouring one sex or gender over the other, if aimed at addressing disadvantage. To date, feminist legal scholarship on gender equality and non-discrimination law has largely focused on issues related to employment and pay equity (Anttila 2013; Nummijärvi 2004). Surprisingly, even sexual harassment—prohibited under the GEA and criminalised in the Criminal Code—has received limited academic attention, even in the wake of the #MeToo movement.

Both GREVIO, the monitoring body of the Istanbul Convention, and the CEDAW Committee have urged Finland to adopt women-specific measures to combat gender-based violence, including through reforms to criminal law (GREVIO 2024: para 86; GREVIO 2019: para 8; UN CEDAW 2022: paras 14, 24). Incorporating the principles of the GEA into the legal framework for addressing violence against women (VAW) would not only benefit women but also align Finnish law more closely with international human rights obligations.

While the Ombudsman has not explicitly identified themselves as feminist, they have confirmed since their first annual report as Rapporteur that "one of the objectives is to support the understanding of violence against women as a gendered and structural problem within Finnish society" (YVV 2023a: 56). In this spirit, the Ombudsman consistently emphasises that violence—including its forms, motives, and consequences—is a gendered phenomenon, and that women and men experience violence differently. Accordingly, they urge all anti-violence efforts to be gender-sensitive. In their first public statement as the VAW Rapporteur, issued as part of the Ombudsman's Recommendations for the Government's 2023–2027 term, they called for the implementation of gender-sensitive and decisive anti-violence policies at all levels of decision-making (YVV 2022a).

The Ombudsman has also recommended that anti-VAW measures be included in the Government's Gender Equality Action Plan 2024–2027 (YVV 2024c). In their view, the legal duties to promote equality and non-discrimination, as set out in the GEA and the Non-Discrimination Act, should serve as the overarching legal framework for preventive anti-violence work (YVV 2023c: para 40). Comprehensive sexuality education—from early childhood through adulthood—should be recognised as a tool to advance gender equality, prevent gender-based violence, and improve health and wellbeing (YVV 2024a: 64–66; YVV 2024c).

Changing the Narrative: The Case of Mediation of Intimate Partner Violence

The widespread use of mediation in cases of intimate partner violence epitomises how criminal law continues to fail women in Finland. Niemi already stated in 2004 that the reliance on mediation in such cases reflects a problematic state attitude towards violence against women (Niemi-Kiesiläinen 2004a: 153–164). She argued that if mediation is preferred over the criminal justice system due to the latter's deficiencies, those flaws should be addressed within the system rather than promoting mediation as an alternative (ibid: 163).

Serious shortcomings in the criminal investigation of violent crimes against women in Finland have consistently drawn concern from international human rights bodies, including the UN Committee against Torture (2024: para 41), the Committee of the Parties to the Istanbul Convention (2023: B.3), the UN CEDAW Committee (2022: para 24), the UN Human Rights Committee (2021: para 19), and GREVIO (2019: para 193). Despite years of advocacy by women's rights organisations in both national and international forums, meaningful change remained elusive—until the current government took office.

According to the Government Programme of Prime Minister Orpo's right-wing coalition, published in June 2023 with a strong focus on crime prevention, 'mediation of domestic and close relationship violence will, as a rule, not be conducted'. The Ombudsman recognised this as a window of opportunity and decided to actively support the objective, while remaining fully aware of the resistance that still exists.

In autumn 2023, the Ombudsman was invited to introduce the topic during a roundtable discussion led by the Minister of Social Security, who is also responsible for the Government's gender equality policies (YVV 2024a: 68). The Ombudsman later provided a formal statement on the Government's draft bill aimed at prohibiting mediation in cases of close relationship violence (YVV 2024b). When the Bill (HE 130/2024 vp) was presented to Parliament and reviewed by the Legal Affairs Committee and the Employment and Equality Committee, both committees heard the Ombudsman among other experts. In December 2024, the Parliament approved the prohibition, and the legislative amendment (Act 966/2024) entered into force in January 2025.

Although the Ombudsman does not claim credit for this historic change, their arguments clearly resonated in the preparatory works (HE 130/2024 vp: 18, 47; LaVM 10/2024 vp; TyVL 13/2024 vp). They consistently emphasised that mediation in intimate partner violence cases stands in stark contrast to the State's obligation to take violence against women seriously. This is not merely a matter of political will or prioritisation—it is a legal obligation under international human rights law (YVV 2022b; YVV 2023a: 59; YVV 2024a: 67–68; YVV 2024b; Kainulainen & Rantala 2024).

To support their normative claims, the Ombudsman referred to statistical data and survey findings on the prevalence of violence against women in Finland and repeatedly invoked binding human rights obligations. They argued that realising perpetrators' criminal responsibility should be prioritised over mediation, and that public authorities should not interrupt criminal proceedings in favour of out-of-court settlements (YVV 2024a: 67–68; YVV 2024b). This view is firmly supported by international human rights standards and by the Istanbul Convention's four-pillar approach—*Prevention*, *Protection*, *Prosecution*, and *Integrated Policies*—which mandates that States prosecute perpetrators. While criminal law is not the sole solution to ending violence against women, it is as essential as preventive and protective measures.

For instance, the Ombudsman has noted that the CEDAW Committee has repeatedly criticised Finland on its handling of violence against women since its first periodic review in 1990 (YVV 2023a: 59). In their submissions to international human rights bodies—including CEDAW, GREVIO, and the Committee of the Parties to the Istanbul Convention—the Ombudsman has reiterated that while Finland performs well in many areas of women's rights, it must significantly improve its response to gender-based violence (YVV 2022b; YVV 2023b).

To further underscore the need for reform, the Ombudsman conducted their first empirical study as the VAW Rapporteur, focusing on how intimate partner violence cases are handled in practice. The study examined prosecutorial decisions in cases of close relationship violence and revealed a concerning pattern: authorities often regarded such violence as a private matter and did not see the need for criminal accountability (Kainulainen & Rantala 2024). The Ombudsman concluded that this reflects a failure by police and prosecutors to recognise the seriousness and societal harm of intimate partner violence.

Conclusion

In this chapter, we have argued that the Finnish Rapporteur on Violence Against Women—whose mandate is directly tied to the Istanbul Convention—has succeeded in drawing political attention to violence against women and in challenging dominant narratives, particularly concerning intimate partner violence. Like the Istanbul Convention, the Rapporteur draws on both criminal law and gender equality policy, striving to bridge the gap between the two.

For Finland, the placement of the national Rapporteur within the Office of the Non-Discrimination Ombudsman may prove advantageous. It opens the possibility for a genuinely intersectional approach, enabling the Ombudsman to draw on institutional knowledge related to minority rights and other axes of inequality beyond gender. It also encourages the formation of broad, feminist alliances that can push for systemic change.

References

Bibliography

Alaattinoğlu, D., Kainulainen, H. and Niemi, J. (2020) 'Rape in Finnish criminal law and process – A discussion on, and beyond, consent'. *Bergen Journal of Criminal Law and Criminal Justice*, 8, 33–53.

Alaattinoğlu, D. and Niemi, J. (2019) 'Legal education – challenging the Finnish criminal law syllabus'. In: Howe, A. and Alaattinoğlu, D. (eds.) *Contesting Femicide*. London: Routledge.

Alaattinoğlu, D. and Niemi, J. (2022) 'Sokea rikosoikeus ja feministinen kritiikki'. In: Yli-Hemminki, E., Melander, S. and Nuotio, K. (eds.) *Rikoksen ja rangaistuksen filosofia*. Helsinki: Gaudeamus.

Anttila, O. (2013) *Kohti tosiasiallista tasa-arvoa?: sukupuolisyrjinnän kiellot oikeudellisen pluralismin aikana*. Helsinki: Suomalainen Lakimiesyhdistys.

Hong, T. (2019) *Kunniaan liittyvän väkivallan uhrin oikeudellinen asema*. Turku: Turun yliopisto.

Kainulainen, H., Honkatukia, P. and Niemi, J. (2021) 'The invisible victim in criminal policy'. *Bergen Journal of Criminal Law and Criminal Justice*, 9(2), 8–21.

Kainulainen, H. and Niemi, J. (2017) 'Parisuhdeväkivallan tunnistaminen rikosoikeudellisessa järjestelmässä'. In: Niemi, J., Kainulainen, H. and Honkatukia, P. (eds.) *Sukupuolistunut väkivalta: oikeudellinen ja sosiaalinen ongelma*. Tampere: Vastapaino.

Kainulainen, H. and Rantala, M. (2024) *Esitutkinnan rajoittaminen ja syyttämättä jättäminen pari- ja lähisuhdeväkivallassa*. Helsinki: Yhdenvertaisuusvaltuutettu.

Kotanen, R. (2018) 'The rise of the crime victim and punitive policies? Changes to the legal regulation of intimate partner violence in Finland'. *Violence Against Women*, 24(12), 1433–1453.

Leskinen, M. (2020) 'The Istanbul Convention on sexual offences: A duty to reform the wording of national law or the way we think?'. In: Niemi, J., Peroni, L. and Stoyanova, V. (eds.) *International Law and Violence Against Women: Europe and the Istanbul Convention*. Abingdon: Routledge.

Niemi, J. (2019) 'Promoting gender equality'. In: Letto-Vanamo, P. and Tamm, D. (eds.) *Nordic Law in European Context*. Cham: Springer.

Niemi, J. (2020) 'Oikeudellisen ajattelun muutos: Onko tasa-arvo oikeudellistumassa?'. In: Kantola, J., Koskinen Sandberg P. and Ylöstalo H. (eds.) *Tasa-arvopolitiikan suunnanmuutoksia: talouskriisistä tasa-arvon kriiseihin*. Helsinki: Gaudeamus.

Niemi, J., Peroni, L. and Stoyanova, V. (eds.) (2020) *International Law and Violence Against Women: Europe and the Istanbul Convention*. Abingdon: Routledge.

Niemi, J., Peroni, L. and Stoyanova, V. (2020) 'Introduction: The Istanbul Convention as a response to violence against women in Europe'. In: Niemi, J., Peroni, L. and Stoyanova, V. (eds.) *International Law and Violence Against Women: Europe and the Istanbul Convention*. Abingdon: Routledge.

Niemi, J. and Verdu, A. (2020) 'The concepts of gender and violence in the Istanbul Convention'. In: Niemi, J., Peroni, L. and Stoyanova, V. (eds.) *International Law and Violence Against Women: Europe and the Istanbul Convention*. Abingdon: Routledge.

Niemi-Kiesiläinen, J. (2001) ‘Criminal law or social policy as protection against violence’. In: Nousiainen, K., Gunnarsson, A., Niemi-Kiesiläinen, J. and Lundström, K. (eds.) *Responsible Selves: Women in the Nordic Legal Culture*. London: Routledge.

Niemi-Kiesiläinen, J. (2004a) *Rikosprosessi ja parisuhdeväkivalta*. Helsinki: WSOY.

Niemi-Kiesiläinen, J. (2004b) ‘The reform of sex crime law and the gender-neutral subject’. In: Svensson, E.-M., Pylkkänen, A. and Niemi-Kiesiläinen, J. (eds.) *Nordic Equality at a Crossroads: Feminist Legal Studies Coping with Difference*. Aldershot: Ashgate.

Nousiainen, K. (1999) ‘Equalizing images? Gendered imagery in criminal law’, *Suomen Antropologi*, 3, 7–24.

Nousiainen, K. and Pentikäinen, M. (2013) ‘Rise and fall of the CEDAW in Finland: Time to reclaim its impetus’. In: Hellum, A. and Aasen, H.S. (eds.) *Women’s Human Rights: CEDAW in International, Regional and National Law*. Cambridge: Cambridge University Press.

Nummijärvi, A. (2004) *Palkkasyrjintä: oikeudellinen tutkimus samapalkkaisuuslainsäädännön sisällöstä ja toimivuudesta*. Helsinki: Edita.

Piispa, M. (2002) ‘Complexity of patterns of violence against women in heterosexual partnerships’, *Violence Against Women*, 8(7), 873–900.

Rantala, M. (2018) ‘Finland on trial’. In: Howe, A. and Alaattinoğlu, D. (eds.) *Contesting Femicide*. Abingdon: Routledge.

Official Documents

Attila, H., Keski-Petäjä, M., Pietiläinen, M., Lipasti, L., Saari, J. and Haapakangas, K. (2023) *Sukupuolistunut väkivalta ja lähisuhdeväkivalta Suomessa 2021: Loppuraportti*. Helsinki: Tilastokeskus.

Committee of the Parties (2023) *Conclusions on the Implementation of Recommendations in Respect of Finland*, IC-CP/Inf(2023)7. Council of Europe.

EK 49/2018 vp. Parliamentary Communication on the Report of the Ombudsman for Equality K 22/2018 vp.

FRA (2014) *Violence Against Women: An EU-Wide Survey. Main Results Report*. Vienna: European Union Agency for Fundamental Rights. Available at: https://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report [Accessed 19 June 2025].

Government Action Plan on Gender Equality (2020–2023). *Hallituksen tasa-arvo-ohjelma 2020–2023*. Available at: http://urn.fi/URN:ISBN:978-952-00-7182-0 [Accessed 19 June 2025].

Government Bill HE 94/1993 vp. Hallituksen esitys rikoslain ja eräiden muiden lakien muutoksiksi.

Government Bill HE 144/2003 vp. Hallituksen esitys laiksi lähestymiskiellosta annetun lain muuttamisesta.

Government Bill HE 78/2010 vp. Hallituksen esitys laiksi rikoslain 21 luvun 16 §:n muuttamisesta.

Government Bill HE 123/2021 vp. Hallituksen esitys laiksi yhdenvertaisuusvaltuutetun muuttamisesta.

Government Bill HE 130/2024 vp. Hallituksen esitys laiksi rikosasioiden ja eräiden riita-asioiden sovittelusta annetun lain muuttamisesta.

GREVIO (2019) *Baseline Evaluation Report: Finland*. Group of Experts on Action against Violence against Women and Domestic Violence.

GREVIO (2024) *Building Trust by Delivering Support, Protection and Justice: Finland*. First Thematic Evaluation Report.

LaVM 10/2024 vp. Report by the Legal Affairs Committee on Government Bill HE 130/2024 vp.

TAS (2018) *Report of the Ombudsman for Equality to the Parliament 2018 (K 22/2018 vp)*.

TAS (2021) *Tasa-arvovaltuutetun lausunto 4.3.2021 luonnoksesta hallituksen esitykseksi*.

TyVL 13/2024 vp. Statement by the Employment and Equality Committee on Government Bill HE 130/2024 vp.

TyVM 16/2018 vp. Report by the Employment and Equality Committee on the Report of the Ombudsman for Equality K 22/2018 vp.

UN CEDAW Committee (2022) *Concluding Observations on the Eighth Periodic Report of Finland*, CEDAW/C/FIN/CO/8.

UN Committee against Torture (2024) *Concluding Observations on the Eighth Periodic Report of Finland*, INT_CAT_COC_FIN_58381_E.

UN Human Rights Committee (2021) *Concluding Observations on the Seventh Periodic Report of Finland*, CCPR/C/FIN/CO/7.

YVV (2022a) *Yhdenvertaisuusvaltuutetun suositukset hallitusohjelmaan 2022–2027*. Available at: https://yhdenvertaisuusvaltuutettu.fi/

YVV (2022b) *Observations by the National Rapporteur on Violence Against Women to the CEDAW Committee*, VVTDno-2022-1159.

YVV (2023a) *Yhdenvertaisuusvaltuutetun vuosikertomus 2022*. Available at: https://yhdenvertaisuusvaltuutettu.fi/documents/25249352/157476116/Yhdenvertaisuusvaltuutetun+vuosikertomus+2022+(PDF).pdf

YVV (2023b) *Comments to the Committee of the Parties to the Istanbul Convention*, VVTDno-2023-524.

YVV (2023c) *Comments to GREVIO on the Report by the Government of Finland of 26 October 2023*, VVTDno-2023-2017.

YVV (2024a) *Yhdenvertaisuusvaltuutetun vuosikertomus 2023*. Available at: https://yhdenvertaisuusvaltuutettu.fi/documents/25249352/213256250/Yhdenvertaisuusvaltuutetun+vuosikertomus+2023+(PDF).pdf

YVV (2024b) *Lausunto hallituksen esityksen luonnoksesta sovittelulain muuttamiseksi*, YVV/1136/2024.

YVV (2024c) *Lausunto luonnoksesta Hallituksen tasa-arvo-ohjelmaksi 2024–2027*, YVV/1873/2024.

3 Chronotopes of Criminal Law – On Time, Place and Sexual Molestation

Ulrika Andersson & Linnea Wegerstad

Abstract

In this chapter we argue for taking time and place into account in analyses of law and legal practice and for law to embrace a chronotopic approach. We demonstrate the relevance of this approach through a chronotopic analysis of the crime of sexual molestation under Chapter 6 Section 10 in the Swedish Criminal Code (1962:700). We present results from a quantitative study of 215 police-reported incidents of sexual molestation in Sweden and their path through the criminal justice system. We show that in comparison with rape, sexual molestation is more often reported on the same day as the incident and more often occurs in a public place. Further, we juxtapose our findings with Niemi's analysis of the criminalisation of sexual harassment in Finland (2019). We also compare all reported cases with the subset of cleared cases (cases leading to a decision to prosecute or to a summary sanction order) and show that among cleared cases, the reported incident more often occurs in public and is more often reported on the same day. In conclusion, the chronotope of a public place and swift reporting has a bearing on the offence of sexual molestation.

Introduction

Johanna Niemi has shown the importance for criminal law scholars of a contextual understanding of sexual offences and the power relations that characterise sexual violence. She has also demonstrated the significance of scrutinising the power of law as exercised in and through crime definitions (Niemi-Kiesiläinen 2004; Niemi 2010 and 2019). Further, Niemi has developed new methodological and interdisciplinary approaches in legal studies with a constant eye to power and gender dynamics (Niemi et al. 2020.) Early on, she drew attention to violence against women in relation to human rights (Niemi-Kiesiläinen 1999) as well as the usefulness of discourse analysis in legal scholarship (Niemi-Kiesiläinen et al. 2007; Niemi 2018). Inspired by Niemi, this chapter considers the role played by time and place in an analysis of sexual offences regulations. We take it as given that time and place work 'in tandem' and should figure in analyses of the law and legal practices. To this end, we argue that law should embrace a chronotopic approach (cf. Padgett 2020; Ewing 2021, Borg & Parker, 2001). Here, we demonstrate the relevance of this approach through a chronotopical analysis of the crime of sexual molestation under Chapter 6, Section 10 of the Swedish Criminal Code (1962:700).

We first describe how time and place have emerged as important in criminal law studies and what a chronotopic approach entails. We then move on to explain that the very definition of what constitutes sexual molestation is dependent on time and place. Next, we present results from a quantitative study of 215 police-reported incidents of sexual molestation in Sweden and their path through the criminal justice system. We show that in comparison with rape, sexual molestation is more often reported on the same day as the incident itself and more often occurs in a public place, and juxtapose our findings with Niemi's analysis of the criminalisation of sexual harassment in Finland (2019). We also compare reported cases with cleared cases (cases leading to prosecution or a summary sanction order) and show that

among cleared cases, the incident more often takes place publicly and is more often reported on the same day. In conclusion, the chronotope of a public place and swift reporting has a bearing on the offence of sexual molestation.

The Importance of Place and Time for Understanding Sexual Violence

In a broad sense, law and legal practice are always related to place: an individual case always occurs in or at a certain place, be it in the physical or virtual world. Procedurally, the place where a crime is committed sets the framework for the criminal proceedings and plays a fundamental role at trial, where both the location and the time of the crime must be specified. Furthermore, in criminal law, some acts are only criminal in certain places. For instance, there are certain streets where driving is prohibited. Similarly, the Swedish crime of *kränkande fotografering* ('photographic activity constituting an invasion of privacy') only applies to specific kinds of photographing in certain private places (Swedish Criminal Code, Chapter 4, Section 6a). While many researchers have problematised the role of place in relation to sexual violence (e.g. Mellgren et al. 2017; Stefansen 2019; Vera-Gray & Kelly 2020), the relevance of place in mainstream legal scholarship has not been explored to any great extent.The field of legal studies itself has also been described as 'anti-geographic' (Bennett & Layard, 2015). An early exception is Stang Dahl's analyses of how cars are used in rapes and how this is relevant to an understanding of the rape definition (Stang Dahl 1994: Chapter 12).

In recent decades, however, some scholars have begun to argue for a spatial awareness in law and legal scholarship (e.g., Braverman et al. 2014; Philippopoulos-Mihalopoulos 2018, 2015, 2010). These researchers are interested in the mutual construction of law and geography and describe the field of 'legal geography' as

a stream of scholarship that takes the interconnections between law and spatiality, and especially their reciprocal construction as core objects of inquiry. Legal geographers contend that in the world of lived social relations and experience, aspects of the social which are analytically identified as either legal or spatial are conjoined and co-constituted. (Braverman et al. 2014: 1)

Other researchers have sought to promote and develop the field of feminist legal geography, arguing that it has a central role to play in revealing and elaborating upon the law–space nexus from a feminist perspective 'and that there is a need for the mantle to be shared by feminist geographers and feminist legal scholars through greater exchange and partnership' (Cuomo and Brickell 2019). Braverman and others claim that 'most [legal scholars] continue to explore space, place, and landscape without the full benefit of the array of resources developed by geographers and others' (Braverman et al. 2014: 8).

In relation to place and in the wake of groundbreaking books by Henri Lefebvre on place and space (1991), Benedict Anderson on imagined communities (1991) and Nira Yuval Davis on gender and nation (1993), feminist geographers have written extensively on how home, the public space, the community and the nation are constituted by gender, sexuality, nationality, race, ability and so forth, touching on many different themes (e.g. Massey 1994; Johnston & Valentine 1995; Valentine 1992; Pain 1997; Molina 2007; Johnston & Longhurst 2010). Writings on the meaning of home, for instance, have touched on a multitude of angles (Mallet 2004). The concept of home is ambivalent, since it is not only where we dwell, cook, eat and learn appropriate social roles, but also a place invested with meanings, such as belonging, intimacy, fear, violent danger, gender and family, sexuality and homelessness (e.g. Valentine

1992; Ahmed 2000; Blunt & Warley 2004; Johnston & Longhurst, 2010; Thörn 2004; Edgren 2011, Tyner 2012).

Previous research has highlighted the relevance of place in legal narratives of sexual vulnerability (and agency) and how a lack of focus on place in legal argumentation prevents the consideration of power in relation to gender, sexuality and age (Andersson 2021). Narratives where sexual agency is related to vulnerability and connected to place are not unusual in rape cases (Andersson & Edgren 2018). For example, if rape occurs in a place unknown to the complainant, s/he may be regarded as particularly vulnerable (Andersson & Edgren 2018; case NJA 1997 s. 538). On the other hand, if rape occurs after the victim has invited the perpetrator into their home, courts are more likely to assign the complainant agency (Andersson & Edgren 2018, case NJA 2004 s. 231).

Rape law, like other areas of law, rests on the liberal assumption that the individual has autonomy and agency, meaning that a legal subject is considered free and competent to make rational choices. This assumption separates the individual from their various contexts. It means that many structural or contextual factors are normally not considered in law and legal practice, at least not explicitly. Several scholars have opposed this view, arguing that the assumption of liberal autonomy conceals structural power that can leave subjects vulnerable (e.g. Grear 2010; Niemi 2010; Naffine 2002; Lacey 1997). As Linda Martin Alcoff puts it, all narratives are plausible within certain frames which set out who can be victimized, who can be accused, and who is intelligible within certain discursive formations (2018: 23). Andersson has explored discursive formations of place, gender and body in relation to rape and asked in what ways rape law and legal practice are linked to place, gender and body (2021). In relation to how vulnerability and agency are expressed in court narratives, rape law, as just noted, assumes a liberal subject with individual autonomy.

Taking issue with the liberal subject, Martha Fineman has argued that vulnerability as a human condition should instead be seen as the starting point for the legal subject (Fineman 2008; 2010; 2017). This line of thought sees vulnerability as both embodied (in individual factors, such as illness, harm or experiences of rape) and embedded (in the organisation of societal institutions and relationships). In relation to this approach, Andersson has argued for a notion of vulnerability and agency that is connected to place. For instance, individual autonomy and trauma may be related to structural factors such as patriarchal notions of female sexuality, and these in turn may manifest differently in connection to different places (Andersson & Edgren 2018).

When it comes to the application of rape law, an awareness of this idea could allow courts to consider and reject potential victim-blaming in narratives of women walking home alone through parks at night or inviting someone into their home. Incorporating a consideration of place into legal interpretations would further legitimize the interpretation of sexual offences in relation to power (cf. Andersson & Wegerstad 2016; Smart 1995). As Andersson has argued (2021), place seems to be key to the analysis of rape and sexual violence, both in terms of the legal issue at stake and in terms of the facts of the case, the two of which are intertwined. The legal analysis thus depends on place, particularly in the sense of where the events took place, but also in terms of the place on the body—the complainant's as well as the defendant's (cf. Laugerud 2020). For example, a case concerning the genital parts of the body can support an interpretation of the situation as rape, while simultaneously influencing how the evidence is assessed (Andersson 2021). The results of our study confirm the importance of place, as we have found that the place of an incident impacts the path of reported cases through the criminal justice system.

To place and space, we add the time factor and the notion that these factors—time and place—co-constitute each other. This approach comes originally from literary analysis, where Mikhail Bakhtin introduced the idea of the chronotope (time-space) and its importance for the interpretation of different literary genres (1981). It was introduced in legal analysis by Mariana Valverde (2015) and legal scholars have gone on to use it in various ways, including to interpret the conceptualisation and representation of sexual consent in digital media (Padgett 2020), to analyse courtroom art and architecture (Ewing 2021) and to examine the constitution of evidence and credibility in rape cases (Laugerud 2020, cf. Lacey 2007).

Sexual Molestation – An Offence Defined by Time and Place

We would like to begin by noting that location plays a role even in determining what terminology to use. In a research project we have been working on since 2019 (The #Metoo momentum and its aftermath: Digital justice seeking and societal and legal responses), we have been interested in how criminal law addresses women's experiences of sexual violence that does not amount to rape or sexual assault under the law. In earlier publications, we have used sexual harassment as an umbrella term for intimate intrusions of a sexual and gendered nature (Wegerstad 2022; see also McGlynn 2024). However, the term sexual harassment often recalls a specific area of law: namely anti-discrimination in the workplace and legal regulation in other specific places, such as schools and universities. This tension between everyday experiences of sexual intrusion and the legal categorisation of such behaviour has also been identified by Niemi (2019).

The offence of sexual molestation corresponds to some extent with sexual harassment as defined in the Swedish Discrimination Act, in EU legislation and in Article 40 of the Istanbul Convention. However, we have chosen to use the term sexual molestation to emphasise that we are focusing on a specific type of criminal classification in the Swedish Criminal Code. In theory, the offence is applicable regardless of the place where the person is exposed. In practice, location plays a role in defining the crime beyond the statutory definition. In the following, we show the importance of place for how the crime of sexual molestation is framed in the preparatory works, for Swedish Supreme Court decisions, and for which reported cases lead to prosecution.

The crime of sexual molestation (*sexuellt ofredande* in Swedish) under Chapter 6, Section 10, para 2 of the Swedish Criminal Code (1962:700/2022:1043) encompasses various forms of intimate intrusions. While the crime of sexual molestation applies both to children and adults, our study includes only complainants over 18 years of age. Sexual molestation under the Swedish code is a catchall provision for acts which cannot be prosecuted as more severe sexual offences, such as rape or sexual coercion. Sexual molestation is a sexual offence; hence, the aim of the provision is to protect the sexual integrity and sexual self-determination of individuals. The provision explicitly mentions indecent exposure, and other types of behaviour (including physical and verbal intrusion) can also amount to a crime if they violate a person's sexual integrity. Sexual molestation thus requires no physical contact; in fact, it can be committed remotely, for example by sending pictures via social media chats.

Behaviour falls within the scope of the sexual molestation provision if it is of such a nature that, from an objective standpoint, it violates the victim's sexual integrity. It is not necessary to prove that the behaviour had this impact on the individual victim in question; nor, conversely, does the victim's apprehension of the event matter. Sexual molestation also does not require any specific intention on the part of the offender to violate the victim's sexual

integrity. An assessment must be made based on all the circumstances, and the question of whom the offence is committed against may be of legal relevance. The kind of behaviour that can be perceived 'as a violation of sexual integrity may also vary with time and environmental conditions', according to a Swedish Governmental Bill (2004/05:45:150). Hence, the context surrounding the incident at hand must be taken into consideration. This context includes the age of the suspect and the complainant, their relationship to each other, and the environment in which the behaviour in question occurred.

The criminalised area is mainly limited by the requirement that the behaviour in question be of a sexual character, which excludes brief touching of body parts that are not considered sexual in themselves, such as the leg and thigh (NJA 2018 s. 443; NJA 2018 s. 1091), and lone verbal comments that include references to sex (NJA 1997 s. 359; NJA 2024 s. 564). Typical examples of sexual molestation include groping of the genitals or breasts, sending pictures of genitals, or sending e-mails and messages of a clearly sexual nature. Whether or not a particular behaviour is considered to violate sexual integrity depends heavily on the context, which is why place and time are important factors in determining whether a certain behaviour amounts to a crime. This context-dependency also makes it difficult to predict whether a specific incident will be criminalised or not.

A chronotopic reading of Swedish case law regarding sexual molestation shows that neither the brief touching of a young woman's leg in the suspect's home nor the touching of a woman's thigh at an after-work event have been considered to amount to a violation of sexual integrity (NJA 2018 s. 443; NJA 2018 s. 1091). Brief comments, even insulting ones, including calling a subordinate a 'whore' in a military service situation or a teacher referring in school to a student's breast, are not considered sexual molestation (NJA 1997 s. 359; NJA 2024 s. 564). However, up-skirting in a subway escalator has been considered sexual molestation (NJA 2017 s. 393), and so too has repeatedly asking a girl in a public place whether she wants to sell sexual services (NJA 2016 s. 129). While relatively few sexual molestation cases have come before the Swedish Supreme Court, a chronotopic reading of those cases suggests that events that take place in public and lengthy or repeated instances of harassment are more likely to be labelled as sexual molestation. This reading gains some support from the fact that indecent exposure, which often takes place in public settings, has been a paramount example of sexual molestation since the crime was introduced in 1965. Before 1965, the law required that indecent exposure be witnessed by other people to amount to a crime (Wegerstad 2015).

To conclude, according to preparatory works, sexual molestation is an offence defined by time and place, and precedents from the Supreme Court give some support for the idea that time and place matter in deciding whether a prosecuted behaviour is a crime or not. We will now turn to the importance of time and place for understanding what happens when sexual molestation is reported to the police.

Chronotopes in Cases of Sexual Molestation Reported to the Police

To study how the criminal justice system responds to police-reported incidents of sexual molestation, we collected reports and case files from two police districts in the south of Sweden: one urban district and one rural. In total, we analysed 215 cases of sexual molestation occurring against a woman or man aged 18 or older, and where a final decision had been reached in 2017 or 2018. The case files consisted of three types of documents, each with great variation in scope: 1) a preliminary investigation report (*förundersöknings-protokoll*), including the initial police report and, when applicable, interview transcripts, notes on investigative measures, photographs, evidence, etc.; 2) a file history (*ärendehistorik*), a chronological summary of measures and decisions taken and the names of involved parties; 3) a crime report (*brottsrapport*), which includes decisions taken and a brief summary of the reasons behind them.

Of our 215 cases, a total of 28 were referred to the prosecutor. In eight cases, the prosecutor discontinued the case (*negativt åtalsbeslut*); in three cases, a summary sanction order (*strafföreläggande*) was issued; and the remaining 17 cases led to indictments. This means that out of the 215 cases, 20 were cleared. We were mainly interested in what characterizes police-reported incidents of sexual molestation and whether there was a difference between cleared cases (indictment or summary sanction order) as compared to all reported incidents.

In line with previous research (Brå 2019a: 43), we found that police-reported sexual molestation is highly gendered. In 200 of our cases, or 93%, the victim was identified or described as a woman; in the remaining cases the victim was identified as a man (15 cases, or 7%). Information about the suspect's gender was available in 208 cases. In 201 of these cases, or 97% the suspect was a man; in the remaining seven cases, or 3%, the suspect was a woman.

We also found that nearly half of the incidents were reported on the same day that the incident took place and that 90% of the incidents were reported within a month (Table 1).

Table 1. Time from incident to report to Police Authority (n = 214; information missing in one case)

	n	Percent	Cumulative percent
Reported the same day	102	48	48
Reported the day after	27	13	61
Reported within a week	32	15	76
Reported within a month	30	14	90
Reported within 6 months	16	7	97
Reported within a year	4	2	99
Reported after more than a year	3	1	100
Total	214	100	100

Compared to sexual molestation, rape is typically reported later. One set of Swedish statistics shows just 31% of rape cases reported on the same day (Brå 2019b: 28), compared with 48% of the sexual molestation cases in our study. Similarly, just 68% of rape cases were reported within a month, which can be compared with 90% of sexual molestation incidents.

In addition to the swiftness of reporting, we also analysed where the incidents of sexual molestation took place (Table 2). In cases with multiple incidents, we coded the place of the first incident only (11 cases, or 5%, included more than one account of sexual molestation).

Table 2. Place of incident (n = 215)

Place	n	Percent	Place	n	Percent
Private residence	47	22	Complainant's home	18	8
			Someone else's home	24	11
			Care home	5	2
Indoors, not private residence	26	12	Indoor environment other than home (e.g. workplace)	24	11
			Hotel	2	1
Public setting or outdoors	101	47	Public indoor environment (e.g. gym, bus, train, shopping mall, public pool)	34	16
			Outdoor environment (e.g. street, park, bus stop, beach)	29	14
			Public entertainment locale (e.g. nightclub, pub)	25	12
			Taxi	11	5
			Car	2	1
Remote	41	19	Internet (including Messenger, Snapchat, WhatsApp)	15	7
			Letter or telephone	26	12
Total	215	100	Total	215	100

Table 2 shows that sexual molestation is committed in many different places—private homes, workplaces, public transportation, nightclubs—including most of the places where women live their daily lives. We found it interesting that a public setting appears to be more common in reported cases of sexual molestation than in reported cases of rape. More specifically, statistics show roughly 60% of reported incidents of rape in Sweden taking place in a private residence (Brå 2019a: 52). By contrast, in our study, a private residence was reported as the crime scene in only 22% of cases.

Finland introduced the crime of sexual molestation in 2014. Referring to a study of 65 district court cases decided shortly after the law was enacted, Niemi concluded that a typical case of sexual molestation involved 'surprise groping by an unknown person in a public place' and that almost half of sexual molestation incidents occurred in public places (2019: 30). Further, 'a special feature of the Finnish context was that one group of cases had taken place in public saunas or Jacuzzis (8%)' (Niemi 2019: 30). Almost 40% of the cases involved private locations, defined by Niemi as apartments, taxis and workplaces.

These figures correspond broadly with our results. However, categorising place is not as straight forward as one at first might think. For example, while Niemi defines a taxi as a

private location, we found more suitable to categorise it as a public setting. Which categorisation one chooses, of course, depends upon one's purpose: we wanted our categories to mirror the great variance in places that we found in the police files, but we were also interested in investigating whether the private/public divide, a central issue in feminist legal research, matters to whether a case is prosecuted or not. But exactly what to consider as a public or a private setting needs to be further problematised. For example, image-based sexual abuse (such as sending 'dick pics') and other kinds of harassment conducted in the digital realm can be considered as taking place either in a private setting (for example, if the victim receives the message while at home) or in a public setting (because the Internet is a public space) (cf. McGlynn and Rackley 2017). At the time of Niemi's work, Finnish law on sexual molestation only covered physical molestation, which means that our category of 'remote', which amounted to almost a fifth of the cases in our study, did not have an equivalent in her study. In 2023, Finnish law was amended and now includes molestation via words, messages and images (Finnish Penal Code Chapter 20 Section 6; 8.7.2022/723). This comparison highlights how the wording of statutory law, even if not place specific, can narrow or expand the geographical scope of criminalisation, and, consequently, reduce or multiply the spaces where sexual violence is made visible and recognised.

There is a link between the places where sexual molestation occurs and the complainant's relationship to the suspect. In 70 of the cases in our study, or 33%, the suspect was a person known to the complainant; in 145 cases, or 67%, the suspect was a stranger. An intimate relationship between complainant and suspect, which was included in the category of 'known', was not so common (occurring in 20 cases, or 9%). It may be more common to report rape committed by an intimate partner. In one set of statistics, 31% of rape cases involved parties in an intimate partner relationship, and only 15% of cases involved a suspect who was a stranger (Brå 2019b: 28–29). However, more recent statistics show the percentage of rape cases where the suspect is a stranger increasing to 25% (Brå 2024).

To sum up our comparison with the more well-researched crime of rape: our figures on police-reported sexual molestation suggest that sexual molestation is reported to a larger degree immediately after it has taken place and is more often perpetrated in a public setting and by a stranger.

Finally, we also investigated differences between cleared cases (cases leading to indictments or a summary sanction order) and all cases by comparing how place, time from incident to report, and complainant-suspect relationship were distributed between the two groups (Table 3).

Table 3. Share in percent of all cases versus cleared cases

	Share among all cases (%, n = 215)	Share among cleared cases (%, n = 20)
Place		
Private residence	22	10
Indoors, not private residence	12	0
Public setting or outdoors	47	80
Remote	19	10
Time from incident to report to Police Authority		
Reported same day	48	85
Complainant-suspect relationship		
Stranger	67	85

Table 3 shows that among cleared cases, the most common place was a public setting (80%), and that a public setting was more common among the cleared cases (80%) than for all cases (47%). Similarly, it was more common that the incident was reported the same day among the cleared cases (85%) than for all cases (48%). For the suspect to be a stranger to the complainant was slightly more common among cleared cases.

Our results indicate the relevance of the spatiotemporal dimension in analysing incidents of sexual molestation reported to the Swedish police and the criminal justice response. We conclude that a common factor among cases which were cleared is *immediacy*. Possible explanations for why cleared cases show a higher prevalence of public settings and a higher percentage of cases reported on the same day as the incident may be that if an incident takes place in a public place, there may be other people who intervene and contact security guards or the police, and there may be witnesses, which makes the case stronger in terms of evidence. If there is a prompt response from the police, the suspect can be identified immediately. In addition, the victim may be more prepared to file a report directly when the offender is a stranger.

Thus, among prosecuted cases of sexual molestation, time and space appear to be important parameters. Cases where the incident of sexual molestation occurred in a public space were reported quickly and were more likely to be investigated and prosecuted. The aspect of time, here in the form of swift reporting, affects the opportunity to gather evidence and also has an influence on the spatiality of the crime, in the sense that it influences the crime scene investigation—the evidence of the space itself—and greatly increases the likelihood of a quicker investigation, final decision and eventual prosecution. Time is also spatialised in the sense that the place of the incident appears to affect the time of the reporting. A public space correlates with swifter reporting due to the increased likelihood of an unknown offender, of witnesses, and of someone intervening. We therefore conclude that the chronotope of a public place and swift reporting has a bearing on the offence of sexual molestation in the Swedish criminal process.

Conclusion

In this chapter we have shown how a chronotopic approach implies an awareness of the spatiotemporal features of cases which form the basis for crime definitions and decision-making in the criminal justice system. We have illustrated how the space-time factor influences reception, perception and interpretation in police reports about sexual molestation. Space and time may also affect the very decision to report the incident at all. This chronotopic perspective is in line with Johanna Niemi's contextual understanding of sexual offences and works as a fruitful tool for scrutinising the power relations that characterise sexual violence, as well as the power of law exercised in and through crime definitions. We hope that this chapter will inspire future studies of how time and place matters for criminal law: both for legal interpretations as well as for the evaluation of evidence.

References

Bibliography

Ahmed, S. (2000) *Strange encounters: Embodied others in post-coloniality*. London: Routledge.

Anderson, B. (1991) *Imagined communities: Reflections on the origin and spread of nationalism*. Revised ed. London and New York, NY: Verso.

Andersson, U. (2021) 'The body and the deed. Places of rape in Swedish court narratives', *Gender and Women Studies*, 4(1), 2–12.

Andersson, U. and Edgren, M. (2018) 'Vulnerability, Agency and the Ambivalence of Place in Narratives of Rape in Three High-Profile Swedish Cases', *NORA - Nordic Journal of Feminist and Gender Research*, 26(3), 197–209.

Andersson, U., Edgren, M., Karlsson, L. and Nilsson, G. (eds.) (2019) *Rape Narratives in Motion*. Palgrave Macmillan.

Andersson, U. and Wegerstad, L. (2016) 'Sexualbrott – kriminaliserad sexualitet eller sexualiserad kriminalitet?', *Juridisk tidskrift*, 2016–17 (1), 3–18.

Bakhtin, M. (1981) 'Forms of time and of the chronotope in the novel', *The Dialogic Imagination*. Austin: University of Texas.

Benforado, A. (2010) 'The Geography of Criminal Law', *Cardozo Law Review*, 31(3), 823–904.

Bennett, L. and Layard, L. (2015) 'Legal Geography: Becoming Spatial Detectives', *Geography Compass*, 9(7), 406–422.

Blunt, A. and Warley, A. (2004) 'Introduction: Geographies of home', *Cultural Geographies*, 11(1), 3–6.

Borg, M.J. and Parker, K.F. (2001) 'Mobilizing Law in Urban Areas: The Social Structure of Homicide Clearance Rates', *Law & Society Review*, 35, 435–461.

Braverman, I., Blomely, N., Delaney, D. and Kedar, A. (eds.) (2014) *The Expanding Spaces of Law. A timely legal Geography*. Stanford, California: Stanford University Press.

Brå (Brottsförebyggande rådet, Swedish National Council for Crime Prevention) (2019a) *Indikatorer på sexualbrottsutvecklingen 2005–2017*, Report 2019:5.

Brå (Brottsförebyggande rådet, Swedish National Council for Crime Prevention) (2019b) *Våldtäkt från anmälan till dom: En studie av rättväsendets arbete med våldtäktsärenden*, Report 2019:9.

Brå (Brottsförebyggande rådet, Swedish National Council for Crime Prevention) (2024) *Statistiken över anmälda brott*. Available at: https://bra.se/statistik/statistik-om-brottstyper/valdtakt-och-sexualbrott.html [Accessed: 11 July 2024].

Cuomo, D. and Brickell, K. (2019) 'Feminist legal Geographies', *Economy and Space*, 51(5), 1043–1049.

Edgren, M. (2011) 'About home and giving voice to experiences of marginalization: A feminist reading of the 1970s social report-books about migration policy in Sweden', *Scandinavian Journal of History*, 36(4), 500–516.

Ewing, G. (2021) ‘Law, art, and time in the architecture of the High Court: A chronotopic analysis’, *The ANU Undergraduate Research Journal*, 11(1), 58–64.

Fineman, A.M. (2008) ‘The Vulnerable Subject: Anchoring Equality in the Human Condition’, *Yale Journal of Law and Feminism*, 20(1), 1–23.

Fineman, A.M. (2010) ‘The vulnerable Subject and the Responsive State’, *Emory Law Journal*, 60, 251–274.

Fineman, A.M. (2017) ‘Vulnerability and Inevitable inequality’, *Oslo Law Review*, 4(3), 133–149.

Grear, A. (2010) *Redirecting human rights: Facing the challenge of corporate legal humanity*. Basingstoke: Palgrave Macmillan.

Johnston, L. and Longhurst, R. (2010) *Space, place, and sex: Geographies of sexualities*. Lanham, MD: Rowman & Littlefield.

Johnston, L. and Valentine, G. (1995) ‘Wherever I lay my girlfriend, that’s home: The performance and surveillance of lesbian identities in domestic environments’. In Bell, D. and Valentine, G. (eds.) *Mapping desire: Geographies of sexuality*, 88–103. New York, NY: Routledge.

Lacey, N. (1997) ‘Unspeakable subjects, impossible rights: Sexuality, integrity and criminal law’, *Women: A Cultural Review*, 8(2), 143–157.

Lacey, N. (2007) ‘Space, time and function: intersecting principles of responsibility across the terrain of criminal justice’, *Criminal Law and Philosophy*, 1, 233–250.

Laugerud, S. (2020) ‘Embodied truths and authentic selves: The constitution of evidence and credibility in rape cases’, *The International Journal of Evidence & Proof*, 24(3), 307–320.

Lefebvre, H. (1991) *The production of space*. London: Blackwell.

Mallet, S. (2004) ‘Understanding home: A critical review of the literature’, *The Sociological Review*, 52(1), 62–89.

Martín Alcoff, L. (2018) *Rape and resistance*. Cambridge: Polity.

Massey, D. (1994) *Space, place and gender*. Oxford: Polity.

McGlynn, C. (2024) ‘Towards a New Criminal Offence of Intimate Intrusions’, *Feminist Legal Studies*, 32(2), 189–212.

McGlynn, C. and Rackley, E. (2017) ‘Image-Based Sexual Abuse’, *Oxford Journal of Legal Studies*, 37(3), 534–561.

Mellgren, C., Andersson, M. and Ivert, A.K. (2017) ‘“It Happens All the Time”: Women’s Experiences and Normalization of Sexual Harassment in Public Space’, *Women & Criminal Justice*, 28(4), 262–281.

Molina, I. (2007) ‘Intersektionella rumsligheter’ [Intersectional spatialities], *Tidskrift för Genusvetenskap*, 3, 7–21.

Naffine, N. (2002) ‘Can women be legal persons?’ In James, S. and Palmer, S. (eds.) *Visible women: Essays on feminist legal theory and political philosophy*, 150–173. Oxford: Hart.

Niemi, J. (2010) ‘What We Talk About When We Talk About Buying Sex’, *Violence Against Women*, 16(2), 159–172.

Niemi, J. (2018) ‘Law and Crisis: reflections on how legal problems are constructed and how they can be studied’, *Retfærd*, 160(3–4), 76–90.

Niemi, J. (2019) ‘Excluding Power from a Narrative: Sexual Harassment in a Criminal Law Reform’. In Andersson, U., Edgren, M., Karlsson, L. and Nilsson, G. (eds.) *Rape Narratives in Motion*, 17–41. Palgrave Macmillan.

Niemi, J., Peroni, L. and Stoyanova, V. (eds.) (2020) *International Law and Violence Against Women: Europe and the Istanbul Convention*. Routledge.

Niemi-Kiesiläinen, J. (1999) ‘Våld mot kvinnor och mänskliga rättigheter’, *Retfaerd*, 22(1), 49–67.

Niemi-Kiesiläinen, J. (2004) ‘The Reform of Sex Crime Law and the Gender-Neutral Subject’. In Svensson, E.-M., Pylkkänen, P. and Niemi-Kiesiläinen, J. (eds.) *Nordic Equality at a Crossroads. Feminist Legal Studies Coping with Difference*. Aldershot: Ashgate.

Niemi-Kiesiläinen, J., Honkatukia, P. and Ruuskanen, M. (2007) ‘Legal Texts as Discourses’. In Svensson, E.-M., Gunnarsson, Å. and Davies, M. (eds.) *Exploiting the Limits of Law*, 69–87. Aldershot: Ashgate.

Padgett, E.S. (2020) ‘At the Limits of the Consenting Subject: Chronotopic Formulations of Consent and the Figure of the Porn Performer’, *Signs & Society*, 8(3), 426–453.

Pain, R. (1997) ‘Social geographies of women’s fear of crime’, *Transactions of the Institute of British Geography*, 22, 231–244.

Philippopoulos-Mihalopoulos, A. (2010) ‘Spatial justice: Law and the geography of withdraw’, *International Journal of Law in Context*, 6(3), 201–216.

Philippopoulos-Mihalopoulos, A. (2015) *Spatial Justice: Body, Lawscape, Atmosphere*. Abingdon, Oxon: Routledge.

Philippopoulos-Mihalopoulos, A. (2018) ‘And For Law: Why Space cannot be understood without Law’, *Law, Culture & the Humanities*, 7(3), 620–639.

Smart, C. (1995) *Law, crime and sexuality*. London: SAGE Publications.

Stang Dahl, T. (1994) *Pene piker haiker ikke: Artikler om kvinnerett, strafferett og velferdsstat*. Oslo: Universitetsforlag.

Stefansen, K. (2019) ‘Understanding unwanted sexual touching. A situational approach’. In Heinskou, M.B., Skilbrei, M. and Stefansen, K. (eds.) *Rape in the Nordic Countries: Continuity and Change*, 49–65. Routledge.

Swedish Government Bill (2004/05: 45) *En ny sexualbrottslagstiftning*.

Thörn, C. (2004) *Kvinnans plats(er)—bilder av hemlöshet*. Stockholm: Égalité.

Tyner, J. A. (2012) *Space, place and violence: Violence and the embodied geographies of race, sex, and gender*. New York, NY: Routledge.

Valentine, G. (1992) ‘Images of danger: Women’s sources of information about the spatial distribution of male violence’, *Area*, 24(1), 22–29.

Valverde, M. (2015) *Chronotopes of Law. Jurisdiction, Scale and Governance*. London: Routledge.

Vera-Gray, F. and Kelly, L. (2020) 'Contested gendered space: public sexual harassment and women's safety work', *International Journal of Comparative and Applied Criminal Justice*, 44(4), 265–275.

Wegerstad, L. (2015) *Skyddsvärda intressen & straffvärda kränkningar: om sexualbrotten i det straffrättsliga systemet med utgångspunkt i brottet sexuellt ofredande*. Lund University, Diss. Lund: Media-Tryck.

Wegerstad, L. (2021) 'Sex Must Be Voluntary: Sexual Communication and the New Definition of Rape in Sweden', *German Law Journal*, 22(5), 734–752.

Wegerstad, L. (2022) 'Theorising sexual harassment and criminalisation in a Swedish context', *Bergen Journal of Criminal Law & Criminal Justice*, 9(2), 81.

Yuval-Davis, N. (1993) *Gender and Nation*. London: Sage.

Swedish Supreme Court Cases

NJA 1997 p. 359

NJA 1997 p. 538

NJA 2004 p. 231

NJA 2016 p. 129

NJA 2017 p. 393

NJA 2018 p. 443

NJA 2018 p. 1091

NJA 2024 p. 564

4 CEDAW and Its Contribution to Gender Equal Criminal Justice Systems

Lourdes Peroni[1]

Abstract

This chapter analyses the contribution of the Committee on the Elimination of Discrimination against Women (CEDAW Committee) to advancing more gender equal criminal justice systems. Just like Johanna Niemi has questioned the assumed gender neutrality of the law, the CEDAW Committee has confronted the supposed gender neutrality of justice. The chapter shows how the Committee has embedded gender equality concerns in the justice systems, criminal procedures and access to justice through standards developed across the General Recommendations adopted over the past twenty-five years. The chapter identifies and discusses three ways in which the Committee has advanced more gender equal criminal justice systems: it has embedded intersectionality in its access to justice standards; it has combated gender stereotypes in the justice system; and it has developed gender-sensitive criminal procedures. In bringing together issues of gender equality and (criminal) justice access and procedures, the analysis seeks to commemorate Johanna Niemi's scholarly contribution to these intersecting areas.

Introduction

This chapter honours Johanna Niemi's contribution to scholarly debates on criminal procedure and gender equality by examining the standard-setting developments of the Committee on the Elimination of Discrimination against Women (CEDAW Committee) on gender equal criminal justice. As the body of independent experts monitoring compliance with the 1979 United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Committee has developed valuable standards to ensure that women equally enjoy all human rights. Though much of CEDAW's potential to advance these human rights remains to be realised, CEDAW has been a vital tool to hold state parties accountable for violations of women's human rights (Byrnes 2010; Cusack 2013: 124).

The Committee has identified access to justice as fundamental for exercising all the human rights protected under CEDAW (GR 33 2015). Ensuring access to justice to victims of human rights violations has therefore been a key issue in many of the CEDAW Committee's General Recommendations (GRs), at least from 2000 onwards. GRs represent the CEDAW Committee's authoritative interpretation of CEDAW. The Committee has advanced standards on gender equal justice systems not only in a GR specifically devoted to women's access to justice but across various GRs, including those devoted to gender-based violence, the rights of indigenous women and girls, trafficking in women and girls and women migrant workers.

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However, the effectiveness of these standards requires embedding intersectionality to Sunderstand how overlapping forms of discrimination become barriers to justice. The CEDAW Committee has been well aware of how intersecting discriminatory factors render access to justice even more difficult for certain groups of women, depending on their minority status, language, national origin, age, sexual orientation and gender identity, among other grounds (GR 33 2015: 8). The Committee has also highlighted how factors such as illiteracy, trafficking, armed conflict, asylum seeker and migration status, living with HIV and imprisonment usually make it harder for women to gain access to justice (GR 33 2015: 9). Women from these groups, according to the Committee, often do not report human rights violations or, when they do, authorities frequently fail to act with due diligence to investigate, prosecute and punish perpetrators (GR 33 2015: 10).

Just like Johanna Niemi has questioned the assumed gender neutrality of the law (Svensson, Pylkkänen and Niemi 2004), the CEDAW Committee has challenged the supposed gender neutrality of justice. The Committee has not only confronted the gender discrimination, bias and stereotypes embedded in justice systems. It has also viewed the obstacles that impede women from accessing justice as part of structural contexts of inequality 'owing to factors such as gender stereotyping, discriminatory laws, intersecting or compounded discrimination, procedural and evidentiary requirements and practices and a failure to systematically ensure that judicial mechanisms are physically, economically, socially and culturally accessible to all women' (GR 33 2015: 3).

In this chapter, I discuss three ways in which the gender equality standards developed by the CEDAW Committee have contributed to advancing more gender equal criminal justice systems. First, the Committee has embedded intersectionality in its access to justice standards by addressing barriers faced by various groups of women (Section 2). Second, it has combated gender stereotypes in the justice system given their negative impact on women's full enjoyment of human rights, particularly on women victims of gender-based violence (Section 3). Last, the CEDAW Committee has pushed for more gender-sensitive criminal procedures. Not only has the Committee combated procedures that may directly or indirectly discriminate against women in their access to justice. It has also emphasised key features that should characterise gender-sensitive procedures (Section 4).

These three areas of focus neatly coincide with themes on which Johanna Niemi has invaluably contributed to the literature. In her scholarly work, she has pushed for integral responses to gender-based violence that include not only legal reforms but also the dismantling of stereotypes that prevent access to justice (Niemi 2006; Sosa, Niemi & van der Aa 2019).

Towards Eliminating Intersectional Barriers in Access to Justice

The CEDAW Committee has extensively recommended states to remove *formal*, *practical* and *structural* obstacles to access to justice, oftentimes taking into account intersectional dimensions. This section discusses these obstacles with a particular emphasis on the ways in which the Committee has tackled them in an intersectional manner.

Intersectionality draws from feminist critiques of the idea that women are a homogenous group (Sosa & Mestre i Mestre 2022: 12). The critiques challenge the lack of inclusion of certain groups of women by a kind of feminism that used to centre on gender as a ground of subordination without attention to other grounds such as class, sexual orientation and race, which interact to subordinate women in different ways (Morondo Taramundi 2022: 146-147).

Coined by American legal scholar Kimberlé Crenshaw (1989), intersectionality essentially foregrounds how these multiple grounds interact to shape people's experiences differently, particularly the experiences of discrimination and inequality (Sosa & Mestre i Mestre 2022: 12).

As a human rights treaty-body known for its approach to intersectional discrimination (Campbell 2015), the CEDAW Committee has adopted intersectionality as 'a basic concept for understanding the scope of the general obligations of States parties contained in article 2' (GR 28 2010: 18). Under Article 2 CEDAW state parties agree to pursue a policy to eliminate discrimination against women. The Committee has recognised that the 'discrimination of women based on sex and gender is inextricably linked with other factors that affect women' (GR 28 2010: 18). These factors include 'race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity;' discrimination based on these factors affect women 'to a different degree or in different ways to men' (GR 28 2010: 18). It has been argued that the Committee has made 'a clear and unambiguous commitment' to follow the intersectionality path and a turn to intersectionality language in its more recent General Recommendations (Hodson 2023: 195).

Unsurprisingly, therefore, the Committee has attended to the intersectional barriers that various groups of women may face when seeking justice for human rights violations. Among common *formal* obstacles to accessing justice, the CEDAW Committee has identified ineligibility for 'free government legal aid' in the case of women migrant workers (GR 26 2008: 21); 'deficiencies in the legal support provided by legal aid counsel' in the case of indigenous women (GR 39 2022: 32); and 'negative consequences, such as prosecution, punishment, detention or deportation for immigration', which may work as disincentives to seek criminal justice for victims of human trafficking (GR 38 2020: 83). The Committee has also observed how 'inadequate legal frameworks [and] complex legal systems' can intersect with other factors to make justice inaccessible to rural women (GR 34 2016: 8). More generally, it has criticised permission requirements for women (from judicial/administrative authorities, from family/community members) to initiate legal actions (GR 33 2015: 44 a).

Language, information on legal remedies/rights and legal aid barriers are among the most commonly addressed *practical* barriers to access justice, in particular for certain groups of women. For instance, the Committee has recommended states to ensure that justice systems include interpreters and translators for indigenous women (GR 39 2022: 27). It has also reiterated the importance of access to information and education on existing laws and available legal remedies as well as to 'free and quality legal aid, including in cases of gender-based violence against women' (GR 39 2022: 33 f), g) and j); GR 37 2018: 8 b) and c). These measures can take various forms, including 'awareness-raising campaigns, community trainings, and legal and mobile clinics that offer this information' (GR 39 2022: 33 f and j). The measures may also involve judiciary training on the rights of (certain groups of) women. Thus, 'the judiciary, lawyers, law enforcement officials, paralegals, traditional leaders and other relevant authorities and officials in rural areas' should be trained on the rights of rural women (GR 34 2016:9 h). The CEDAW Committee has also recommended awareness raising and training for criminal justice officials on the rights of migrant women workers (GR 26 2008:26 g). In the context of harmful practices, it has similarly recommended providing training to 'law enforcement personnel, including the judiciary, on new and existing legislation prohibiting harmful practices and ensure that they are aware of the rights of women and children and of their role in prosecuting perpetrators and protecting victims of harmful practices' (CEDAW GR 31 / CRC GC 18 2019:73 c).

Structural barriers to access justice have also been tackled by the CEDAW Committee in an intersectional manner. Criminal justice measures should consider, for instance, the 'conditions of poverty, racism and gender-based violence' which have historically affected indigenous women (GR 39 2022: 33 i). In turn, rural women may experience difficulties in accessing justice given 'socio-cultural constraints' in combination with other factors such as complex legal systems and lack of information (GR 34 2016: 8). The CEDAW Committee has similarly noticed that women migrant workers 'who are scarcely ever out of sight of their employers' and often lack outside-world contacts may find it difficult to file complaints (GR 26 2008: 21). The Committee has identified various other structural obstacles to accessing justice, including court concentration in main cities and absence thereof in rural and remote areas as well as 'physical barriers for women with disabilities' (GR 33 2015: 13).

The Committee's intersectional standards to tackle formal, practical and structural obstacles to accessing justice resonate with Johanna Niemi's attention to the intersectional barriers that women often face when seeking protection from gender-based violence. In addressing access to justice as a human right, her collective scholarly work on gender-based violence sheds light on key procedural aspects of accessibility to justice (Sosa, Niemi & van der Aa 2019). Relying precisely on the CEDAW Committee's work, she argues with Sosa and van der Aa for making information on protection orders available in different languages while drawing attention to other barriers such as the economic ones to avoid costly procedures (2019: 947–948).

Towards Justice Systems Free from Gender Stereotypes

The CEDAW Committee has been particularly concerned about the negative impact of gender stereotypes and bias in the judicial system given their 'far-reaching consequences for women's full enjoyment of their human rights' (GR 33 2015: 26). The Committee pinpoints the various ways in which stereotypes harm women's access to justice: they distort outcomes by relying on preconceived beliefs rather than on facts; they lead to the application of rigid standards of what is considered 'appropriate' behaviour for women; and they undermine women's testimonies as parties or witnesses (GR 33 2015: 26).

The CEDAW Committee notes that, in causing judges to misinterpret and misapply the law, such stereotypes may have far-reaching consequences (GR 33 2015: 26). In criminal cases, for example, gender stereotyping may result in 'perpetrators not being held legally accountable for violations of women's rights, thereby upholding a culture of impunity' (GR 33 2015: 26). According to the Committee, though gender stereotyping impedes women's equal access to justice in all areas, it has a particular negative impact on women victims of violence given that stereotypes undermine their claims while supporting those of alleged perpetrators (GR 33 2015: 8, 26, 27). In the Committee's view, gender stereotypes may permeate investigations, trials and the final judgment (GR 33 2015: 27).

Ultimately, gender stereotyping can compromise 'the impartiality and integrity of the justice system, which can, in turn, lead to miscarriages of justice, including the revictimization of complainants' (GR 33 2015: 26). As the Committee puts it:

Women should be able to rely on a justice system free of myths and stereotypes, and on a judiciary whose impartiality is not compromised by those biased assumptions. Eliminating stereotyping in the justice system is a crucial step in ensuring equality and justice for victims and survivors (GR 33 2015: 28).

One fundamental requirement to ensure impartiality, equality and fairness of judicial systems is therefore that they are free from gender-based discrimination, bias and stereotypes. The requirement implies that judges, adjudicators, prosecutors and law enforcement officials do not apply, reinforce, perpetuate or allow gender stereotypes to influence investigations and trials (GR 33 2015: 27). The requirement also entails that evidentiary rules and legal procedures are not influenced by gender stereotypes (GR 33 2015: 17 e); GR 35 2017: 26 c).

As eliminating gender stereotyping in justice systems is crucial to achieving equality and justice (GR 33 2015: 28), the Committee has recommended adopting awareness-raising and capacity-building measures for the judiciary officials and law students (GR 33 2015: 29). The Committee has also insisted on promoting dialogue and raising awareness on the negative impact of stereotyping and gender bias in the justice system (GR 33 2015: 29). In these ways, the CEDAW Committee has not solely exposed the non-neutral character of the justice system. It has contributed towards dismantling gender bias in investigations, procedures, evidentiary rules and judgments and, in so doing, has promoted more gender equal access to justice for women.

The CEDAW Committee's concern about the harms of gender stereotypes/stereotyping goes well beyond access to justice issues. The Committee has frequently addressed gender stereotypes/stereotyping in its larger work (Cusack & Timmer 2011; Cusack 2014: 6). In 2004, for example, the Committee identified the obligation to 'address prevailing gender relations and the persistence of gender-based stereotypes' (GR 25 2004: 8.8) as one of three types of obligations central to achieving substantive equality (Cusack 2014: 21). Together with the United Nations Convention on the Rights of Persons with Disabilities, CEDAW is actually one of the few international human rights treaties to include an express state obligation to combat stereotypes. Article 5 CEDAW, a core anti-stereotyping provision, requires that state parties modify the social and cultural patterns of conduct with a view to eliminating practices based on stereotyped roles for men and women (Cusack 2014: 22).

Being the first international treaty to establish specific human rights obligations on gender stereotyping (Cusack 2014: 24), it is unsurprising to see the Committee emphasising the importance of ensuring that investigations of violence are impartial and not influenced by gender stereotypes and that victims' access justice is not prejudiced by such stereotypes (Cusack 2014: 26). In fact, at the time of writing of this chapter, the Committee is working on a forthcoming GR on Gender Stereotypes. For now, its available Concept Note serves as a reminder that the Committee 'has addressed gender stereotypes since the commencement of its work in its Concluding Observations, General Recommendations and in its jurisprudence under the Optional Protocol, recognising their far-reaching consequences on women's full enjoyment of their human rights.'

Johanna Niemi's work—particularly her scholarship on gender-based violence—has shown how changing norms is as fundamental as changing attitudes towards violence against women (2006). She has critiqued framings of gender-based violence as 'minor disputes' or 'private matters' if policy against this violence is to be efficient (2006). Together with Sosa and van der Aa, she reminds us how stereotypes 'can taint the authorities' assessment of the risk that women face, for instance, by regarding the victim's response to violence as contrary to the expected behavior, dismissing the severity of the violence or deeming it as a private quarrel' (2019: 947). The authors show how stereotypes may thus hinder access to protection orders (2019: 947). They argue that preconceived notions of domestic violence, for example, may lead authorities to provide protection orders in the most extreme cases of bodily injuries, disregarding psychological and economic forms of violence (2019: 947).

Towards Gender-Sensitive (Criminal) Procedures

The CEDAW Committee has paid substantial attention to procedural aspects of access to justice, pushing for more gender equal (criminal) procedures. In the first place, it has acknowledged that procedures may be discriminatory and thus negatively impact women's access to justice:

[D]iscriminatory procedural and evidentiary rules and a lack of due diligence in the prevention, investigation, prosecution, punishment and provision of remedies for violations of women's rights result in contempt of obligations to ensure that women have equal access to justice (GR 33 2015: 23).

As a result, the Committee has called on states to eliminate any existing procedures which may discriminate against women, directly or indirectly, in their access to justice (GR 33 2015: 25 a) This includes abolishing rules requiring women to seek permission from family or the community to begin legal action; rules requiring women to 'discharge a higher burden of proof than men in order to establish an offence or seek a remedy'; and procedures which exclude women's testimonies or attribute them inferior value (GR 33 2015: 25 a).

The CEDAW Committee has, in the second place, signalled attention to procedural aspects across various interrelated components of access to justice, namely justiciability, availability, accessibility and good-quality justice systems. Thus, if states are to embrace *justiciability*, which the Committee understands as 'the unhindered access by women to justice' (GR 33 2015: 14 a), they are recommended a series of measures, including revising burden of proof rules (GR 33 2015: 15 g). The recommended revision is motivated by a need to ensure 'equality between the parties in all fields where power relationships deprive women of fair treatment of their cases by the judiciary' (GR 33 2015: 15 g).

In turn, ensuring broad legal standing for groups and civil society organisations is an example of the measures that the Committee has suggested to improve the *availability* of justice (GR 33 2015: 16 c). The Committee seeks that groups and organisations with an interest in a case are allowed to file petitions and participate in the proceedings (GR 33 2015: 16 c). The availability component requires establishing 'courts, quasi-judicial bodies or other bodies throughout the State party in urban, rural and remote areas, as well as their maintenance and funding' (GR 33 2015: 14 b).

When it comes to *accessibility*, the CEDAW Committee has insisted on disseminating information about available procedures (GR 33 2015: 17 c) and reducing court costs and fees for filing documents for women with low incomes or on waiving such costs for women living in poverty (GR 33 2015: 17 a). Considering online arrangements to facilitate hearings and data sharing, collection and information has been another measure aimed at enhancing accessibility to justice for women (GR 33 2015: 17 d). The Committee understands that accessibility requires that justice systems 'be secure, affordable and physically accessible to women, and be adapted and appropriate to the needs of women' (GR 33 2015: 14 c)

In line with the Committee's efforts to eliminate stereotypes in the justice system discussed in the previous section, *good-quality justice systems* require that 'evidentiary rules, investigations and other legal and quasi-judicial procedures are impartial and not influenced by gender stereotypes or prejudice' (GR 33 2015: 18 e). The Committee has criticised the application of preconceived and stereotypical notions of the standard of proof required to substantiate the occurrence of gender-based violence (GR 33 2015: 26 c). States should

therefore ensure that 'evidentiary requirements are not overly restrictive, inflexible or influenced by gender stereotypes' (GR 33 2015: 51 h). Good-quality justice systems, the Committee has observed, requires the capability of ensuring prompt, impartial, independent and gender-sensitive resolution of women's demands for justice (GR 33 2015: 14 d).

The Committee has paid further attention to various other criminal procedure aspects in cases of gender-based violence. For instance, it recommends that during questioning, evidence collection and other procedures related to the investigation of violence 'a confidential and gender-sensitive approach to avoid stigmatization, including secondary victimization' is adopted (GR 33 2015: 51 g). One of the recommendations made to improve the criminal justice response to domestic violence includes 'recording of emergency calls, taking photographic evidence of destruction of property and signs of violence and considering reports from doctors or social workers, which can show how violence, even if committed without witnesses, has material effects on the physical, mental and social well-being of victims' (GR 33 2015: 51 i).

In sum, the Committee has not just combated procedures that may directly or indirectly discriminate against women in their access to justice. As the analysis in this section has sought to illustrate, the CEDAW Committee has outlined some key features that should characterise gender-sensitive procedures by developing gender-equality informed standards on evidence, hearings, legal standing and burden of proof, among others.

In resonance with the Committee's concerns, Johanna Niemi's scholarship on gender-based violence has also shown how procedures, even when cases are processed efficiently, may side-line victims and their wishes (Sosa, Niemi & van der Aa 2019: 960). To mention just one example: 'high standard of evidence in criminal procedures may […] limit the accessibility of protection in criminal procedure' (Sosa, Niemi & van der Aa 2019: 960).

Conclusion

Over the past twenty-five years, the CEDAW Committee has played a remarkable role in developing human rights standards to improve gender equal access justice, significantly but not solely in instances of gender-based violence. The Committee has not only made extensive recommendations to eliminate intersectional obstacles to access justice, tackling formal, practical and structural barriers. More fundamentally, the Committee has challenged the gender inequalities deeply ingrained in justice systems, including the workings of gender stereotypes that undermine the integrity and impartiality of these systems. Advancing more gender-sensitive (criminal) procedures has also been an important part of these remarkable efforts. Besides calling on states to eliminate gender discriminatory procedures, the Committee has recommended a wide range of gender-sensitive procedural measures, from revising burden of proof rules that maintain unbalanced gender power relationships in proceedings to ensuring evidence requirements that are not overly inflexible or influenced by gender stereotypes.

These developments under CEDAW exhibit significant overlaps with Johanna Niemi's contributions to feminist legal scholarship, including the literature on gender-based violence. Ultimately, the Committee's work and Niemi's work seem to share a critical approach to law that challenges its gender neutrality without abandoning law reforms. In bringing together gender equality and (criminal) justice issues, this chapter commemorates the scholarly work of Johanna Niemi with whom I had the privilege of working together and joining efforts to contribute to the literature on gender-based violence (Niemi, Peroni & Stoyanova 2020).

References

Bibliography

Byrnes, A.C. (2010) 'The Convention on the Elimination of All Forms of Discrimination against Women and the Committee on the Elimination of Discrimination against Women: Reflections on their role in the development of international human rights law and as a catalyst for national legislative and policy reform', UNSW Law Research Paper No. 2010-17.

Campbell, M. (2015) 'CEDAW and women's intersecting identities: a pioneering new approach to intersectional discrimination', 11(2) *Revista Direito GV*, 479–504.

Crenshaw, K. (1989) 'Demarginalizing the intersection of race and sex: a black feminist critique of antidiscrimination doctrine, feminist theory and antiracist policies', 1 *The University of Chicago Legal Forum*, 139–167.

Cusack, S. (2014) 'Eliminating judicial stereotyping: equal access to justice for women in gender-based violence cases', Final paper submitted to the Office of the High Commissioner for Human Rights.

Cusack, S. (2013) 'The CEDAW as a legal framework for transnational discourses on gender stereotyping', in A. Hellum and H. Aasen (eds) *Women's Human Rights: CEDAW in International, Regional and National Law*. Cambridge: Cambridge University Press, 124–157.

Cusack, S. and Timmer, A. (2011) 'Gender stereotyping in rape cases: the CEDAW Committee's decision in *Vertido v The Philippines'*, 11(2) *Human Rights Law Review*, 329–342.

Hodson, L. (2023) 'Gender equality untethered? CEDAW's contribution to intersectionality', in R. Cook (ed) *Frontiers of Gender Equality: Transnational Legal Perspectives.* Philadelphia: University of Pennsylvania Press, 175–195.

Morondo Taramundi, D. (2022) 'Estereotipos, interseccionalidad y desigualdad estructural', in F. Arena (ed) *Manual sobre los efectos de los estereotipos en la imparticion de la justicia*, Mexico City: Suprema Corte de Justicia de la Nación.

Niemi, J. (2006) 'Feminist policy against violence in Sweden', in U.V. Bondeson (ed) *Law and Morality*, Stockholm: Forlaget Thomson, 289–300.

Niemi, J., Sosa, L. and van der Aa, S. (2019) 'Protection against violence: the challenges of incorporating human rights' standards to procedural law', 41 *Human Rights Quarterly*, 939–961.

Niemi, J., Peroni, L. and Stoyanova, V. (2020) *International Law and Violence Against Women: Europe and the Istanbul Convention.* Abingdon: Routledge.

Sosa, L. and Mestre i Mestre, R. (2022) 'Ensuring the non-discriminatory implementation of measures against violence against women and domestic violence: Article 4, paragraph 3 of the Istanbul Convention', Strasbourg: Council of Europe Publications.

Svensson, E.-M., Pylkkänen, A. and Niemi-Kiesiläinen, J. (2004) 'Introduction: Nordic feminist legal studies at a crossroads', in E.M. Svensson, A. Pylkkänen and J. Niemi-Kiesiläinen (eds) Nordic Equality at a Crossroads: Feminist Legal studies coping with Difference. Aldershot: Ashgate.

CEDAW Committee General Recommendations

CEDAW Committee (2004) General Recommendation No. 25: Article 4, paragraph 1 of the Convention (temporary special measures).

CEDAW Committee (2008) General Recommendation No. 26 on women migrant workers, 5 December.

CEDAW Committee (2010) General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 16 December.

CEDAW Committee (2014) Joint General Recommendation No. 31 / General Comment No. 18 of the Committee on the Rights of the Child on harmful practices, 14 November.

CEDAW Committee (2015) General Recommendation No. 33 on women's access to justice, 3 August.

CEDAW Committee (2016) General Recommendation No. 34 on the rights of rural women, 7 March.

CEDAW Committee (2017) General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19 (1992), 26 July.

CEDAW Committee (2018) General Recommendation No. 37 on the gender-related dimensions of disaster risk reduction in the context of climate change, 13 March.

CEDAW Committee (2020) General Recommendation No. 38 on trafficking in women and girls in the context of global migration, 20 November.

CEDAW Committee (2022) General Recommendation No. 39 on the rights of Indigenous women and girls, 31 October.

Section II: Law, Gender and Power

5 Pathways to Feminist Law: Remembering Personal and Political Experiences of the Quest

Kevät Nousiainen

Abstract

This chapter offers a personal narrative of the journey to promote feminist legal studies and gender equality in law. While Johanna's path and mine differed in some respects, both were shaped by similar academic and institutional contexts. I explore how the pursuit of feminist jurisprudence emerged and evolved within these structures, using a narratological approach. In the 1970s, legal education in Helsinki offered little insight into gender, but interests in socio-legal studies and procedural law opened alternative perspectives. Encounters with Nordic women's law scholars were pivotal in embracing a feminist lens. The shift toward interdisciplinary thinking, spurred by theoretical developments and changes within academia, played a crucial role. Traditional academic hierarchies could be bypassed through alternative spaces—externally funded projects and informal scholarly networks—where feminist legal studies found room to grow. Later university reforms created more opportunities for feminist scholars, though this success also sparked resistance. These dynamics have shaped both Johanna's and my own academic work.

Academic Memory Work, Autobiographies and Narratives

Women's law, feminist jurisprudence, gender studies in law—these terms mark efforts to view law through a gendered lens. Though feminist legal studies were slow to emerge, especially compared to other disciplines, they nonetheless took root. A recent book on the origins of women's studies in social sciences barely mentions law, underscoring how difficult the discipline was for feminist thought.

This chapter offers a personal narrative of how gender studies in law developed in Finland, drawing on memory work and autobiography. While Johanna's and my paths only occasionally intersected, we often worked within similar contexts and toward shared aims. My story is necessarily subjective, shaped by present understanding. I invite the reader into an 'autobiographical pact': to accept that the narrator and the subject are one and the same, offering a retrospective account as truthfully as memory allows.

I borrow from Greimasian narratology, where a subject undertakes a quest, encountering both support and resistance. This 'Quest'—to promote gender awareness in law—unfolded within structures that both enabled and constrained us. Some actants in this story were people; others were institutional frameworks and academic norms. While I may take liberties with Greimas, the model fits.

Johanna is a central figure in Finnish feminist legal studies, alongside others like Pirkko K. Koskinen, Anu Pylkkänen, and Liisa Nieminen, each working with different methods and theories. In the 1990s, we were even asked to define 'women's law'—a task that proved

difficult but possible. Feminist legal studies have always been plural and contested. I share Johanna's view that gender studies challenge all of law, not just a subfield.

This chapter traces the motivations, opportunities, and limitations that shaped feminist legal scholarship in Finland.

The Quest: To Understand Law and Gender

Studying Law in a Turbulent Time

Neither Johanna nor I entered law with certainty. I began at the University of Helsinki in 1969, choosing law over social sciences, perhaps swayed by a reference to *Antigone* in an entrance exam text. I came from the small town of Pori, shaped by 1960s cultural radicalism, jazz and leftist ideals. Law seemed to offer a path toward justice—a belief I now find slightly naïve.

Johanna, by contrast, initially pursued natural sciences. She tells of an accidental lab explosion that nudged her toward law—a field less combustible, at least literally. By the time she arrived, I had already graduated.

In the late 1960s and early 1970s, law was still a male-dominated field in Finland. About a third of students were women, but female professors were rare. Some male faculty clearly resented the growing number of women. Until then, I had rarely considered my gender significant—but law school quickly made it so. The atmosphere was conservative, competitive, and coded in ways that left women on the margins. Professors tracked women's exam performance with suspicion, and speaking in seminars as a woman required crossing unspoken boundaries.

I wore jeans and flea-market clothes in a sea of suits and pearls—a quiet protest against an elitist culture. The formalism of law school was stifling. Studying was rote, reading rooms silent, and textbooks largely devoid of theory. Human rights law was absent. Finland had not yet ratified major treaties or joined the Council of Europe. Constitutional debate centered on presidential versus parliamentary power.

Still, stirrings of change were visible. Legal education and institutions were widely seen as outdated—even President Kekkonen said so in a 1970 interview that resonated with my growing disillusionment. Students were politically active. While I avoided party politics, I found space for legal critique in *Demla*, a progressive lawyers' association that fostered interest in legal reform over doctrinal rigidity.

Amidst the conservatism, some voices stood out. Kivivuori argued that jurisprudence was political; Aarnio explored hermeneutics; Anttila attracted crowds to her criminology lectures. I wrote my thesis on family law under Aarnio's supervision—though I later learned that his legal theory circle never included women.

Finding a place in academia was not easy. There were no doctoral programs as we know them now—entry required the patronage of a professor. The university functioned through an archaic master-apprentice model. I dreamed of research, but the path was opaque, political,

and deeply personal. Looking back, I now see this phase as shaped by the structures of the 'traditional Academia', still untouched by later reforms aimed at democratisation.

Sidepath into the Sociology of Law

With no professor stepping forward to guide me into doctoral studies, my academic path took shape unexpectedly when I was hired as a researcher at the Institute of Criminology in early 1974. I was 23. Though led by Inkeri Anttila, the opening came through the Institute's board, chaired by sociologist Klaus Mäkelä. Later, Johanna would also work there, by then renamed the Research Institute of Legal Policy and incorporated into the university.

The Institute, founded in 1964, followed the model of Oslo's Institutes for Criminology and Sociology of Law, established in 1954 and 1960 respectively. Since Helsinki's Faculty of Law declined to host such a unit, it was placed under the Ministry of Justice. Anttila's influential career in criminal law has been well documented (Lahti 1996; Lahti 2016), particularly her collaboration with social scientist Patrik Törnudd in reforming the criminal code and reducing Finland's notably high incarceration rates—then two to three times those of the other Nordic countries (Kostiainen 2023). Their criminological view saw punishment as a societal signal: the offender as a "vicarious sufferer" whose penalty reinforced legal norms for others (Anttila & Törnudd 1970). I found this perspective compelling at the time. Later, however, their legacy complicated efforts to criminalise and sanction forms of violence against women (VAW), though the Institute did provide key data on such violence using court records, police reports, surveys, and hospital data.

Working at the Institute offered freedoms and connections the university lacked: interdisciplinary collaboration, international engagement, and a more egalitarian working culture. Most colleagues were young social scientists. I learned from them, from our well-stocked library, and through active participation in Nordic networks. Anttila and Törnudd represented Finland in the Nordic Research Council for Criminology (NSfK) during the 1970s. My own visits to Oslo's Institute of Sociology of Law brought me into contact with Vilhelm Aubert, Nils Christie, Torstein Eckhoff and Thomas Mathiesen. These exchanges helped me begin to see myself as a sociologist of law—well before the discipline was taught at Finnish universities.

Editorial work became another entry point into academic life. Legal journals in the 1970s were largely male-dominated. However, the associations Demla and OYY launched *Oikeus* in 1972 as a channel for progressive legal thought. In 1974, Klaus Mäkelä became editor-in-chief and invited me to join as associate editor. Other editors included Pentti Arajärvi, Niklas Bruun, and Olli Mäenpää, familiar faces from student days. I later became editor-in-chief and helped *Oikeus* publish some of the first feminist writings in Finnish legal scholarship. Johanna, too, later held the same position. A Nordic counterpart, *Retfærd*, was founded in Denmark in 1976 and also became a key outlet for feminist legal work. Niklas Bruun and I represented Finland on its editorial board for years. Through that collaboration, I improved my Swedish and became comfortable editing in Scandinavian languages. Both journals—aptly named 'Justice'—played pivotal roles in shaping feminist legal discourse in the Nordic countries.

Finding 'Women's Law' and Adopting the 'Quest'

The most transformative result of Nordic contacts was my introduction to what was then called 'women's law' (kvinnerett, kvinderet, kvinnorätt, naisoikeus). I already had a latent feminist interest: my early reports at the Institute noted gendered patterns—for instance, how girls were often institutionalised for having sexual relations with older men. I also explored gender differences in legal processes and began reading Anglo-American literature on 'wife battering' and the need for women's shelters.

This interest deepened when I met Tove Stang Dahl at Oslo's Institute of Criminology. She was a Norwegian representative to the Nordic Council for Criminology, which soon began supporting women's criminology (kvinnekriminologi) as a research priority (Nordisk Samarbeidsråd for Kriminologi 1962–1982: 25–26). Finnish researchers also benefited: Tuija Mäkinen wrote on prostitution, Pirkko Viitanen on rape (Viitanen 1982), Katriina Virtanen on violence against women, and Teuvo Peltoniemi on family violence.

At a Nordic seminar, Dahl presented ideas that shaped her later article on women as victims (Dahl 1980). She argued that Nordic criminology focused on offenders and neglected victims—particularly women—who were portrayed as strong while male offenders were cast as weak. She criticised prevailing Nordic tolerance toward offenders and the treatment of 'wife battering' as a private family issue rather than a crime. She later developed a broader feminist legal vision: to describe, explain, and improve women's legal and social status (Dahl 1985). Her critique of Finnish legal and criminological silence around violence against women was eye-opening. I invited her to speak at the Demla summer seminar and translated her talk, which *Oikeus* published in 1982.

Dahl's vision extended beyond criminal law, and so did mine. I became increasingly interested in gender equality legislation, especially through Danish contacts. Denmark, having joined the EEC in 1973, was already engaging with European anti-discrimination law. Legal challenges brought by Gabrielle Defrenne, particularly the landmark *Defrenne II* case, had made Article 119 of the Treaty of Rome (on equal pay) a foundation for EU secondary legislation on sex discrimination.

Ruth Nielsen's *Kvindearbejdsret* (1979) introduced me to this legal framework. We met at a Nordic research course in Denmark and walked together as she explained anti-discrimination law in Danish. Though I did not grasp all the details, the encounter opened a new world. I began to see that equality was not just about prohibiting overt discrimination, but about addressing indirect, systemic injustice (Nousiainen 2004). I also learned that the concept of equality had evolved in international law, with conventions like UN CERD (1965) and CEDAW (1979) requiring both non-discrimination and positive measures.

By the late 1970s, my legal lens had changed: I now saw gendered injustice across the legal field. I had adopted the *Quest* of women's law, and a new identity was forming—not just as a sociologist of law, but as a feminist legal scholar.

Yet my enthusiasm for the Institute of Legal Policy had begun to fade. Tired of writing short, fragmented reports, I focused on topics loosely tied to 'access to justice'—legal aid, consumer rights, legal advice columns. I came to understand 'access to justice' as a vital

principle of the rule of law, thanks to a key anthology on the topic (Cappelletti & Garth 1978). But the Institute's working conditions did not support focused research. Turning reports into academic work was discouraged, and distributing author's copies of a published article led to reprimands. As a staff representative on the Institute's board, I often clashed with leadership. There was no clear path forward.

Disillusioned, I withdrew briefly into private life: I restored an old house, married, and became a mother.

Still, the academic path called. I maintained ties with the Law Faculty—especially a group of young civil law scholars from the University and the Ministry of Justice. We discussed contract law and welfare-state legal doctrines, and I introduced them to women's law. A chance encounter at a criminology conference with Heikki Ylikangas, newly appointed professor of legal history, became a turning point. His assistant, Jukka Kekkonen, had worked at the Institute. When Jukka left for civil service, Pia Letto-Vanamo, who was writing her thesis in legal history, told me about a temporary opening for an assistantship. She encouraged me to apply and use the time to write my licentiate thesis—one of the prerequisites for doctoral studies.

The 'Quest' in the Two Academies

Changing University, Changing Focus of Work

My only Faculty-funded position at the University of Helsinki was a one-year assistantship in legal history and theory. Since teaching posts were reserved for core subjects and closely guarded, my career—as research assistant, researcher, and professor of women's legal studies—depended entirely on external funding.

During my time at the Research Institute for Legal Policy, Finnish universities underwent major changes. Democratic participation in governance expanded, and external research funding from the Research Council and Nordic/European bodies became central (Husu 2005). The transformation of the Academy of Finland into a funding body (Pohls 2005) created opportunities outside traditional faculty hierarchies—what I call the 'other' Academia. Yet these shifts also aligned with increasing pressure for competitiveness and results.

External applicants needed a university-affiliated host and academic endorsement. Selection emphasised international publications and collaborations, which many Finnish legal scholars found unsuitable for their discipline. My Research Institute background proved useful. Following my brief Faculty post, I secured a scholarship and Research Council funding—years I remember as the most intellectually fulfilling of my life.

My affiliation with the Faculty—'official Academia'—was more fraught. The Faculty's structure, divided into institutes like that for general jurisprudence (history, theory, sociology), did not appeal to me. I admired these fields but resisted traditional supervisory dynamics, where a professor would mentor, examine, and recommend his assistant. With friends, we joked about "academic cloning."

At the Institute, I had identified as a sociologist of law, though my interests were increasingly theoretical. The Faculty had appointed Paavo Uusitalo as assistant professor of sociology of law in 1975, but he remained focused on empiricism. I wanted to explore theoretical approaches, like Giddens' agency-focused sociology (Giddens 1979), which aligned with the linguistic turn also emerging in legal studies.

My licentiate thesis in legal history examined conciliation and court decisions; another thesis for legal theory explored legal practice in the US Civil Rights Movement (Nousiainen 1985). Both addressed access to justice. Around this time, Johanna also joined the Faculty, writing on insolvency—a topic with similarly strong justice implications, especially given Finland's outdated legislation during the 1990s recession.

Among legal history scholars, strong personal and professional ties developed. I shared childcare with Pia Letto-Vanamo and collaborated with Anu Pylkkänen, who was preparing her licentiate thesis. Our discussions evolved into a lasting feminist legal partnership. A network of young women scholars began to address the status of women in academia and women's law.

In the 1980s, my focus shifted from social sciences to philosophy, amid a broader turn toward postmodern thought. Many legal scholars trained under G.H. von Wright rejected this as relativistic. But feminist and postmodern theories, with their emphasis on language and indeterminacy, resonated with my interests. Poststructuralism's binary oppositions helped us interrogate concepts like sex, gender, equality, and difference. A Lacanian circle formed, and we read French feminist theory and Jacques Derrida, whose work influenced Critical Legal Studies. CLS conferences in Britain featured strong gender and sexuality themes.

The sex/gender distinction was widely adopted but also debated in the 1980s. I first met Tuija Pulkkinen while she worked on J.V. Snellman's texts. We discussed Hegel, feminism, and eventually Butler's performative view of gender—a perspective easily understood by legal scholars familiar with speech act theory.

Feminist activism also flourished outside academia. TANE's 1981 research subcommittee brought scholars and politicians together; I succeeded Pirkko K. Koskinen as legal studies representative. The Finnish Association for Women's Studies, Helsinki Women Researchers' Association, Unioni's legal advisory service, and Tukinainen's legal aid initiative for rape survivors were all spaces where I was actively engaged.

From 1990–1998, TANE's subcommittee on violence against women (VAW) focused on law reform. At the time, marital rape was not criminalised, and domestic assault was not prosecuted ex officio. In 1994, we proposed a research program on VAW. Initially rejected as too narrow, the program was finally launched in 1998, enabling key projects including one led by Johanna.

Interest in human rights also grew during the 1980s, mostly within the 'other Academia.' The first lecture series at the Law Faculty (1985) was initiated by Lauri Hannikainen. I contributed a lecture on CEDAW, later published (Helminen & Lång 1985). Johanna's 1989 refugee law study (Niemi-Kiesiläinen 1989) marked further engagement. The 1995 constitutional reform, adding fundamental rights, deepened this shift.

Women doctoral students from various fields launched an extracurricular women's law course. I continued publishing in this area, delaying my dissertation. As I lacked subject affiliation, I doubted I would get a Faculty post, but aimed to complete my thesis in legal science.

I completed my doctoral thesis in 1992 on court and procedural modernisation, integrating theoretical, historical, and sociological perspectives. I also explored how seemingly neutral evidentiary rules had gendered effects.

In Finnish universities, supervisors propose pre-examiners. Though Paavo Uusitalo had supported my funding applications, he rejected my thesis and demanded a full rewrite. Lacking time and funding, I sought alternative routes. I shared the manuscript with Lars D. Eriksson and Thomas Wilhelmsson, who supported it. Since the Faculty had never assigned me a supervisor, Wilhelmsson agreed to be appointed and then requested pre-examiners.

This unusual process—triggering resentment—led to three pre-examiners instead of the usual two. Fortunately, Uusitalo and Klami (legal theory) were excluded. The public defense took place in May 1993, with two opponents (P.O. Träskman and Kaarlo Tuori), who supported a respectable grade.

Feeling alienated from the 'official Academia,' I returned to the Research Institute. Hoping for broader recognition, I applied for the European Award for Legal Theory. Although shortlisted, I did not win. Decades later, I learned Aulis Aarnio—former IVR president—had dismissed my work as 'postmodern rubbish'. My later roles as chair of Sofy and IVR board member may have reinforced his opposition.

While recounting these personal dynamics may seem unnecessary, they illustrate how early professional resistance often re-emerged as opposition to women's studies more broadly—resistance I came to symbolise for some.

Mandate for the Quest, in Projected University Life

The most viable path forward was to seek external funding for a feminist legal studies research group—an area in which I had considerable experience. While the Research Council rarely awarded project funding to non-professors, the University of Helsinki offered internal grants with less stringent criteria. Many women in our Faculty group interested in women's law had not yet completed their theses but were eager to join. I applied for funding with Thomas Wilhelmsson as co-applicant. The grant was approved, and Thomas entrusted the work entirely to us.

Our project focused on family law in context. We explored themes typically overlooked in traditional family law: intersections with labour law and social security, diverse family forms (same-sex, single-parent), the state's role in promoting specific family models, internal power dynamics, custody disputes, and legal perspectives on pregnancy. From the outset, we encountered a recurring challenge in feminist legal research: our focus often overlapped with—but diverged from—the established domains of traditional legal scholars. As a result,

our work could be perceived as a tacit critique of prevailing jurisprudence. Similar tensions later emerged between feminist and mainstream scholars in criminal law.

To mitigate conflict, I refrained from supervising project members whose theses were funded by the project, even though I was principal investigator. Young researchers were understandably reluctant to distance themselves from faculty gatekeepers in the core legal subjects, which remained the primary route to academic careers.

Another consideration was the relationship between feminist legal studies and the broader women's studies movement. As a board member of Kristiina-instituutti, the University's women's studies centre, I was engaged in ongoing debates about institutional structures. I believed feminist legal studies should be integrated into legal education at the Faculty, not segregated as a separate domain—though cross-disciplinary engagement with women's studies remained important.

I continued applying for academic positions. I was encouraged to apply for an assistant professorship in legal theory and history at the University of Lapland, and a professorship in legal theory in Stockholm. In Lapland, Aulis Aarnio ensured that his long-time doctoral student was selected. In Stockholm, he evaluated my Finnish-language publications and deemed me incompetent. Fortunately, in 1997, the University of Turku appointed me as assistant professor of comparative law and legal theory. Aarnio was not involved in the evaluation. At the time, assistant and full professors had equivalent qualifications, and the title distinction was abolished the following year—making me, unexpectedly, a full professor.

In 1998, the Ministry of Education launched a competition for three fixed-term professorships in women's studies, open to all Finnish universities. The feminist scholars at our Faculty submitted an application, and the Law Faculty agreed to support it. One of the professorships was awarded to our Faculty. I applied and was appointed. This allowed me to act as principal investigator for new projects—an increasingly vital role, especially after the Research Council stopped funding doctoral candidates and the university's graduate school system was still underdeveloped. Leading projects brought no extra pay, no time for one's own research, and did not reduce other duties—but it was essential for sustaining feminist legal research and doctoral training.

With this appointment, I had a fixed-term mandate for the Quest. The Ministry expected faculties to make the professorships permanent, but that never materialised. A second fixed-term position in women's law was funded through the University's pool for time-limited professorships. These could be awarded based on personal merit or specific fields—though field-specific appointments required the Faculty to guarantee permanent funding, which the Law Faculty declined. However, they agreed to host the professorship if I succeeded in a merit-based application. This marked the beginning of my second term as professor of women's law.

Later, I successfully applied for the Minna Canth Academy Professorship from the Finnish Research Council. Technically, it should have been based at the University of Turku, where I held a permanent position. I negotiated with both universities. Turku couldn't commit to a permanent chair in feminist legal studies but offered flexibility in teaching. The deans at Helsinki, by contrast, pledged to pursue a permanent gender studies position in law if the

Academy professorship were based there. Our interdisciplinary group in Helsinki, including legal and political scientists, was strong, so I chose to stay—though I remained cautious. Law faculties generally created positions only to cover core teaching needs. Despite my efforts, I was unable to make anti-discrimination and equality law a mandatory course—even as EU and domestic legislation in these areas expanded rapidly.

My time as a fixed-term professor in Helsinki felt like a "projected life"—driven by hope rather than certainty that feminist legal studies would secure a permanent foothold. I maintained strong ties with the congenial environment at Turku, teaching a few courses there each year. Working in a research group allowed us to share insights and combine strengths. I missed the solitude of reading and writing, but found joy in collective intellectual work. What we sought was a "room of our own," where discussion and reflection were possible. Like Virginia Woolf nearly a century earlier, we knew that women in academia needed both money and space to write.

External funding allowed us to build such a space. Project members varied across the 1990s and 2000s, and new themes constantly emerged. I was relieved when Johanna began leading projects on violence against women, which required deep expertise in criminal law. At times, I struggled with impostor syndrome—common in interdisciplinary work—but collaboration carried us forward.

International and Interdisciplinary Openings, Growing Antagonism

In the 1990s, international law and politics became important allies in the feminist legal studies quest. Contrary to the national narrative, progress in Finnish gender equality was often driven by international commitments rather than domestic initiatives (Kantola et al. 2012, Nousiainen 2005). In 1991, Hilary Charlesworth, Christine Chinkin, and Shelley Wright famously argued that international law failed to address women's concerns (Charlesworth, Chinkin & Wright 1991). By 2000, Charlesworth and Chinkin reaffirmed many of their earlier points, but international law had begun to change (Charlesworth & Chinkin 2000).

Traditionally, human rights law held only states accountable. The rise of **horizontal human rights law** required states to prevent private individuals from violating human rights. This shift transformed the legal understanding of violence against women (VAW), now seen as both discrimination and a human rights violation. Another key development was the recognition of **positive duties** in international law (Fredman 2008). European Union law also played a pivotal role; since Finland's EU accession, many changes in national equality law can be traced back to European legal frameworks. These developments allowed feminist legal reforms to be framed as legal imperatives interpretable through legal doctrine—no longer just political demands or external critiques.

Research funding enabled us to build international networks, from Australia to Europe. By the 1990s, Anu Pylkkänen and I recognised that publishing in Finnish was no longer viable—academic survival demanded publishing in English. We organised exchanges, hosted visiting scholars in Helsinki, and made use of Finnish Institutes in London and Berlin to host

conferences with British and German colleagues. Our closest allies were Nordic feminist legal scholars. Anu co-authored a book on Nordic welfare politics and marital law (Melby et al 2006), and through the *Gränsöverskridande kvinnorätt* network, we found a vital support system for Nordic scholars often working in isolation. This network produced several influential books (Nousiainen et al 2001, Svensson et al 2004, Hellum et al 2023), with Johanna playing an active role.

Umeå University in Sweden used a private donation to support women's law. After a departmental visit to Helsinki, Anu and I were invited as "network professors." Johanna held a professorship at Umeå in the early 2000s, and Anu was appointed there in 2013, shortly before her passing.

Interdisciplinarity was essential to our work. In the 2000s, I collaborated extensively with political scientists Anne Holli and Johanna Kantola especially on EU gender law and politics. This caused discomfort at the Law Faculty, where some colleagues viewed these interdisciplinary projects—often involving "non-lawyers"—with suspicion. Even though feminist projects benefited the Faculty financially, some colleagues questioned the legitimacy of our funding and rejected post-structuralist approaches. The critique of feminist work became entangled with broader resistance to structural change and interdisciplinary methods in academia.

Hostility towards feminist legal studies intensified. I was frequently the target of what would now be recognised as hate speech. During the landline era, I avoided answering the home phone—my partner was better equipped to handle hostile calls from men's rights activists. The rise of social media amplified the vitriol, though being a "conscientious objector" to social media shielded me from the worst of it. Nevertheless, feminist scholars must engage with the media, though our efforts to raise awareness on issues like custody-related abuse, pay discrimination, and trafficking often went unnoticed. Ironically, many of these issues only gained media attention decades later.

Conversely, internal debates within women's studies attracted disproportionate media coverage. For example, rare instances of violence by women against men or claims of male discrimination received substantial attention. Positive measures to promote equality were often reframed as "positive discrimination," and women who benefited from them portrayed as undeserving—an issue feminist scholars flagged already in the 1990s (Bacchi 1996).

In the 2000s, while "gender" had not yet become a primary target of the political right and the "manosphere," the concept itself came under fire. The turn to qualitative methods and postmodern thought was attacked in both academic journals and the media by traditionalist social and natural scientists (Niemelä & Tammisalo 2006), with such criticism often veering into broader attacks on feminism and gender studies (Kotro & Sepponen 2007).

The New Academia

The new millennium brought more precarious working conditions to academia: rising student numbers, fierce competition for external funding, and mounting pressure to publish internationally. In the 2000s, various Finnish ministries pushed for university reform, citing

international bodies like the OECD and EU. The Confederation of Finnish Industries lobbied for universities to prioritise economic relevance (Louekari 2019). While fixed-term contracts had always affected junior academics, temporary positions became increasingly common even among professors.

In 2004, the **Universities Act** introduced a "third task" for universities: promoting interaction with society and regional development. Many academics saw this as a dilution of the university's core mission. However, for feminist legal scholars, this societal engagement was essential. Finland's "velvet triangle" of gender equality actors included state institutions (TANE, the Equality Unit at the Ministry of Social Affairs and Health, the Ombudsman for Gender Equality, and the Women MPs' Network), women's organisations, and gender equality researchers (Holli 2006). I worked closely with the Ministries of Social Affairs and Foreign Affairs—contributing to legislative drafting, organising expert seminars, and participating in diplomatic efforts centered on gender equality.

The 2005 reform of the **state pay system** included universities. Professors opposed replacing the familiar "pay class" system with one based on concrete job descriptions, viewing it as a New Public Management incursion. But for those concerned with pay equity, task-based systems allowed for the comparison necessary to address discrimination. Anja Nummijärvi, who had just defended her thesis on pay discrimination (Nummijärvi 2004), noted that the new system could advance equal pay. Around this time, I joined the Professors' Union. On a flight with Aila Lauha, a Union board member, she emphasised the need to monitor the gendered impacts of the pay reform. I agreed—and soon found myself elected to the Helsinki Professors' Association board. The logical next step was to push the Union to track and address pay disparities.

Discipline-based research evaluations by the Finnish Research Council began in the 1980s. In 1990, a report on legal sciences described the field as insular, overly "dogmatic," and disconnected from other disciplines and legal practice. It recommended more international and interdisciplinary engagement—prompting widespread outrage in the legal academy, but little change (Valovirta 2001).

Anticipating that evaluations would influence university funding, Helsinki University undertook its own internal assessment. The Scientific Council, of which I was a member, worked hard to develop fair criteria across disciplines. But differing practices—individual vs. group work, national vs. international publishing, and varied authorship norms—made consensus difficult. The process angered many in the Law Faculty, and as a Council member, I bore some of the brunt.

Later national assessments emphasised **international co-publication** and **impact factors**, signaling a shift in academic priorities (SA Tieteen tila). Feminist legal research at our Faculty received high marks in both legal and women's studies categories—but this recognition did not translate into greater institutional support.

Johanna Kantola (2005) showed that Political Science offered few courses in women's studies. Feminist scholars operated mostly in what we called the "other Academia"—temporary, project-based roles without stable footing. Thematic gender courses failed to reveal the structural gendering of society. With Karoliina Ahtela, I conducted a survey to

understand why women left the Law Faculty after earning doctorates. Many cited inadequate supervision and a lack of integration into Faculty life. Our findings were presented internally but never published—and were lost when later research evaluators asked for them.

The **2009 Universities Act** marked a significant shift: universities were transformed from state institutions into independent legal entities, and their staff became employees rather than civil servants. The old tripartite governance model—shared among professors, junior staff, and students—was replaced by a managerial structure. The **2010 university reform** emphasised financial autonomy, competition for funding, international collaboration, and strategic innovation (Yliopistouudistuksen vaikutusten arviointi 2016).

End of Story?

No preparations were made for a permanent position in women's studies in law as my term as Academy Professor came to an end. At the time, the Universities Act (2009) was about to enter into force (in 2010). Under the new legislation, I would no longer be entitled to a leave of absence from my permanent position in Turku. If a chair in women's studies were to be filled through the regular procedure, I risked falling between two chairs. There was considerable reluctance in the Faculty—not only toward establishing a permanent chair in gender studies in law, but also toward the idea of appointing me to such a position in particular.

An appointment by invitation requires that the candidate be highly qualified and demonstrably eligible for the professorship. Having competed for a fixed-term professorship three times, I believed that an invitation might be justified. Ultimately, however, the decision rested with the Faculty.

What I was not prepared for was the use of non-academic means to oppose the appointment. Certain colleagues from the Faculty sent statements to the yellow press, claiming that a blatant scheme was underway to invite an unqualified person to a chair in feminist legal studies. I had no time for such outlets and first learned of the accusations when a journalist from *Helsingin Sanomat*, Finland's largest daily, called to request a comment. I was on a tram, on my way to a parliamentary hearing, and said I could not respond at that moment. The next day, *HS* published a story about the 'skirmish' that had erupted at the Law Faculty.

In response, the Faculty offered to fund a fixed-term professorship instead of a permanent one. After all, I would soon retire. But that was not the point. The aim of the *Quest* was to ensure that gender studies in law would continue. The Faculty had every right not to establish a chair in gender studies if it so chose, and I was prepared to accept such a decision. But the media campaign was unacceptable. I told the Faculty to proceed with a temporary professorship through the regular appointment process and decided to return to Turku at the end of my Academy Professor term. My colleagues in Turku received the news with collegiality. It was a relief to rejoin the 'official' Academia there. Our new Research Council project on intersectional discrimination was to start in Helsinki. I and the younger legal scholars joined the Turku Law Faculty, while political scientists remained in Helsinki. Anu

Pylkkänen had a project in Helsinki. She tried to transfer it to Turku, but the Helsinki Faculty did not allow it.

Was that the end of the story? Of course not—the *Quest* did not end. Other scholars in the field, such as Johanna, would carry the work forward. What ended was the pursuit of a permanent 'room of one's own' for gender studies in law. While many scholars have earned strong academic qualifications in the field, few have secured positions in the 'official' Academia. Yet today, gender studies in law are more necessary than ever, as they engage with the ongoing clash between liberal and conservative values.

Looking back at the key actants in this narrative, it is clear that feminist legal studies met strong resistance within the traditional Academy. The *Quest* survived by aligning with the 'other Academia' and by finding allies both within and outside legal scholarship. External funding made our presence at the university possible, and academic freedom enabled us to pursue theoretical development and expand the range of issues under study. Scholars in gender studies in law demonstrated the qualifications increasingly demanded by the new, competitive university system: international cooperation, the ability to secure research funding, and expertise in both societal and academic domains. These were our survival skills—and I believe they will continue to be essential for the future of gender studies in law.

References

Bibliography

Anttila, I. and Törnudd, P. (1970) *Kriminologia*. Porvoo: WSOY.

Bacchi, C. (1996) *The Politics of Affirmative Action: 'Women', Equality and Category Politics*. London: Sage.

Bourdieu, P. (1984) *Homo Academicus*. Paris: Éditions de Minuit.

Broms, B. (1980s) *Yhdistyneet kansakunnat*. Helsinki: Suomalainen lakimiesyhdistys.

Cappelletti, M. and Garth, B. (1978) *Access to Justice Volume I World Survey*. Alphen aan den Rijn: Sijthoff and Noordhof.

Dahl, T.S., Graver, K., Hellum, A. and Robberstad, A. (1975) *Juss og Juss*. Oslo: Pax Förlag.

Dahl, T.S. (1980) 'Kvinner som ofre', *Nordisk Tidskrift for kriminalvidenskab*, 58(1).

Dahl, T.S. (ed.) (1985) *Kvinnerett I*. Oslo: Universitetsforlaget.

Charlesworth, H., Chinkin, C. and Wright, S. (1991) 'Feminist Approaches to International Law', *American Journal of International Law*, 85(4).

Charlesworth, H. and Chinkin, C. (2000) *The Boundaries of International Law*. Manchester: Manchester University Press.

Eskola, K. (1968) *Miesten maailman nurjat lait*. Helsinki: Tammi.

Fredman, S. (2008) *Human Rights Transformed: Positive Rights and Positive Duties*. Oxford: Oxford University Press.

Giddens, A. (1979) *Central Problems in Social Theory: Action, Structure and Contradiction in Social Analysis*. London: Macmillan.

Greimas, A.J. (1983) *Structural Semantics: An Attempt at a Method*. Lincoln: University of Nebraska Press.

Helminen, M. and Lång, K.J. (eds) (1987) *Kansainväliset ihmisoikeudet*. Helsinki: Lakimiesliiton kustannus.

Holli, A.M. (2006) 'Strong together? A comparative study of the impact of women's movement on policy-making in Finland', In: Hellsten, S., Holli, A.M. and Daskalova, K. (eds.) *Women's Citizenship and Political Rights*. Basingstoke: Palgrave.

Hallberg, P., Pohjalainen, T., Letto-Vanamo, P., Peltola, M. and Kivinen, J. (2021) *Yliopistoautonomia*. Opetus- ja kulttuuriministeriön julkaisuja 2021:27.

Hellum, A., Ikdahl, I., Strand, V. and Svensson, E.-M. (eds.) (2023) *Nordic Equality and Anti-Discrimination Laws in the Throes of Change*. Abingdon: Routledge.

Husu, L. (2005) 'Suomen Akatemia ja naistutkimuksen nousu', In: Pohls, M. (ed.) *Suomen Akatemian historia II, 1970–1988: Yhteiskunta ja tutkimus*. Helsinki: Suomalaisen Kirjallisuuden Seura, 458–459.

Jackson, B. (1985) *Making Sense in Law: Linguistic, Psychological and Semiotic Perspectives*. Cardiff: Deborah Charles Publications.

Jameson, F. (1981) *The Political Unconscious: Narrative as a Socially Symbolic Act*. Ithaca: Cornell University Press.

Julkunen, R. (2010) *Sukupuolen järjestykset ja tasa-arvon paradoksit*. Tampere: Vastapaino.

Kalliomaa-Puha, L., Kurki-Suonio, K., Nieminen, L., Nousiainen, K., Nummijärvi, A., Petrell, K., Pohjonen, S., Pylkkänen, A. and Turunen, R. (1994) 'Avoimia vastauksia naisoikeuden tutkimuksesta', *Oikeus*, 164–166.

Kantola, J. (2005) *Mykät, kuurot ja kadotetut: Sukupuolten välinen tasa-arvo Helsingin yliopiston valtio-opin laitoksella*. Helsinki: Helsingin yliopisto, yleisen valtio-opin laitos.

Kantola, J., Nousiainen, K. and Saari, M. (2012) 'Tasa-arvon lukemisesta toisin', In: Kantola, J. & Nousiainen, K. (eds) *Tasa-arvo toisin nähtynä*. Helsinki: Gaudeamus.

Kekkonen, U. (1970) 'Kansanvallasta ja sen toteutumisesta lainkäytössä', *Lakimies* (Interview).

Koskinen, P.K. (1983) *Naisoikeutta: naisnäkökulma työoikeuteen*. Helsinki: Lakimiesliiton kustannus.

Kostiainen, A. (1923) *Rationaalisuuden vallankumous: Oikeus, asiantuntijuus ja politiikka rikosoikeuskomitean (1972–1977) työskentelyprosessissa*. Helsinki: Suomalainen lakimiesyhdistys.

Kotro, A. and Sepponen, H. (eds) (2007) *Mies vailla tasa-arvoa (Man without equality)*. Helsinki: Tammi.

Kuusela, H. (2024) *Syytös*. Tampere: Vastapaino.

Lahti, R. (ed.) (1996) *Kohti rationaalista ja humaania kriminaalipolitiikkaa*. Helsinki: Helsingin yliopisto, rikos- ja prosessioikeuden sekä oikeuden yleistieteiden laitos.

Lahti, R. (2016) *Inkeri Anttila (1916–2013): Rikosoikeuden uudistajan ammatillinen ura ja vaikutus.* Helsinki: Forum Iuris.

Lejeune, P. (1975) *Le Pacte Autobiographique*. Paris: Seuil.

Lempiäinen, K. and Rantalaiho, L. (2023) *Naistutkimuksen alkuja: muistikuvia akateemiselta kentältä*. Tampere: Vastapaino.

Louekari, S. (2019) 'Maailma ja Suomi tarvitsevat tiedettä', In: Kallioinen, M. and Louekari, S. *Tiedossa tulevaisuus: Professorit uudella vuosituhannella*. Helsinki: Professoriliitto.

Melby, K., Pylkkänen, A., Rosenbeck, B. and Carlsson Wetterberg, C. (2006) *Inte ett ord av kärlek: Äktenskap och politik i Norden ca 1850–1930*. Göteborg: Makadam.

Nielsen, R. (1979) *Kvindearbejdsret*. København: Juristforbundets Forlag.

Niemelä, J. and Tammisalo, O. (2006) *Keisarinnan uudet (v)aatteet*. Helsinki: Terra Cognita.

Niemi, J. (2015) 'Onko "oikeus ja sukupuoli" oikeudenala?', *Lakimies* 113(7–8).

Niemi, J. and Nousiainen, K. (2021) 'Prosessioikeuden marginaaleista', In: Frände, D., Koulu, R., Lindfors, H. and Vuorenpää, M. (eds) *Sata vuotta prosessioikeutta*. Helsinki: Suomalainen lakimiesyhdistys.

Niemi-Kiesiläinen, J. (1989) *Pakolaisoikeus: Oikeuden rajat*. Helsinki: Helsingin yliopiston julkisoikeuden laitoksen julkaisuja.

Nieminen, L. (1990) *Perusoikeuksien emansipatoriset mahdollisuudet? Valtiosääntöoikeudellinen tutkimus legaalistrategioiden rajoista*. Helsinki: Lakimiesliiton kustannus.

Nordisk Samarbeidsråd for Kriminologi (1982) *Halvor Kongshavn: Nordisk Samarbeidsråd for Kriminologi 1962–1982*. Available at: https://www.nsfk.org/wp-content/uploads/sites/10/2020/06/Nordisk-Samarbeidsrad-for-Kriminologi-1962-1982.pdf [Accessed 3 March 2025].

Nousiainen, K. (1985) *Lakimiehet ja kansalaisliikkeet: Tutkimus yhdysvaltalaisen juristikunnan vaihtoehtoisista ammattikäytännöistä*. Helsinki: Oikeuspoliittinen tutkimuslaitos.

Nousiainen, K., Gunnarsson, Å., Niemi-Kiesiläinen, J. and Lundström, K. (eds.) (2001) *Responsible Selves*. London: Routledge.

Nousiainen, K. (2004) 'On the Limits of the Concept of Equality: Arguments for a Dynamic Reading', In: Svensson, E.-M. (ed.) *Nordic Equality at a Crossroads: Feminist Legal Studies Coping with Difference*. London: Routledge.

Nousiainen, K. (2005) 'Tasa-arvon monet kasvot: kansainvälisiä vaikutuksia Suomen tasa-arvo-oikeudessa', *Lakimies* 103(7–8).

Pohls, M. (ed.) (2005) *Suomen Akatemian historia II, 1970–1988: Yhteiskunta ja tutkimus*. Helsinki: Suomalaisen Kirjallisuuden Seura.

Nummijärvi, A. (2004) *Palkkasyrjintä: Oikeudellinen tutkimus samapalkkaisuuslainsäädännön sisällöstä ja toimivuudesta*. Helsinki: Edita.

Pylkkänen, A. (1990) *Puoli vuodetta, lukot ja avaimet: nainen ja maatalous oikeuskäytännön valossa 1660–1710*. Helsinki: Lakimiesliiton kustannus.

Suomen Akatemia (2016) *Tieteen tila*. Available at: https://www.aka.fi/globalassets/2-suomen-akatemian-toiminta/2-tietoaineistot/aka_tieteen_tila_yksi.pdf [Accessed 4 August 2025].

Svensson, E.-M., Pylkkänen, A. and Niemi-Kiesiläinen, J. (eds) (2004) *Nordic Equality at a Crossroads: Feminist Legal Studies Coping with Difference*. London: Routledge.

Valovirta, V. (2001) 'Tieteenalojen arviointi Suomessa', *Suomen Akatemian julkaisuja*, 6/01, 23–26.

Viitanen, P. (1982) *Raiskaus (Rape)*. Porvoo: WSOY.

Yliopistouudistuksen vaikutusten arviointi (2016) *Loppuraportti*. Helsinki: Oikeus- ja kulttuuriministeriö, Owal Group.

6 Breaking the Legal Glass Ceiling in 'Gender Equal' Finland

Daniela Alaattinoğlu

> For that visit to Oxbridge and the luncheon and the dinner had started a swarm of questions. Why did men drink wine and women water? Why was one sex so prosperous and the other so poor? What effect has poverty on fiction?
>
> Virginia Woolf, *A Room of One's Own*

Abstract

Who are the senior producers of legal knowledge and senior legal practitioners in Finland? Inspired by recent international scholarship on the people behind the law and glass ceilings in academia and the legal profession, this chapter investigates the gender balances in three high-level sites of legal knowledge production and practice: i) the Finnish Supreme Courts, ii) the professors working at Finnish law schools, and iii) the partners of major law firms in Finland. In the Finnish context, the text continues the discussion initiated by Johanna Niemi and Daniela Alaattinoğlu on the gendered legacy of Finnish law and its implications for today's Finnish legal scholarship and education, posing the question of why discussions on gender and representation—while women increasingly enter legal professions—are still underdeveloped and contested in a country which claims to already be 'gender equal'.

Introduction: Does Representation Matter in Law?

Johanna Niemi has done extraordinary things in her legal and academic career. She has, for example, been one of the trailblazers within Finnish research on women and law, later gender and law,[1] establishing the legal discipline as one to be reckoned with in an academic environment which has not always looked favourably upon the field (see Niemi 2015). She can also be described to have shattered (parts of) the glass ceiling—that seemingly invisible, in this case gendered, barrier to senior roles—within the legal profession in more ways than one, most recently as the Dean of the oldest and largest Finnish law school.[2] While Johanna's own scholarship has primarily focused on other questions than the glass ceiling and gender representation, this chapter focuses on these themes in the Finnish legal context. I have made this focal choice since I would like to, from a slightly different angle, address phenomena which Johanna's scholarship and teaching have taken issue with, particularly the often-assumed neutrality—particularly gender neutrality—of the law and its creators and thinkers, as well as the myth of gender equality as an already achieved state in Finland (see, for example, Niemi 2017; Niemi & Kainulainen 2017; Niemi 2013; Niemi-Kiesiläinen 2004).

Law, like much academic writing in general, has traditionally not paid much attention to the producers of knowledge within the discipline, since their positions, experiences, ethnicity,

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1 In this text, 'gender' is used both to refer to both 'sex' and 'gender', since both are inherently interdependent and socially constructed, rather than one being simply 'biological' and the other 'social'.

2 Senior leadership roles (such as Deans or Rectors) in Finnish academia are typically dominated by men —this said, Johanna Niemi is not the first woman to be the Dean of the Faculty of Law in Helsinki.

gender, race or class are considered unimportant and thus often remain hidden from the reader. For example, utilising the 'god trick' (Haraway 1988)—positioning the author of the text outside of it, as the objective, non-situated, omniscient observer—is a common practice in both legal and scholarly writing. Furthermore, much owing to the legal objectivity ideal and the aim of treating people equally before the law (see Alaattinoğlu & Niemi 2022: 313; Bladini 2013), law strives to, and is often assumed to be, impartial and neutral—assumingly requiring the same from its authors. Yet, the producers of legal knowledge and the actors behind legal practice, with their experiences and situated knowledges, are always partial in the sense that their perspectives are, by default, situated and incomplete (see Haraway 1988).

Drawing on a small, albeit representative, dataset, this text is an attempt to (re)start a conversation about gender parity and representation in senior legal professions in Finland. I am guided by the question of what the gender balance is in the senior roles of the Finnish Supreme Courts, Finnish law schools and the largest Finnish law firms. Raising this question, I am particularly inspired by recent international scholarship and reports on gender parity (and lack of such) and representation within academia (see, e.g. Flynn et al 2019; LaBerge et al 2024; Dixon & Versteeg 2023; NordForsk 2024; EIGE 2022), efforts to address gender parity in courts (see Ashraph et al 2024; Skaar et al 2022) as well as acknowledging the importance of 'counting', or collecting quantitative data, as one strategy (yet not claiming that it should be the *only* one) when it comes to achieving gender equality (e.g. UN Women 2024; Galán-Muros et al 2023). Asking how gender equality is realised in terms of representation in senior legal roles in Finland, the chapter seeks to continue the discussion started by Johanna and myself on the simultaneous gender-blindness and male-dominated authorship in Finnish criminal law syllabi (Alaattinoğlu & Niemi 2019; 2020).

Across all senior legal roles examined in this paper, representation and gender balance are sporadically addressed at the organisational level. Except for more abstract commitments to gender equality, general policy documents and guidelines such as plans for the promotion of inclusion and equality (e.g. in higher education institutions and courts), the legal institutions and law firms investigated do not utilise concrete measures to ensure gender equal representation, such as gender quotas (nor are they legally required to do so).[3] Representation and gender balances specifically within the Finnish legal profession are rather under-discussed topics—while gender parity has more systematically been addressed within political decision-making in Finland (see e.g. Holli 2011).

At the outset, it should be recognised that the methodological approach used in this small-scale study is not without problems. One issue is its limitations, the first being the quite rough and definitely limited understanding of gender equality which appears through quantitative analysis and by only investigating the top layers of a few legal fields. Furthermore, with the exception of the Finnish Supreme Court, which uses the gendered pronouns 'Mr' and 'Ms' in its list of Justices on the English version of its website,[4] I have deducted the gender of the individuals who have been counted based on their first names. This method of deduction, relying on gender assumptions, is inherently flawed, since it provides little insight about the

[3] The actors investigated in this chapter are not directly affected by the gender parity requirements in, for example, the Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures or the Finnish gender quotas in public institutions according to Laki naisten ja miesten välisestä tasa-arvosta [Act on the Equality between Women and Men] 609/1986, Section 4 a.

[4] The choice of gendered titles is rather peculiar, particularly since it would have been more correct in English to use the formally gender-neutral title 'Dr' for several of the justices, who have completed a doctoral degree. In modern Finnish, gendered titles are not commonly used.

gender identity of the individuals who are being counted, given that they are not personally or directly asked or heard (and, as a result, also possibly misgendered). Furthermore, the approach used is also binary, since it categorises individuals either as men or women, offering no room to consider that some individuals who are counted may identify outside of the gender binary. Other problems, which can be raised both with regards to the conceptual and methodological basis of this paper, is that it leaves little room for intersectional approaches, that it does not take into consideration other forms of societal power imbalances than gendered ones, and that it risks treating gender as a uniform category, detached from context. These are all serious concerns which merit due consideration, and which should be addressed in future research. Such research should ideally access data on self-identification of the relevant actors, and could, in turn, utilise a combination of quantitative and qualitative methods, including larger, more comprehensive datasets on representation in senior legal roles.

Despite its inherent imperfection, I have chosen the limited, quantitative methodological approach for this paper, since I consider this text an 'early attempt' at discussing the gender balance in senior legal roles in Finland, serving as a conversation starter, which should be followed by other, more sophisticated, contributions. A driving aim of the research is to discover, render visible and discuss possible glass ceilings within the legal profession. As such, I am convinced that representation matters and should be used as a tool to promote gender equality. A diversity of perspectives and experiences from different societal groups is necessary in knowledge production (see Harding 2016). This is especially true in legal knowledge production, since law not only claims to possess the tools to understand the world, but also to normatively deduce what is *legally right* or even *just* in it.

The chapter advances in four sections. The following three sections discusses the gender balances among, firstly, the justices on the Finnish Supreme Courts, secondly, the professors in Finnish law schools, and finally, the partners in major law firms in Finland. The concluding discussion analyses the empirical findings of the article to address whether there is a gendered glass ceiling within the legal profession and among legal knowledge producers in Finland, a country which claims to be a leader in the field of gender equality.

The Justices on the Finnish Supreme Courts

The Finnish legal system has two supreme courts, the Supreme Court and the Supreme Administrative Court. Both enjoy the legal and cultural status as prime interpreters of Finnish law, particularly regarding 'difficult legal questions'. While judicial review does not have a strong tradition in Finnish legal culture, the case law of the supreme courts is considered a source of high normative standing and is actively quoted in Finnish legal scholarship and textbooks for law students.

Courts in Finland are obliged to have an equality plan, but not an action plan for equality (The Finnish National Courts Administration 2024)—meaning that commitments to gender equality can stay on a more general and abstract level. The gender balance of the Finnish Supreme Court at the end of August 2024, as per the official websites of the Court, is 68,4 % (n=13) men and 31,6 % (n=6) women. At the moment of investigation, the President of the Court was a man.

The Finnish Administrative Supreme Courts also displayed a similar imbalance in August 2024, with 65,2 % (n=15) men and 34,8 % (n=8) women. Much like the first Supreme Court, the Finnish Administrative Supreme Court also had a male President. Since there is a greater

gender imbalance than the generally accepted 40/60 (e.g. used in Finnish gender equality legislation), it can be concluded that men are overrepresented and women underrepresented among Finnish Supreme Court justices.

Contrastingly, the Finnish National Courts Administration (2024) reported that in 2023, 62 % of all judges in Finland were women and 38 % men—making the judicial profession clearly dominated by women.[5] Yet, there appears to be a glass ceiling in place in the judicial profession, seen on the Supreme Court bench and also demonstrated by a majority of the presidents of national courts (first instance, second instance and supreme courts) being men (69 % in 2023). Moreover, at the time of research (August 2024), looking particularly at the general courts (excluding, most importantly, administrative courts), it is notable that the presidents of both the Supreme Court and the national Courts of Appeal were all men.

The Finnish National Courts Administration also recognised that when the presidential positions at courts were opened for applications in 2023, a majority (81 %) of the applicants were men (The Finnish National Courts Administration 2024). While this statement is not further analysed by the organisation, it indicates that few(er) women apply for higher roles within the judicial profession. As such, it implies that the gendered glass ceiling is not just created in recruitment situations, but probably also a result of more structural and broader societal inequalities (on this phenomenon in general, see e.g. Tabassum and Nayak 2021).

Professors at Finnish Law Schools

Coming to the next professional sphere investigated in this chapter, I am looking at professors as the academic leaders of the research and teaching at Finnish law faculties or departments. Law professors as senior or leading figures within legal academia play a particular role as legal knowledge producers, not merely through leading research projects and authoring texts directed at other legal academics and legal practitioners, but also as the writers of law textbooks used in legal education. Finnish higher education institutions are legally obliged to have gender equality plans with actions to improve gender equality and to actively monitor the implementation of such plans and actions (*Laki naisten ja miesten välisestä tasa-arvosta* [Act on the Equality between Women and Men], Section 5 a). Yet, there are no gender quotas in place in these institutions to ensure the representation of women also in senior roles in academia.

Within the category 'professor', I have not only included current full professors, but also research professors or Academy professors (funded by the Research Council of Finland), professors of practice and tenure-track professors. I have excluded emeritus/emerita professors, lecturers, postdoctoral researchers, doctoral researchers, research assistants, visiting staff and administrative staff. I have relied on the information provided on the official websites of the University of Helsinki, the University of Turku, the University of Eastern Finland, the University of Lapland and Åbo Akademi University in August 2024. I have limited the analysis to the law programmes of these universities, since they can award their graduates the title 'Master of Laws', which is normally the university degree required to act as a lawyer or within many positions within the legal profession in Finland. It is possible that some information on the university websites was not up-to-date at the time of research—

[5] The authority also recognises that some individuals identify outside of the male-female binary, but that statistics are only kept in a binary form (The Finnish National Courts Administration 2024). I here note that it could be a good idea for Finnish courts to rely on self-recognition in such statistical record keeping, and also allow for non-binary gender recognition.

making the study susceptible to a certain, but hopefully small, margin of error—but I consider the information on the official websites of the universities to be reliable in general.

Starting from the University of Helsinki, the higher education institution comes quite close to a gender balance among professors, with 43 professors at the time of research, among which 60,5 % (n=26) were men and 39,5 % (n=17) women. At the time of research, the Dean of the law school was a woman – familiarly by now, Johanna Niemi. The University of Turku, on the other hand, where I am working myself and where Johanna was previously working, there were, at the moment of the investigation, considerably fewer professors (n=22), among which men were overrepresented (68,2 %, n=15) and women underrepresented (31,8 %, n=7). The Dean of the Faculty of Law at the University of Turku, at the time of inquiry, was a man.

There are also law schools which achieve a gender balance at the professorial level. At the University of Eastern Finland, 32 people were employed as professors at the time of inspection and 56,3 % (n=18) of these were men; 43,8 % (n=14) women. The head of the Faculty of Law at the University of Eastern Finland was a man. Another institution which also appeared to have achieved gender parity—however with very few professors hired at the moment the study was conducted (n=7), which may be explained by the relative newness of the law program, was the law school at Åbo Akademi University, with 42,9 % (n=3) men and 57,1 % (n=4) women. The head of this program, at the time of inquiry, was a man.

An interesting outlier in the comparison was the University of Lapland, since it listed 20 professors, among which 70 % (n=14) were women and 30 % (n=6) men. Hence, it was the institution in the comparison with the starkest gender imbalance, with women overrepresented and men underrepresented. The Dean of the Faculty of Laws at the University of Lapland at the time of inquiry was a woman.

This said, it can be deduced that at the time of the investigation, it was more common that there was a gender imbalance at individual Finnish law schools than there being gender equal representation. Nevertheless, looking at all the professors at these law programs in Finland, there seems to be an overall gender balance in senior Finnish legal academia—with 54,8 % (n=68) men and 45,2 % (n=56) women law professors. There was also gender parity with a view to the heads of law programs (60 % men and 40 % women). In comparison to the judicial profession, at the moment, there appears to be less of a gendered glass ceiling in Finnish legal academia, with several women holding top positions and gender imbalances in both directions.

These observations—that there seems to be some level of gender parity in Finnish senior academia despite the lack of official quotas or equality programs—are interesting to discuss against the findings of the Nordic Centre of Excellence NORDICORE, which has investigated gender balances in Nordic academia. The Centre found there to be a general underrepresentation of women at the professorial level in the Nordic region. Yet, Finland displayed an unusual pattern in the comparison, since it has since the early 1990s had a higher level of female professors than the other Nordic countries. Interestingly, this trend has not been the result of any official gender equality initiatives. However, Finnish gender balances appear to have stagnated and not developed as much as neighbouring countries which have enforced institutional gender equality actions (NordForsk 2024).[6]

[6] More qualitative research on gender inequality in Finnish academia has been conducted, for example, by Liisa Husu (Husu 2004; 2010).

In the light of the discussion on the 'old' and 'new' Academia in Finland by Kevät Nousiainen in this volume, I here find it particularly interesting to raise the question of whether the longer tradition of more women in senior roles in Finnish academia may be related to the heavy influence of New Public Management in Finnish academia during the last decades (see Mäntylä et al 2024). This trend, manifested, for example, by performance-based public funding and increasing dependency of external funding, has been more actively embraced by Finnish higher education institutions in comparison to the neighbouring Nordic countries (Mäntylä et al 2024: 43). These kinds of neoliberal reforms may have provided a 'way in' for scholars not protected by old boy networks, but the 'feminisation' of academia has also been accompanied by its increasing precarisation, manifested by funding being more and more project-based and a normalisation of consecutive fixed-term contracts.[7]

Partners in Finnish Law Firms

The final group examined in this chapter is partners at Finnish law firms. A partner at a law firm is a senior-ranking lawyer who is typically also a co-owner of the firm. Partners therefore carry particular responsibility for generating revenue and can be considered the 'leaders' of their firms—much like professors lead the work at law schools, or justices at supreme courts.

This sector is perhaps subject to least scrutiny when it comes to enforcing gender parity, since law firms are considered private entities, i.e., not actors associated with public power or public resources in the same way that judicial or higher education institutions are. In this way, the public-private divide, criticised and discussed vividly in feminist scholarship, becomes visible yet again. This divide is also something that I, as the author of this text, have not escaped, since I have chosen not to name the individual law firms, since they are private entities, while the courts and law faculties are named, since they are public entities.

Since many law firms in Finland are rather small, and may only have one or two partners, I have focused only on the largest Finnish law firms (or international firms with offices in Helsinki)—more specifically, the ones included on the international 'Legal500' list in August 2024. These law firms typically focus on private law, particularly corporate law. In total, I investigated 17 law firms and the partners listed at their websites (one firm was excluded, since its websites only included limited information about people working there).

There was a great variety among the law firms investigated in terms of the number of partners, with the smallest bureaus having only 5–6 partners, while the largest one had 33 at the time of the investigation. As employers of over 30 employees (on a regular basis), many of the law firms counted are obliged by law to have plans in place for how they enforce gender equality, particularly when it comes to salaries (*Laki naisten ja miesten välisestä tasa-arvosta* [Act on the Equality between Women and Men], Section 6 a). Some of the firms also published commitments to sustainability, the Sustainable Development Goals and/or gender equality on their websites, but such commitments remained ubiquitously non-specific—not, for example, listing particular actions taken to promote, for example, gender equality.

The results of the investigation are listed in Table 1.

[7] According to Mäntylä et al, up to 70 % of lecturers and researchers at Finnish universities are employed through fixed-term contracts, which is a much higher number than in Norway and Sweden. Mäntylä et al. 2024: 50.

Law firm (number of partners)	**Men**	**Women**
Law firm 1 (23)	14 (60,9 %)	9 (39,1 %)
Law firm 2 (Helsinki office) (19)	12 (63,2 %)	7 (36,8 %)
Law firm 3 (26)	21 (80,8 %)	5 (19,2 %)
Law firm 4 (30)	20 (66,7 %)	10 (33,3 %)
Law firm 5 (20)	13 (65 %)	7 (35 %)
Law firm 6 (11)	8 (72,7 %)	3 (27,3 %)
Law firm 7 (25)	17 (68 %)	8 (32 %)
Law firm 8 (26)	17 (65,4 %)	9 (34,6 %)
Law firm 9 (33)	25 (75,7 %)	8 (24,2 %)
Law firm 10 (12)	10 (83,3 %)	2 (16,7 %)
Law firm 11 (6)	4 (66,7 %)	2 (33,3 %)
Law firm 12 (8)	7 (87,5 %)	1 (12,5 %)
Law firm 13 (5)	3 (60 %)	2 (40 %)
Law firm 14 (7)	2 (28,6 %)	5 (71,4 %)
Law firm 15 (27)	21 (77,8 %)	6 (22,2 %)
Law firm 16 (14)	11 (78,6 %)	3 (21,4 %)
Law firm 17 (Helsinki office) (7)	4 (57,1 %)	3 (42,9 %)
Average	68,1 %	31,9 %

Table 1. Gender balance in major Finnish law firms.

Interestingly, only two out of 17 law firms in the comparison achieved gender parity among partners (falling within the 40–60 % balance), making such firms a small exception to the general rule of gender imbalance, with clear male overrepresentation. There was only one firm in the comparison where women were overrepresented. Since women partners remained underrepresented in the large majority of Finnish law firms, the study clearly revealed the existence of a gendered glass ceiling in the sector. Gender parity in Finnish law firms is seldom specifically addressed in any efforts by the firms themselves, and the reasons behind the gender inequality are still to be investigated. This said, it is notable that this glass ceiling is not uniquely Finnish, but is largely part of an international trend of women being underrepresented among law firm partners (see, e.g., American Bar Association 2024).

Coming back to the public-private divide, discussing pay equity and comparing the private and public sector, the higher representation of women in senior positions in Finnish academia and on Finnish courts in general is interesting, since the salaries within the public sector for

lawyers in Finland are considerably lower in comparison to the private sector.[8] Furthermore, women lawyers are still paid lower salaries in comparison to their male counterparts when working for the same employer. As per a 2021 investigation by the Association of Finnish Lawyers, this gender gap was the greatest in private law firms, where women lawyers received 73-80 % of men lawyers' salary (see Alma Insights 2022).

Glass Ceilings in a 'Gender Equal' Country

For a long time, Finnish law was mainly shaped by men as actors, authors and thinkers behind the law. While some women pioneers have shattered the glass ceiling simply with their careers (such as Inkeri Anttila, who was the first Finnish woman to become a full professor of law, see Tiirakari 2005), this text seeks to go beyond individual accounts and investigate the gender balance in senior legal roles from a quantitative (albeit limited) perspective. In the 2020s, when a majority of the law students are women (see Kangas et al 2023) and when Finland generally internationally profiles itself as a gender-equal country (Finland Toolbox 2024), one could even ask whether there is still a need to address questions such as representation and gender parity. Surely, we have come a long way in comparison to the days of Viriginia Woolf's *A Room of One's Own*?

Treating gender equality as an already-achieved state may lead to stagnation and deterioration of previously won struggles. This appears to be the case also in Finland, since the country is falling in some international rankings on gender equality (for example EU rankings, see Finnish Ministry of Social Affairs and Health 2023). The findings discussed in this chapter indicate that even though women are entering the legal profession at an increasing rate, they still struggle to achieve senior roles, particularly in the Supreme Courts and among partners in major law firms. Furthermore, there is still a wide gender gap in salaries among lawyers in Finland.

The existence of glass ceilings in the legal profession hardly comes as a surprise to anyone with some degree of familiarity with the institutions investigated. Yet, it is remarkable that discussions on gender and the need to apply gender-specific measures within Finnish law are still avoided, met with scepticism, misunderstood or even dismissed.[9] I am convinced that the findings discussed in this chapter call for addressing gender inequality more thoroughly in the country.

Even though little research exists about glass ceilings in the Finnish legal profession specifically, the findings in this article should be regarded in the light of the fact that the glass ceiling is not unique to law, nor to Finland. It is a global phenomenon which has organisational, societal and personal aspects (Sharma and Kaur 2019) and should therefore also be discussed as such. In other words, reasons for women not accessing senior roles can be discrimination and stereotypes within the organisation, unfavourable work environments, few female leadership precedents and unfair labour policies which prevent the recruitment of women into higher positions (see Watanabe and Kwarteng 2024). Societal aspects can be, for example, work-family imbalances and the expectation that women take on a larger proportion of unpaid care work within the family. Indeed, the burden of care work for family members is still disproportionately shouldered by women in Finland (EIGE 2024). Personal aspects,

8 According to the Association of Finnish Lawyers' 2021 investigation, the average salary of a lawyer in the private sector was 7100 euros, and 6010 euros in the public sector (Alma Insights 2022).

9 See, for example, Rantala and Kainulainen in this volume.

which are inherently intertwined with the organisational and societal aspects, could be, for example, low self-esteem and conflict-aversion as more common among women than men (see Watanabe and Kwarteng 2024).

Shattering glass ceilings in the legal sector in Finland would require more qualitative knowledge about the specific hurdles for women to advance to leading positions. Such knowledge is critical in finding ways to further diminish hurdles and promote women's career advancement (see Husu 2004). I consider it unlikely that vague equality commitments and plans without specific actions, which most of the courts, law schools or law firms investigated in this chapter have, will work to achieve gender parity alone. Instead, considering gender quotas, or paying particular attention to attracting underrepresented applicants in recruitment, may be more efficient strategies to promote gender parity in senior legal roles. In addition, one may ask whether societal and cultural changes at large are promoting change towards gender equality, which affect women's abilities to fully participate in the labour market, also in the legal sector. One such example is the introduction of more gender-equal parental leaves and benefits in Finland in the early 2020s, the target of which is increasing the number of fathers taking parental leave and ultimately, a larger responsibility for unpaid care work within the family (Savinko 2023; Ventelä 2023).

Without targeted actions and a firm commitment to gender equality, the legal profession in Finland risks reinforcing barriers for women. Achieving real change demands not just recognition of these obstacles, but a collective will to dismantle them and build a more gender just future.

References

Bibliography

Alaattinoğlu, D. and Niemi, J. (2019) ‘Legal education: challenging the Finnish criminal law syllabus’. In: A. Howe and D. Alaattinoğlu (eds) *Contesting femicide – feminism and the power of law revisited*. London: Routledge.

Alaattinoğlu, D. and Niemi, J. (2022) ‘Sokea rikosoikeus ja feministinen kritiikki’. In: E. Yli-Hemminki, S. Melander and K. Nuotio (eds) *Rikoksen ja rangaistuksen filosofia*. Helsinki: Gaudeamus.

Alma Insights (2022) *Saisiko olla täysi palkka vai siitä 85 prosenttia?* Available at: https://www.almainsights.fi/juridiikan-ja-talouden-uutiset/saisiko-olla-taysi-palkka-vai-siita-85-prosenttia/#:~:text=Koko%20juristikunnan%20kokonaispalkan%20keskiarvo%20oli,prosenttia%20miesten%20palkasta%20koko%20juristikunnassa [Accessed 28 March 2025].

American Bar Association (2024) *For the first time, women make up majority of law firm associates, new NALP report says*. Available at: https://www.americanbar.org/groups/journal/articles/2024/for-the-first-time-women-make-up-a-majority-of-law-firm-associates-nalp-report-says/ [Accessed 3 September 2024].

Ashraph, S., Corsi, J., Heathcote, G., Kula, S.L., Lythgoe, J. and Kelsall, M.S. (2024) *Gender parity at the International Court of Justice*. PeaceRep. Available at: https://peacerep.org/2024/03/08/gender-parity-at-the-international-court-of-justice/ [Accessed 2 September 2024].

Bladini, M. (2013) *I objektivitetens sken*. Gothenburg: Makadam.

Dixon, R. and Versteeg, M. (2023) ‘Unsexing citation: closing the gender gap in global public law’. *International Journal of Constitutional Law*, 21(2).

EIGE (2022) *Gender equality in academia and research: GEAR tool step-by-step guide*. Luxembourg: Publications Office of the European Union.

EIGE (2024) *Time indicators in Finland*. Available at: https://eige.europa.eu/gender-equality-index/2023/domain/time/FI [Accessed 3 September 2024].

Finland Toolbox (2024) *Finland – society committed to gender equality*. Available at: https://toolbox.finland.fi/life-society/finland-society-committed-to-gender-equality/ [Accessed 9 September 2024].

Finnish Ministry of Social Affairs and Health (2024) *Finland ranks eighth in the EU gender equality index*. Finnish Government. Available at: https://valtioneuvosto.fi/en/-//1271139/finland-ranks-eighth-in-the-eu-gender-equality-index [Accessed 9 September 2024].

Flynn, F.B., Noonan, M.N., Sauder, M. and Andersson, M.A. (2019) ‘A rare case of gender parity in academia’. *Social Forces*, 98(2).

Galán-Muros, V., Bouckaert, M. and Roser, J. (2023) *Policy brief: the representation of women in academia and higher education management positions*. UNESCO-IESALC Policy Brief Series.

Haraway, D. (1988) 'Situated knowledges: the science question in feminism and the privilege of partial perspective'. *Feminist Studies*, 14(3).

Harding, S. (2016) *Whose science? Whose knowledge?* Ithaca: Cornell University Press.

Holli, A.M. (2011) 'Transforming local politics? The impact of gender quotas in Finland'. In: B. Pini (ed.) *Women and representation in local government: international case studies*. London: Routledge.

Husu, L. (2004) 'Naisystävällisempään yliopistoon?: tiedenaiset ja muutoksen visiot'. *Naistutkimus*, 17(1).

Husu, L. (2010) 'Gender discrimination in the promised land of gender equality'. *Higher Education in Europe*, 25(2).

Kangas, L., Kokko, M. and Wallenius, K. (2023) 'Kone näyttää, miten pahasti jotkin alat ovat sukupuolittuneita korkeakouluissa'. *Yle*. Available at: https://yle.fi/a/74-20047025 [Accessed 9 September 2024].

LaBerge, N., Wapman, K.H., Clauset, A. and Larremore, D.B. (2024) 'Gendered hiring and attrition on the path to parity for academic faculty'. *eLife*, 13:RP93755. Available at: https://elifesciences.org/articles/93755 [Accessed 2 September 2024].

Mäntylä, N., Hack, M. and Wenander, H. (2024) 'The legal position of academic staff in a changing university landscape: a comparative analysis of Finland, Norway, and Sweden'. *Retfærd*, 48(4).

Niemi, J. (2013) 'Naisia, miehiä ja sukupuolia'. *Tieteessä tapahtuu*, 31(1).

Niemi, J. (2015) 'Onko "oikeus ja sukupuoli" oikeudenala?'. *Lakimies*, 113.

Niemi, J. (2017) 'Män kan (inte) våldtas'. *Tidskrift utgiven av Juridiska Föreningen i Finland*, 153.

Niemi, J. and Kainulainen, H. (2017) 'Parisuhdeväkivallan tunnistaminen rikosoikeudellisessa järjestelmässä'. In: J. Niemi, H. Kainulainen and P. Honkatukia (eds) *Sukupuolistunut väkivalta: oikeudellinen ja sosiaalinen ongelma*. Tampere: Vastapaino.

Niemi-Kiesiläinen, J. (2004) *Rikosprosessi ja parisuhdeväkivalta*. Helsinki: WSOY.

NordForsk (2024) *Gender equality policies bring more women to the top of academia*. Available at: https://www.nordforsk.org/news/gender-equality-policies-bring-more-women-top-academia [Accessed 2 September 2024].

Savinko, L. (2023) 'Perhevapaauudistuksen tavoitteena parantaa tasa-arvoa, perheiden päätökset tärkeitä'. *Akava*. Available at: https://akava.fi/akavalainen/perhevapaauudistuksen-tavoitteena-parantaa-tasa-arvoa-perheiden-paatokset-tarkeita/ [Accessed 10 September 2024].

Sharma, S. and Kaur, R. (2019) ‘Glass ceiling for women and its impact on women’s career progression in the Indian service sector: the moderating role of family structure’. *International Journal of Indian Culture and Business Management*, 18(2).

Skaar, E., Sieder, R., Orre, A.J., De Lauri, A., Gloppen, S., Wimpelmann, T. and Domingo, P. (2022) *Women on the bench: the role of female judges in fragile states*. CMI. Available at: https://www.cmi.no/projects/2122-women-on-the-bench [Accessed 2 September 2024].

Tabassum, N. and Nayak, B.S. (2021) ‘Gender stereotypes and their impact on women’s career progressions from a managerial perspective’. *IIM Kozhikode Society & Management Review*, 10(2).

The Finnish National Courts Administration (2024) *Tasa-arvon toteutuminen*. Available at: https://www.tuomioistuinvirasto.fi/fi/index/tuomioistuinvirasto/vastuullisuus/tuomioistuinlaitoksenvastuullisuusraportti2023kpy155/4.tasa-arvontoteutuminen.html [Accessed 3 September 2024].

Tiirakari, L. (2005) ‘Inkeri Anttila – ensimmäinen nainen oikeusministerinä’. *Naisten ääni*. Available at: https://www.naistenaani.fi/inkeri-anttila-ensimmainen-nainen-oikeusministerina/ [Accessed 9 September 2024].

UN Women (2024) *Women Count*. Available at: https://data.unwomen.org/women-count [Accessed 2 September 2024].

Ventelä, A. (2024) ‘Perhevapaauudistuksen voimaantulosta on vuosi – mitä sen tuloksista tiedetään nyt?’. *Sosiaalivakuutus*. Available at: https://sosiaalivakuutus.fi/perhevapaauudistuksen-voimaantulosta-on-vuosi-mita-sen-tuloksista-tiedetaan-nyt/ [Accessed 10 September 2024].

Watanabe, K.S. and Kwarteng, A.H. (2024) ‘Unveiling the glass ceiling phenomenon and mitigating strategies through organizational justice: a conceptual paper’. *Cogent Business and Management*, 11(1).

Primary Legal Sources

Laki naisten ja miesten välisestä tasa-arvosta [Act on the Equality between Women and Men] 8.8.1986/609.

Section III: Changing Insolvency Law: Comparative and National Perspectives

7 Comparative Consumer Insolvency and Debt Adjustment

Iain Ramsay & Bill Whitford

Abstract

This chapter explores the development of personal insolvency law as a central topic in comparative legal scholarship and policy reform. It examines key themes in the study of debt and insolvency, critically assessing international narratives on personal insolvency following the 2008 global financial crisis and offering insights into the emergence of distinct national approaches. During this period of increased globalisation, scholarly attention has focused on the spread of legal ideas, legal transplants, and the patterns of convergence and divergence across legal systems. Consumer bankruptcy provides an illustrative case of how different countries respond to the challenges posed by globalized consumer credit and deregulated financial markets. The chapter also underscores the significant influence of Johanna Niemi's work on these discussions.

Introduction

A characteristic of the late twentieth and early twenty-first century has been the unleashing of consumer credit, driving economies and substituting for stagnating wages in declining welfare states. This was accompanied by significant rises in overindebtedness in many countries. The debt crises of the 1990s in several European countries, following significant deregulation of credit markets, and the subsequent Great Recession of 2008, transformed the private world of household debt into a public issue of international dimensions. A further consequence has been the proliferation of personal insolvency laws throughout the world, and the emergence of regional and international narratives on the treatment of personal insolvency (Ramsay 2017; World Bank 2014).

A recent article reviewing research on consumer overindebtedness over the past 50 years (Leandro & Botelho 2022) identifies three periods: a low activity phase from 1969 to 1995, a considerable increase between 1997 and 2010, and a high-activity phase from 2011 to 2019. A major contribution to better understanding this increase is the cutting-edge research of an international group of scholars, in which we—together with Johanna Niemi—had the possibility to participate. In our work to understand consumer overindebtedness, in a series of conferences and publications (see e.g. Niemi-Kiesiläinen & Ramsay 1997; Niemi, Ramsay & Whitford 2003, 2009) we adopted a comparative socio-legal approach, driven by a focus on law in action. More precisely, we analysed the distinct legal responses of legal systems to overindebtedness, producing valuable comparative law insights into the reactions of different legal systems to overindebtedness, and the interests and ideas influencing differences in legal rules and institutions. Initially focused on comparative analysis of US consumer bankruptcy and European jurisdictions, this work now extends worldwide.

This chapter outlines the emergence of this focus on personal insolvency law as a site of comparative intellectual inquiry and policy reform. It discusses emerging themes of comparative scholarship on debt and insolvency, analysing critically the distinct international narratives around personal insolvency since the global financial crisis of 2008 and suggesting explanations for distinct national models of personal insolvency. During this period of high globalisation, scholars often focused on the international diffusion of legal ideas and

institutions, legal transplants, as well as convergence and divergence in legal systems. The study of consumer bankruptcy provides a useful case study of diverging approaches to the costs of globalisation of consumer credit in increasingly deregulated markets. In particular, we consider the important contributions of Johanna Niemi to the themes of the paper.

Consumer Bankruptcy or Debt Adjustment?

Comparative legal analysis is increasingly driven by policy concerns (Whitman, 2007–08). The rapid growth of consumer credit in European countries in the 1980s, stimulated by a period of credit and capital liberalisation, brought in its wake the inevitable issue of overindebtedness. Most continental European jurisdictions had no dedicated institutions providing a way out for overindebted individuals through a discharge of debts. In contrast, US, UK and Commonwealth jurisdictions such as Australia had offered individuals, whether entrepreneurs or consumers, the possibility of a discharge of debt and a 'fresh start'—'a new opportunity in life and a clear field of future effort unhampered by the pressure and discouragement of pre-existing debt' (Local Loan Co v. Hunt 1934, 244). The US provided the most liberal system under the Bankruptcy Reform Act 1978, with open access to bankruptcy, a discharge from unsecured debts in a matter of months, and no requirement of post-bankruptcy income payments.

The US seemed to provide a policy model for European reforms (see e.g. Huls 1992; Huls et al. 1994). One might expect that with declining welfare states in many European jurisdictions and the rapid worldwide growth of credit, a similar model of bankruptcy might emerge in some European countries. However, the introduction of a swift discharge of debts, with its challenge to the idea of *pacta sunt servanda*, proved too radical for several European countries. Indeed, it was sometimes viewed, for example in France, as potentially leading to social exclusion (Ramsay 2017: 110). Most jurisdictions looking at the US drew on Chapter 13 of the US Bankruptcy Code, which provided for a partial repayment of debts, generally over three years. The use of a repayment plan as an integral part of relief in European jurisdictions also addressed the fear of moral hazard and concerns about the erosion of the value of *pacta sunt servanda*. In addition, some Nordic jurisdictions placed significant controls on access to relief such as a requirement of 'permanent insolvency' (Graver 1997: 165; Ramsay 2017: 138).

In 1999, Johanna Niemi (Niemi-Kiesiläinen 1999a) argued that US and European systems represented distinct paradigms, understanding paradigms as not only including the goals of policy, but also the types of instruments appropriate to achieve these goals (Hall 1993). US law reflected the central role of consumer credit in an open credit society of financial risk takers, with bankruptcy providing the opportunity for a swift re-entry to the market. In contrast, in European systems with the requirements of a payment plan, the emphasis on debt counselling and the absence of open access represented 'consumer debt adjustment'. European systems constructed overindebtedness as a social problem rather than a credit market problem, so that swift re-entry to the market was not a goal. Instead, entry to a debt adjustment system was often limited to events addressed by the welfare state, such as unemployment or illness.

These insights were developed further into two ideal types or paradigms of consumer bankruptcy, following Habermas' conception of a paradigm as 'images of one's own society that guide the contemporary practices of making and applying law' (Habermas 1999). Niemi argued that US and European approaches to personal insolvency reflected contrasting liberal

and welfare paradigms (Niemi-Kiesiläinen 2003). Within the liberal paradigm, the market is the central sphere with the construction of the debtor as a rational actor. Consumer bankruptcy law represents private law market regulation allocating market risks. It reduces risk taking but also raises the issue of moral hazard. The law must therefore attempt to balance these competing forces through rules which shape actors' incentives. In the liberal model, the debtor must pay for access to market institutions (Niemi-Kiesiläinen 2003: 50). Given the economic market focus, it is not surprising that economic analysis, including law and economics, is an influential form of analysis within the liberal paradigm.

In contrast, the welfare state paradigm envisages the state pursuing certain political goals, often through public law measures of redistribution and protection against social and economic risks. Welfarism is also present in private law through the recognition of doctrines such as social force majeure (Wilhelmsson 1990). The Nordic model is concerned with the reason for overindebtedness, such as illness, accidents and unemployment, constructing debt relief as a response to these issues. Accordingly, the debtor is a client of the welfare state, rather than a market actor, and similar to other welfare institutions has free access while controls on entry reflect the moral value of *pacta sunt servanda* (Niemi-Kiesiläinen 2003: 54–55).

Situating personal insolvency law within contrasting liberal and welfare paradigms extended comparative analysis beyond more traditional contrasts between civil and common law or the functionalism of Zweigert and Kötz (Zweigert & Kötz 1998), who view legal systems as reaching similar conclusions through different conceptual approaches. Niemi's model pointed the way to future empirical analyses of paradigms of consumer bankruptcy, for example in the work of Jan Heuer (Heuer 2013). Heuer provided an empirically based classification of the underlying normative structures of individual insolvency laws (Heuer 2013). Heuer outlines four models. The market model (US, Canada) provides a swift discharge, allocating market risks to creditors as superior risk bearers, ensuring the re-entry of the debtor to the market. The restrictions model (England and Wales, Scotland, Australia, New Zealand) is similar to the market model but includes significant restrictions on debtors to protect the public. The liability model (Germany, Austria) emphasises the individual responsibility of debtors to repay, while the mercy model (Denmark, Finland, Norway, Sweden, France) represents a needs-based system where debt relief is dependent on discretionary decisions of bureaucrats (Heuer 2013).

The narrative of the liberal US discharge policy within the market model downplays the longstanding and ongoing conflicts in the US regarding the availability of discharge (Ramsay 2017: 66; Zackin & Thurston 2024). There have long been important exceptions to discharge, compromising the promise of a fresh start, especially for secured debts (Whitford 1997; 1999). The 2005 US bankruptcy amendments (BAPCPA), driven by creditor lobbying, expanded these exceptions, introduced a means test for access to any kind of discharge, and required debtors to undertake counselling. Johanna Niemi's contrast between the US liberal and Nordic welfare models may also underestimate the extent to which in the US, through a loosely connected infrastructure of judges, court-appointed trustees, Chapter 13 standing trustees, and the Federal Public Trustee Service, there exists a significant state infrastructure (Ramsay 2017: 65–66). The image of government as a Weberian top-down model, where political goals are established in legislation and implemented through impersonal state employees, does not capture this important role of the US state in bankruptcy (Novak 2008).

Experience of the European systems of debt adjustment revealed two phenomena: many individuals had no repayment capacity (Heuer 2020; Niemi 2009: 103), and high access

requirements, for example proving 'permanent insolvency', resulted in many individuals not obtaining access to a discharge of debt, remaining in a state of long-term informal insolvency, described in Sweden as 'eternity debtors' (Ramsay 2017: 141). While some jurisdictions (for example, France, the UK) modified their regimes to provide a low-cost alternative for this group of debtors, other influential regimes such as Germany and Sweden retain the requirement of a substantial repayment period for all individuals seeking debt relief, even if no recovery is achieved through many repayment plans.

Comparative Institutional Frameworks

Consumer insolvency is a small stakes game even if in aggregate it may represent large numbers of individuals. This suggests the need for a system which minimises overall costs and retains public confidence. Three approaches are evident in existing systems (World Bank 2014: para 160): those in which an administrative agency dominates, for example France or Sweden; systems where public processing of insolvency co-exists with private restructuring alternatives (UK); and court-based systems supported by publicly funded or private intermediaries (US, Germany).

Notwithstanding these formal distinctions, personal insolvency law is increasingly a routinised process of administrative justice. In the US, much of consumer bankruptcy is handled by paralegal staff, with few contested issues, and even rarer hearings before judges (Littwin, 2011). In Germany, debt counsellors under pressures of caseloads have little time to provide extensive counselling, while in the UK, limits on funding and heavy caseloads push debt advisors to more mechanical processing.

Marshaw's (1983) influential analysis of administrative justice suggests three models of administrative justice: bureaucratic rationality, professional treatment and moral judgement. These models reflect commitments to distinct approaches to decision making. Professional treatment through debt counselling implies an individualised assessment of a person's circumstances, possibly linking to a variety of social services. This approach is in tension with a bureaucratic rationality of rule-structured processing based on objective criteria. It seems that in many jurisdictions, pressures on the funding of welfare state institutions may result in increased tendencies towards the achievement of targets, an objective in tension with an ideal of professional treatment (Kilborn 2009; Davey 2020).

Johanna Niemi noted in 1999 that the growth of debt counselling occurred at a time of a general roll-back in welfare spending, often by Conservative governments (Niemi 1999b). Counselling seemed to function as palliative care, substituting for wider social responses. This observation raises questions about the assumptions underlying personal insolvency. A widespread assumption is that bankruptcy is part of a social safety net. A more critical approach argues, however, that personal insolvency law is a disciplinary mechanism of social control within neo-liberal governance which individualises responsibility, neutralising collective responses to debt and defusing political conflict (Soederberg 2014). In this context, investigating the longitudinal effects of bankruptcy becomes important.

In the US, studies differ on the benefits of bankruptcy to individuals: some conclude that individuals have continuing problems after bankruptcy (Greene, Patel & Porter 2016) while others indicate that bankrupts benefit significantly over time in terms of employment and finances (Dobbie & Song 2015). The very limited number of longitudinal European studies also differ. A 2014 Swedish study suggests that a substantial number of individuals do not think that the repayment process had given them a fresh start (Ahlstrom, Edstrom &

Savemark 2014) while a later Danish study indicates significant long-term benefits in terms of income and employment prospects for those granted debt relief (Bruze, Hilsløv & Maibom 2024).

Towards International Norms in Personal Insolvency

Since the Asian financial crisis of the 1990s, key global actors such as the International Financial Institutions (IMF and World Bank) and professional insolvency associations have promoted the concept of a rescue culture in corporate insolvency as part of the international financial architecture of development. The United Nations Commission on International Trade Law (UNCITRAL) underlined the role of effective corporate bankruptcy as a central part of a modern market economy, and its legislative guide provides best practices for assessing a state's insolvency law (Ramsay 2017: 153).

Personal insolvency was not, however, regarded as significant at the international level, being characterised as raising social and cultural issues best addressed at the national level. The financial crisis of 2008 nevertheless transformed household credit and insolvency from a parochial concern to an issue for the international financial architecture, accelerating narratives about the nature and role of personal insolvency. In 2011, the World Bank identified personal insolvency as a potential systemic risk, documenting the fact that over half of middle-income and low-income countries had no personal insolvency system. It established an international task force to investigate the policies and principles underlying the various legal systems that have addressed consumer insolvency, resulting in the first report by an IFI to articulate the need for and benefits of a personal insolvency system (World Bank 2014; Kilborn 2015; Garrido 2016). It argues for the introduction of a personal insolvency discharge of debts, in terms of the objectives of relieving hardship, reducing externalities from debt such as lost productivity and costs to families and communities, creating incentives for responsible lending, encouraging entrepreneurship, and allocating losses to those in the best position to spread them.

The World Bank Report outlines the objectives of personal insolvency and the relevant issues in establishing an institutional framework, including the role and structure of repayment plans and the extent to which debtors might retain certain assets. It does not provide an international standard similar to UNCITRAL guidelines but does outline a policy blueprint for reformers, and criteria for undertaking further empirical analysis of existing systems. Its influence may often be through transnational and regional knowledge-based networks—so-called epistemic communities—in addition to direct influence on national legislators and policymakers (see e.g. Kilborn 2015; Howells 2014). The Report does not refer to any specific jurisdiction in its discussions to avoid the charge of norm imperialism. Yet, it is clear that it draws on the experience of selected European systems, the US and Anglo-Commonwealth sources, and earlier European reports on overindebtedness (World Bank 2014: para 21). The French overindebtedness commissions, for example, provided a model for a 'one-stop-shop' institutional structure for managing overindebtedness (World Bank 2014: para 175; Ramsay 2017: 157).

Despite the important role of the US model in earlier work on comparative consumer bankruptcy, it now appears in the World Bank Report as somewhat of an outlier. This can be seen, for example, regarding the report's focus on topics such as controls on access and the swift fresh start without the need for any income repayments. At the same time, the Report is also implicitly critical of long repayment plans in some European jurisdictions and highlights

the problem of the 'No Income No Asset' debtor, unable to access debt relief in those jurisdictions requiring payment for access. The significance of this latter group for insolvency law is twofold. It suggests the need for easily accessible and swift access to insolvency for this group (Ramsay 2020). It also raises the question whether insolvency and the associated fresh start can solve the continuing economic and social problems faced by some individuals.

The Report also addresses the difficult issue of the treatment of mortgages in bankruptcy, highlighted by the large number of mortgage foreclosures in many jurisdictions following the 2008 financial crisis. A secured creditor is traditionally in a strong position in bankruptcy, since only unsecured debts were discharged. The US Chapter 13 did permit an individual to remain in a home provided they could cure any defaults in payment. In practice, however, this was rarely sufficient protection and many Chapter 13 plans failed. The financial crash had a dramatic impact on the value of homes in many countries but few jurisdictions were willing to permit individuals to write down the value of their homes, based partly on a fear of the impact on lending and political pressure from financial institutions.

The Eurozone crisis following the financial crisis resulted in EU bailouts of several countries, and the return of the IMF to Europe as a global problem solver for the world financial system. One aspect of this role involved persuading countries such as Greece, Latvia, Lithuania and Spain to introduce or modify their personal insolvency systems. For example, the mortgage foreclosure crisis in Spain following its real estate collapse resulted in individuals having their homes foreclosed but with no possibility of discharging the balance of the mortgage debt through insolvency because of the absence of an insolvency system permitting discharge. The absence of an international standard resulted in the IMF often facing difficulties in persuading politicians to introduce reforms, particularly in countries such as Spain, with its influential banking sector. Over time, the IMF identified a set of 'best international practices', namely: a fresh start for responsible individuals from liabilities at the end of three to five years, appropriate filing criteria to make insolvency procedures accessible to individuals while minimising abuse, repayment terms which accurately reflect the debtor's capacity to ensure an effective fresh start, and a swift 'no income no asset' procedure (Liu & Rosenberg 2013; Bergthaler, Garrido & Rosha 2023).

EU Approaches to Personal Insolvency

The EU is committed to the creation of an integrated credit and capital market, a 'highly competitive social market economy' which will combat social exclusion and discrimination. EU harmonisation of credit markets initially focused primarily on the front end of credit markets to facilitate access to credit and competitive markets for informed consumers (Ramsay 2016: 165). Although the EU recognised in the 1990s the widespread European problem of overindebtedness, this was classified as a social issue, best dealt with at the national level, particularly given the significant differences in national legislation to address overindebtedness (Ramsay 2017: 170–171). 'Soft' approaches to co-ordination through peer review, academic studies and benchmarking were adopted. In 2007, the Council of Europe, recognising the connections between human rights and debt (such as the prohibition in the European Convention on Human Rights on imprisonment for debt), published recommendations on Debt Problems, based on a report by Niemi & Henriksen (Niemi & Henriksen 2006), which included a partial or total discharge of debt where other measures proved to be ineffective (Council of Europe 2006: 10).

At the same time, insolvency reform in the EU focused on business and corporate insolvency. The absence of a single EU insolvency system arguably raised investment and capital costs in the context of the EU goal of a single integrated market. However, given political difficulties in achieving substantive harmonisation, early attempts addressed only issues of recognition and jurisdiction, intending to prevent forum shopping and ensure mutual recognition of proceedings throughout the EU.

A further aspect was the renewal of interest in risk-taking entrepreneurialism as an engine of growth. A series of EU reports suggested that the absence of an easily accessible discharge was inhibiting start-up businesses in the EU, with policymakers looking enviously at the Silicon Valley mantra 'Fail Fast, Fail Often, Fail Everywhere' (Donohue 2015), suggesting the resilience of US entrepreneurialism fostered by liberal bankruptcy laws, notwithstanding the reality that most small businesses fail and only a few are established in high-tech industries (Shane 2008).

Different discharge periods existed in individual European debt adjustment systems, creating incentives for cross-border 'bankruptcy tourism'. The EU Insolvency Regulation of 2000 addressed primarily corporate insolvency, providing only general guidance on individual jurisdiction. Individuals in strict regimes such as Germany, with a long discharge period, might decide to move their Centre of Main Interests (the test for jurisdiction) to a more liberal regime, such as England and Wales, with its relatively short 12-month discharge period and straightforward access criteria. During and after the financial crisis, professionals and small business representatives, particularly from Ireland and Germany, took this route, aided by English firms willing to advise individuals on how to establish the requisite residence for jurisdiction in the UK (Ramsay 2017: 179). The English courts nevertheless became tougher in policing this tourism, a contrast to their generally welcoming approach to corporate insolvency, promoting London as an attractive centre for business rescue. In fact, the number of 'bankruptcy tourists' was relatively small (Ramsay 2017: 181) but it illustrated the significance of the impact of freedom of movement on the resources of other countries. It also highlighted the restrictive nature of some countries' laws. In this context, Johanna Niemi pointed out the incoherencies in existing laws and the extent to which existing rules might inhibit freedom of movement (Niemi 2012; 2013).

The EU ultimately enacted a Directive on Restructuring in 2019 setting minimum standards for business restructuring, intended to further the growth of a European capital market (EU Directive, 2019). The Directive also addresses the situation of individual entrepreneurs. In order to reduce bankruptcy tourism and promote entrepreneurial risk-taking, the Directive requires member states to permit honest entrepreneurs to have a full discharge of debts after no more than three years, along with a lifting of any professional disqualifications on the sole ground of insolvency. The Directive does not extend to consumers, perhaps because of continuing disagreements among states as to the length of an 'earned start'. However, in Recital 21, it recognises both the difficulty of separating consumer and business debts, and the significance of consumer overindebtedness, recommending the application by Member States of the discharge provisions to consumers (Arias Varona, Niemi & Hupli 2020).

Conclusion

The research of Johanna Niemi and others has exposed many practical and theoretical issues about the role of law and the state in addressing the economic and social issues associated with overindebtedness, the distinct institutional approaches of legal systems to these issues,

and the interests and ideologies at play. Debt collection, overindebtedness and personal insolvency are certainly no longer topics of 'low visibility' (Rock 1973). Johanna's work spans not only the theoretical and academic aspects of this topic but also includes important policy contributions at the national, regional and international levels. Furthermore, her work has also catalysed and encouraged other scholars. This contribution has pointed to Johanna's important role in the emergence of comparative scholarship on consumer insolvency and debt adjustment, an area which still presents important questions meriting further research.

References

Bibliography

Ahlstrom, R., Edström, S. and Savemark, M. (2014) *Is Debt Relief Rehabilitative? An Evaluation of Debt Relieved Persons' Health, Life Quality and Personal Finances Three Years after Conducted Debt Relief*. Stockholm: Swedish Consumer Agency.

Bergthaler, W., Garrido, J. and Rosha, A. (2023) 'The right tool for the job? Mortgage distress and personal insolvency during the European debt crisis', *IMF Working Paper*, 2023/092.

Bruze, G., Hilsløv, A. and Malborn, J. (2024) 'The long run effects of individual debt relief', *IZA Institute of Labor Economics*.

Council of Europe (2007) *Legal Solutions to Debt Problems: Recommendations*.

Davey, R. (2020) 'Financialised welfare and its vulnerabilities: Advice, consumer credit, and church-based charity in the UK', *Ethnos*, 1–19.

Dobbie, W. and Song, J. (2015) 'Debt relief and debtor outcomes: Measuring the effects of consumer bankruptcy protection', *American Economic Review*, 105, 1272–1311.

Donohue, J. (2015) 'Fail fast, fail often, fail everywhere', *The New Yorker*, 31 May.

Garrido, J. (2016) 'Law and development in the treatment of the insolvency of natural persons: The World Bank Report', in Hajjiri, T. and Cohen, A. (eds) *Global Insolvency and Bankruptcy Practice for Sustainable Economic Development: General Principles and Approaches in the UAE*.

Graver, H.-P. (1997) 'Consumer bankruptcy: A right or a privilege? The role of the courts in establishing moral standards of economic conduct', *Journal of Consumer Policy*, 20, 161–177.

Greene, J., Patel, P. and Porter, K. (2016) 'Cracking the code: An empirical analysis of consumer bankruptcy outcomes', *Minnesota Law Review*, 101, 1031–1098.

Habermas, J. (1999) 'Paradigms of law', in Rosenfeld, M. and Arato, A. (eds) *Habermas on Law and Democracy: Critical Exchanges*. Berkeley: University of California Press.

Hall, P. (1993) 'Policy paradigms, social learning, and the state: The case of economic policymaking in Britain', *Comparative Politics*, 25(3), 275–296.

Heuer, J. (2013) 'Social inclusion and exclusion in European consumer bankruptcy systems'. Available at: https://www.academia.edu/3992692/Social_Exclusion_in_European_Consumer_Bankruptcy_Systems [Accessed 19 June 2025].

Heuer, J. (2020) 'Hurdles to debt relief for "no income no assets" debtors in Germany: A case study of failed consumer bankruptcy law reforms', *International Insolvency Review*, S44–S76.

Howells, N. (2014) 'The fresh start goal of the Bankruptcy Act: Giving a temporary reprieve or facilitating debtor rehabilitation', *QUT Law Review*, 29–52.

Huls, N. (1992) 'American influences on European consumer bankruptcy law', *Journal of Consumer Policy*, 15, 125–142.

Huls, N. (1993) ‘Toward a European approach to overindebtedness of consumers’, *Journal of Consumer Policy*, 16, 215–234.

Huls, N. et al. (1993) *Overindebtedness of Consumers in the EC Member States: Facts and Search for Solutions*. Brussels: Story Scientia.

Kilborn, J. (2009) ‘Two decades, three key questions and evolving answers in European consumer insolvency law: Responsibility, discretion and sacrifice’, in Niemi, J., Ramsay, I. and Whitford, W. (eds) *Consumer Credit, Debt and Bankruptcy: Comparative and International Perspectives*. Oxford: Hart.

Kilborn, J. (2015) ‘Reflections of the World Bank’s report on the treatment of the insolvency of natural persons in the newest consumer bankruptcy laws: Colombia, Italy, Ireland’, *Pace International Law Review*, 27(1), 306–344.

Leandro, J.L. and Botelho, D. (2022) ‘Consumer over-indebtedness: A review and future research agenda’, *Journal of Business Research*, 145, 535–551.

Littwin, A. (2011) ‘The affordability paradox: How consumer bankruptcy’s greatest weakness may account for its surprising success’, *William & Mary Law Review*, 52,1933–2023.

Liu, Y. and Rosenberg, C. (2013) ‘Dealing with private debt distress in the wake of the European financial crisis: A review of the economic and legal toolbox’, *IMF Working Paper*, 2013/44.

Mashaw, J. (1983) *Bureaucratic Justice: Managing Social Security Disability Claims*. New Haven: Yale University Press.

Niemi-Kiesiläinen, J. and Ramsay, I. (eds) (1997) ‘Special issue: Changing directions in consumer bankruptcy law and practice in Europe and the U.S.A.’, *Journal of Consumer Policy*, 20(2), 133–287.

Niemi-Kiesiläinen, J. (1999a) ‘Consumer bankruptcy in comparison: Do we cure a market failure or a social problem?’, *Osgoode Hall Law Journal*, 37(1–2), 473–503.

Niemi-Kiesiläinen, J. (1999b) ‘The role of consumer counselling as part of the bankruptcy process in Europe’, *Osgoode Hall Law Journal*, 37(1–2), 409–413.

Niemi-Kiesiläinen, J. (2003) ‘Collective or individual? Construction of debtors and creditors in consumer bankruptcy’, in Niemi-Kiesiläinen, J., Ramsay, I. & Whitford, W. (eds) *Consumer Bankruptcy in Global Perspective*. Oxford: Hart, 41–60.

Niemi-Kiesiläinen, J., Ramsay, I. and Whitford, W. (eds) (2003) *Consumer Bankruptcy in Global Perspective*. Oxford: Hart.

Niemi-Kiesiläinen, J. and Henriksen, A.-S. (2006) *Legal Solutions to Debt Problems in Credit Societies*. Report to the Council of Europe and Skrifter från Juridiska Institutionen, Umeå University.

Niemi, J., Ramsay, I. and Whitford, W. (2009) *Consumer Credit, Debt and Bankruptcy*. Oxford: Hart.

Niemi, J. (2012) ‘Consumer insolvency in the European legal context’, *Journal of Consumer Policy*, 35(4), 443–459.

Niemi, J. (2013) ‘Never too small to fail: Insolvency of consumers as an international concern’, in Backert, W., Block-Lieb, S. and Niemi, J. (eds) *Contemporary Issues in Consumer Bankruptcy*. Frankfurt: Peter Lang, 9–30.

Novak, W. (2008) ‘The myth of the “weak” American state’, *American Historical Review*, 113, 752–772.

Ramsay, I. (2016) ‘Changing policy paradigms of EU consumer credit and debt regulation’, in Leczykiewicz, D. and Weatherill, S. (eds) *The Images of the Consumer in EU Law: Legislation, Free Movement and Competition Law*. Oxford: OUP, 159–182.

Ramsay, I. (2017) *Personal Insolvency in the 21st Century: A Comparative Analysis of the US and Europe*. Oxford: Hart/Bloomsbury.

Ramsay, I. (2020) ‘The new poor person's bankruptcy: Comparative perspectives’, *International Insolvency Review*, S1.

Rock, P. (1973) *Making People Pay*. London: Routledge.

Shane, S. (2008) *The Illusion of Entrepreneurship*. New Haven: Yale University Press.

Soederberg, S. (2014) *Debtfare States and the Poverty Industry*. London: Routledge.

Varona, J.A., Niemi, J. and Hupli, T. (2020) ‘Discharge and entrepreneurship in the preventive restructuring directive’, *International Insolvency Review*, 29, pp. 8–31.

Whitford, W. (1997) ‘Changing definitions of fresh start in American bankruptcy law’, *Journal of Consumer Policy*, 20, 179–198.

Whitford, W. (1999) ‘Secured creditors and consumer bankruptcy in the United States’, *Osgoode Hall Law Journal*, 37(1–2), 339–368.

Whitman, J.Q. (2007–08) ‘Consumerism versus producerism: A study in comparative law’, *Yale Law Journal*, 117, 340–406.

Wilhelmsson, T. (1990) ‘“Social force majeure” — A new concept in Nordic consumer law’, *Journal of Consumer Policy*, 13, 1–14.

World Bank (2014) Garrido, J., Kilborn, J., Booth, C., Niemi, J. and Ramsay, I. *Report on the Treatment of the Insolvency of Natural Persons*. Washington, DC: World Bank.

Primary Sources

Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency).

Cases Cited

Local Loan Co v. Hunt, 292 US 234 (1934).

8 Personal Insolvency in Spain: Pending Challenges

Francisco Javier Arias Varona

Abstract

Influenced by Johanna Niemi's scholarship on the insolvency of individuals, this chapter reviews the current state of Spanish law on personal insolvency, identifying key challenges such as the risk of abuse due to insufficient creditor participation, an overburdened judicial system, and the contentious treatment of debts owed to public administrations. It emphasises the need for a balanced approach that protects creditors' rights while offering genuine relief to honest but unfortunate debtors. The chapter calls for future reforms to enhance creditor participation, streamline judicial processes, and reconsider the treatment of public debts to create a more equitable and effective insolvency framework.

Introduction

This paper reviews the current situation of Spanish law on the insolvency of individual persons and the possibility to discharge previous debts, traditionally anchored in human rights (Niemi & Henrikson 2005) and now justified in economic terms (Arias Varona et al 2020). Johanna Niemi is one of the most renowned scholars in the European context in this regard. Her work in this field has contributed decisively to the development and understanding of a regime that allows individuals to discharge past debts and have a second chance, not only through her academic contributions but also through her involvement in fostering comparative analysis (Niemi et al 2009; Niemi-Kiesiläinen et al 2003) and her commitment to policy proposals, whether in the European context (Niemi & Henrikson 2005) or from a more global perspective (Kilborn et al 2011).

Spain was absent from the above comparative perspectives because it was a latecomer to the recognition of a special regime allowing for the discharge of unsatisfied liabilities. After an intricate road, its present situation, deeply connected to the protection of entrepreneurship as in the EU Directive 2019/1023, is more comparable to the experience of other countries. I find it timely to add our context to the comparative discussion so often led by Johanna Niemi, in particular because Spain has been able to benefit from previous comparative experiences, but there are still important shortcomings that need to be addressed in the future.

Of course, the nature of this contribution makes it impossible to provide an exhaustive development of each and every issue raised by the Spanish regulation of consumer insolvency. Therefore, I focus on two seemingly distinct issues which share a common theme: the need to ensure a balanced solution between the various interests at play. In one case, the interests at stake are those of the debtor and their creditors, as reflected in the need to prevent abuse by the debtor. In the other case, the interests at stake are those of different creditors, as reflected in the decision to exclude from full discharge debts vis à vis public administrations. Both issues have been part of the fundamental debate of Spanish law and are still far from being convincingly solved. The policy discussions also have strong ties with some of those reflected in Johanna Niemi's longstanding work.

The reason I have selected this topic is not only academic but also personal. My recent academic work owes much to Johanna Niemi, her trust in my work and the fruitful stay as her guest at the University of Turku during 2019. Lately, my research has been directed towards

other subjects, but I find it appropriate to go back to the problem of insolvency of individuals, as this is where my academic relationship with Johanna Niemi has been closest and an ideal topic to pay tribute to the brilliant career of Professor Niemi and to recognise the profound impact she has had on the work of so many academics. In my case, her impact goes far beyond the academic and professional level, as she has created a personal and familial bond with Finland. Although the following pages are an expression of my gratitude, it is pertinent to state first of all: *kiitos paljon, Johanna!*

Approaching the Insolvency of Individuals in Spain

The Winding Road to Discharge

The regulatory framework for the insolvency of individuals in Spain has not always had a specific set of rules. This was true for the traditional bankruptcy rules in the nineteenth century, as well as for the first version of the Spanish Insolvency Act (Law 22/2003 on Insolvency), which was passed to modernise the insolvency regime in Spain. The law did not originally provide an appropriate framework for the insolvency of individuals aimed at obtaining a discharge of unsatisfied liabilities. The policy approach present in other countries and discussed in the European context was not part of the policy discussion at that time. Even in the academic arena, fundamental contributions in this field, such as the 2005 report by Niemi and Henrikson, were practically absent from discussions until later on.

For a long time, individuals not carrying on a business activity had to resort to a general procedure regulated in the Civil Code, which was hardly used. The Insolvency Act of 2003 marked the first time a proper insolvency procedure applied to insolvent individuals. However, the absence of an appropriate framework for benefitting insolvent individuals caused a very low number of proceedings concerning these debtors during the first years of application, as shown by official statistics (INE, Spanish Official Institute of Statistics).

The inadequacies of the model—particularly the fact that it did not contemplate the possibility of exonerating outstanding debts (so-called discharge)—generated a debate essentially limited to the academic sphere, where the situation was criticised. The effects of the 2008 financial crisis became a turning point, although the legislator initially focused on the protection of mortgage debtors, due to the socio-cultural importance of home ownership in Spain (Arias Varona 2013).

The influence of recommendations made by the IMF to Spain (International Monetary Fund, 2013) triggered the introduction of discharge in 2013, through the reform of the Insolvency Act by Law 14/2013. This amendment distinguished between natural persons with and without a business activity: debtors engaged in business could benefit from an out-of-court settlement procedure, not available to natural persons without business activity, as well as from a broader discharge. This reflected a progressive shift in policy motivation. The connection between discharge and fundamental rights, emphasised in Niemi's work, gave way to the importance of a fresh start to promote entrepreneurship and economic activity. The fact that these provisions were introduced via a Law on entrepreneurship exemplifies this shift, which was ultimately enshrined in Directive (EU) 2019/1023 of the European Parliament and of the Council on preventive restructuring frameworks (Arias Varona et al 2020).

Concerns about abuse and opportunistic behaviour were a major source of public debate at that time, likely encouraging the conservativeness of the legislator, who designed a very

limited discharge scheme of little practical use (Cuena Casas 2014). In 2015, a more ambitious legislator took the model one step further. Law 25/2015 of 28 July (known as the 'Law for a Second Chance') marked important progress by allowing over-indebted consumers access to debt discharge mechanisms on more reasonable terms. The so-called Benefit of Exoneration of Unsatisfied Liabilities (*Beneficio de Exoneración del Pasivo Insatisfecho*, BEPI) opened the possibility for any individual who had acted in good faith to have remaining debts cancelled following liquidation of assets or fulfilment of a payment plan. Risk control and moral considerations remained important; for example, debt relief was granted provisionally and only became definitive after a five-year period of good conduct.

The model was not without critics, who pointed to its restrictive nature and the possibility of revoking the benefit after the judicial decision. To some extent, it was assumed that the reform was driven by political and electoral considerations, resulting in a hasty and flawed regulation that, despite progress, continued to generate doubts about its implementation and efficacy (Cuena Casas 2016). Nonetheless, the amendment led to a significant increase in individual insolvency cases, which rose to percentages close to 30%.

The latest amendment occurred in 2022 with the recast of the Insolvency Act (*Texto Refundido de la Ley Concursal*, TRLC), aiming to transpose the Directive on Preventive Restructuring into Spanish law. The result is a more ambitious and refined model which, notwithstanding some aspects that could be improved, aligns more closely with comparative experiences. The debate on possible abuse by debtors remains central in Spain's policy discussion.

The Current Situation in Brief

The enactment of Law 16/2022 transposed the Preventive Restructuring Directive and introduced substantial changes to the regime applicable to the insolvency of individuals, now codified in Articles 486 to 502 of the TRLC. This section briefly outlines some of the central characteristics of the model, particularly those provisions designed to offer individuals the possibility to discharge previous debts, which forms the core of the regulation. The analysis provides essential context for understanding the challenges under the current legal framework.

Spanish insolvency law provides two paths for the debtor to obtain a discharge of debts: immediate discharge upon liquidation of the estate, and deferred discharge subject to a payment plan. The choice between these routes depends on the debtor's personal and financial circumstances, particularly their ability to comply with a payment plan.

Immediate discharge is available following the liquidation of seizable assets, requiring the debtor to allocate all such assets to satisfy creditor claims, except those deemed non-seizable. This option is especially useful for debtors who do not possess significant valuable assets or wish to relinquish them. In return, there is no obligation to comply with a subsequent payment plan.

Deferred discharge, on the other hand, requires a payment plan proposed by the debtor and approved by the court. The plan must extend over a period of three to five years, during which the debtor must allocate sufficient income to satisfy dischargeable debts (Art. 496 TRLC). Non-dischargeable debts must be repaid in full. This route is better suited for debtors with a stable income or assets they wish to retain, such as a primary residence. However, it

prolongs the discharge process and subjects the debtor to judicial supervision throughout the payment period.

Under Spanish law, the discharge does not extend to all of the debtor's liabilities (Art. 489 TRLC). The generosity of the model is largely determined by the extent of dischargeable debt. Over time, legislators have expanded the scope of dischargeable liabilities, although some significant limitations remain. The favourable treatment of debts owed to public administrations continues to be particularly controversial. In general, most ordinary and subordinated debts are dischargeable, allowing for the exemption of, for instance, unsecured financial liabilities such as personal loans or obligations to suppliers. However, there remains a broad list of non-dischargeable debts, including traditionally excluded categories such as maintenance obligations and debts arising from criminal sanctions.

Consequently, Spanish insolvency law offers natural persons—whether or not they are entrepreneurs—the opportunity to discharge past debts and begin (almost) anew. To access this benefit, however, debtors must satisfy certain conditions demonstrating that they have acted in good faith. This concept has been interpreted in case law as referring to a set of behaviours and attitudes that indicate the debtor has not acted negligently or fraudulently. Rather than being defined positively, good faith is framed in negative terms, with specific grounds for exclusion. These include, for example, convictions in the last ten years for offences against property, the socio-economic order, document forgery, or crimes against the public treasury or social security; the failure of prior efforts to reach settlement agreements with creditors; or reckless or negligent over-indebtedness (Art. 487 TRLC).

Good faith thus functions as a key safeguard against abuse of the insolvency system. It also introduces the next central issue: the challenge of adequately balancing the interests involved—namely, those of debtors and creditors—while preventing misuse of the legal framework.

A Critical View: Is Spanish Law Adequately Balanced?

The Delicate Balance of Discharge

Any discharge model implies a decision to balance the interests of creditors and the need to provide a fresh start to honest but unfortunate debtors. Even if the focus is placed on the debtor's side, it should not be forgotten that the discharge affects creditors' right to satisfaction of their claims, and that this limitation is only justified under specific conditions. Hence, it is essential to ensure that this particular mechanism is not abusively used by debtors.

Discharge or fresh start—fundamental to insolvency law (Warren & Westbrook 2005)—is arguably the most salient example of a pro-debtor rule in insolvency law and remains central to policy debates on the consumer bankruptcy system. Commonly understood as the economic rehabilitation of debtors through the discharge of debt, with the expectation that life after bankruptcy will be free of financial hardship, it suggests that former bankrupts can rebuild their financial lives: earning, spending, and borrowing sustainably. Discharge provides individuals with relief from over-indebtedness and facilitates their reintegration into economic life (Porter & Thorne 2006).

Such a measure, however, does not come without costs (Ramsay 2012). First, it erodes the fundamental principle of *pacta sunt servanda* (Kilborn 2007). The discharge of debts presents a direct financial impact on creditors: debts are eliminated and creditors are forced to write

off these amounts as losses. The fundamental right of creditors to collect their claims upon maturity is directly affected, but a generous discharge may have broader implications. The limitation on debt recovery can influence the overall profitability of lending institutions and their willingness to extend credit. Creditors, aware of the possibility that debts may ultimately be forgiven, may impose more stringent lending criteria to mitigate their exposure to non-repayment. This could lead to more restrictive access to credit, particularly for high-risk borrowers, and impact the overall credit market. If borrowers perceive discharge as an accessible option, they may engage in riskier borrowing behaviour, increasing overall credit market volatility. This can, in turn, heighten systemic financial risks, prompting creditors to reassess their lending models and risk management strategies.

Achieving a fair balance between creditor rights and debtor rehabilitation is, therefore, a central challenge in personal insolvency law, and legal safeguards are necessary to ensure that only honest but unfortunate debtors benefit from debt relief, thus preventing opportunistic behaviour. This explains why one of the main concerns regarding personal insolvency regimes is the potential for abuse by debtors seeking to discharge liabilities while avoiding legitimate repayment obligations. How to solve this problem remains part of the ongoing debate on personal insolvency rules, with clear differences between the US and Europe in their approaches to this issue (Kilborn 2018).

To mitigate abuse, legal frameworks typically incorporate good faith requirements with court control, sometimes also relying on creditor participation to ensure their interests are properly considered—although creditor passivity limits its effectiveness, particularly in so-called NINA cases. Other possible or complementary approaches include oversight by insolvency administrators or conditional discharge models, requiring debtors to meet partial repayment obligations before obtaining full relief. Whatever the model may be, strengthening these mechanisms is essential to balance debtor protection with creditor recovery. The system must incorporate safeguards to prevent strategic misuse by debtors, which could undermine creditor rights and the integrity of financial markets (Ramsay 2017). As previously stated, only honest but unfortunate debtors should benefit from debt relief (Kilborn 2020).

Reassessing the Regulation of Abuse in Spanish Insolvency Law

Control against abuse depends, in the first instance, on the existence of safeguards to prevent unjustified recourse to debt discharge. To this end, Spanish legislation includes a time limitation: a debtor cannot apply for a new discharge within two or five years of the previous procedure, depending on whether it involved a payment plan or liquidation (Art. 488 TRLC). In addition, a good faith requirement has been progressively refined to screen applicants (Art. 487 TRLC). However, the greatest challenge lies in the implementation of these controls. In practice, the theoretical framework is undermined by the passivity of creditors, on whom the effectiveness of oversight largely depends through various mechanisms of challenge (see Arts. 493, 498bis and 502 TRLC). The limited involvement of creditors, particularly in assetless insolvency proceedings, significantly increases the risk of abuse by debtors.

When creditors fail to exercise their procedural rights, an asymmetry arises that may allow debtors to benefit disproportionately. This situation occurs, for example, when creditors do not challenge the granting of discharge or the valuation of the debtor's assets. The absence of creditor control creates a gap in oversight that debtors may exploit strategically. If creditors—whether due to a lack of resources or interest—remain inactive, judges are left with fewer elements to properly assess the case. Consequently, the risk of debtors securing an

undeserved discharge increases. In such cases, some debtors may use the system to avoid repaying their obligations without genuinely exhausting all means of satisfying their creditors.

In the Spanish context, this risk is well recognised (Cuena Casas 2024), but there is widespread acknowledgment of the difficulty in addressing it. Creditors frequently lack sufficient incentives to actively participate in proceedings, particularly in no-asset cases. In such instances, the discharge is often granted without a payment plan—because none can be proposed—or without liquidation, as the debtor's assets are insufficient to cover even the costs of the procedure. The implications of this extend beyond individual cases: repeated patterns of creditor disengagement erode the disciplinary function of insolvency proceedings and may ultimately encourage abusive use of the discharge mechanism.

This problem is further exacerbated by the institutional and practical limitations of judicial oversight. Under Spanish law, the courts face structural challenges, most notably heavy caseloads that restrict the ability of judges to conduct thorough reviews. In a control model that already relies heavily on creditor proactivity, this places further constraints on effective supervision. Compounding the issue is the absence of consistent and clearly defined criteria for identifying abuse by debtors. Some courts adopt flexible interpretations of the requirements, creating legal uncertainty and allowing certain debtors to obtain unjustified relief. This situation calls for improved judicial resourcing and possibly a regulatory reform that would strengthen judicial discretion in cases where creditor inaction undermines the fairness of the process. Yet, such developments do not appear likely in the near future.

The Delicate Decision about Non-dischargeable Debt

In the broader context of bankruptcy law, creditor treatment is typically a matter of ranking and priority—determining the order in which claims are satisfied from the debtor's estate. As Niemi has noted, 'in no legal order are all the creditors paid on the same footing' (Niemi 2003). The policy decisions concerning ranking have therefore always been central to insolvency law. Every insolvency framework assumes—at least as a possibility—that the debtor will fail to meet their commitments and that some claims may remain unpaid. Consequently, rank and priority serve to allocate greater or lesser risk among different classes of creditors.

Building on this idea, the determination of creditor ranking is not a universal or purely technical matter, but rather a reflection of societal values and economic priorities. Different legal systems prioritise claims according to their perceived social and economic importance, thereby shaping the distribution of non-payment risk among creditors. These preferences reflect both the economic structure and the normative judgments embedded within the legal order (Garrido 2000).

This proposition helps to explain legislators' choices. Some jurisdictions grant preferential treatment to public claims, such as tax and social security debts, on the grounds that these obligations underpin essential public services. When secured creditors are prioritised, it reflects a legislative aim to reinforce access to credit markets and promote economic stability. Special protections for employees or other vulnerable creditors acknowledge the broader societal harm caused by unpaid wages. Yet legislators must decide not only which claims are worthy of preferential treatment, but also in what order such preferences are to be recognised. These decisions do not stem from immutable rules; rather, they illustrate how legal systems balance economic efficiency, distributive fairness, and social protection.

This general discussion takes on a more acute character in the context of individual insolvency and discharge, where the question is which debts should not be dischargeable at all. In such cases, the issue is not merely a matter of lower priority in distribution—i.e. a higher risk of non-payment—but the complete impossibility of ever enforcing the claim. This difference makes policy decisions surrounding discharge especially consequential, as they determine not only the likelihood of recovery, but whether a creditor may lawfully seek repayment at all. Moreover, where discharge is understood as a foundational principle of individual insolvency law, the exclusion of certain debts is seen as exceptional (Langston 2023).

When determining which debts should be excluded from discharge, legislators must weigh the rights of debtors against the need to safeguard the interests of creditors and society at large. For instance, exclusions based on debtor misconduct—such as fraud, wilful harm, or other culpable behaviour—reflect a concern for maintaining the integrity of the system. Public policy considerations underlie the non-dischargeability of criminal fines, underscoring the societal imperative to uphold certain obligations. In some cases, the rationale is the creditor's inability to absorb risk collectively, as is true for domestic support obligations, where the creditor (e.g. a dependent family member) is the sole recipient and bears the full burden of non-payment. Occasionally, a combination of specific misconduct and public concern justifies the exclusion of particular debts from discharge.

Whatever the rationale, the policy decision to exclude certain debts from discharge remains especially significant. Discharge eliminates the creditor's right to enforce repayment altogether, rather than merely diminishing the amount recoverable. Such determinations are thus vital to ensure fairness and to allocate the economic impact of individual insolvency in a just and socially sustainable manner.

The Unsatisfactory Situation of (Limited Discharge of) Debts Owed to Public Administration

The arguments developed in the previous paragraph help to explain why the possibility of discharging tax and social security claims has long been the subject of extensive debate in Spanish law, accompanied by a series of shifting legal approaches. The arguments for and against including such debts among those eligible for exoneration are well known. Opponents have contended that public debts are essential for financing public services and that permitting their discharge would place an unfair burden on taxpayers who meet their obligations, thereby creating a structural imbalance in fiscal responsibility. However, in a very high percentage of cases, a fresh start would be practically impossible without including such debts, as the majority of liabilities are often owed to the Treasury and Social Security. This point has been particularly persuasive in the context of a model that promotes discharge as a tool to encourage entrepreneurship.

Until 2020, tax and social security debts were not eligible for discharge. The Recast Insolvency Law of 2020 did not alter this situation. This legislative stance raised serious concerns regarding its compatibility with Directive (EU) 2019/1023, which had not yet been transposed into national law at that time. These concerns prompted the Provincial Court of Alicante to refer several questions to the Court of Justice of the European Union (CJEU) for a preliminary ruling, challenging whether the Spanish legal framework conformed to the requirements of the Directive. In particular, the court asked whether the blanket exclusion of public claims—without express justification in domestic legislation—violated the spirit and objectives of the Directive.

In April 2024, the CJEU issued its preliminary ruling in *Case C-687/22*, concluding that Spanish law could lawfully exclude specific categories of claims, provided that such exclusions were duly justified. The Court underscored that Article 23(4) of Directive 2019/1023 affords Member States a margin of discretion to define excluded claims, but insisted that any such exclusion must be grounded in clearly articulated public interest considerations (see Art. 23(4) Dir 2019/1023 and Recitals 78 and 81; Asensio 2024; Díaz Moreno 2024).

Subsequently, Law 16/2022 amended the Spanish Insolvency Act to introduce a more nuanced approach. Under the new regime, tax and social security debts are partially dischargeable—subject to specified limits. This restricted discharge remains contentious. Critics argue that without full exoneration of public debts, the underlying policy goals of personal insolvency legislation—such as genuine financial rehabilitation—are significantly undermined. Anticipating the CJEU's position, the Spanish legislator explicitly provided justification for the partial exclusion of public claims in the Explanatory Memorandum to Law 16/2022. It stated that such debts are essential for maintaining the rule of law and supporting the welfare state. Specifically, the memorandum affirms that exceptions are based 'on the special relevance of their satisfaction for a just and supportive society, based on the rule of law (such as maintenance debts, public law debts...)'. This rationale appears to meet the standard articulated by the CJEU, according to which:

> the fact that, before the period for transposition of the Restructuring and Insolvency Directive has expired, a national legislature did not duly justify the exclusion of a category of debt, such as claims governed by public law, from discharge of debt is not, in itself, liable seriously to compromise the attainment of the objective pursued by that directive. First, […] that directive allows Member States to exclude from discharge of debt categories of debt, such as claims governed by public law. Secondly, such a failure by the national legislature to provide a justification for the exclusion of claims governed by public law from procedures for discharge of debt does not affect the opportunity for that legislature to provide an appropriate justification for that exclusion if it maintains the exclusion after the period for transposing that Directive (para. 51).

Spanish law appears to be broadly aligned with the requirements of Directive 2019/1023. However, this alignment does not preclude continued debate regarding the underlying legal policy choices. The prevailing perception remains that the state has exercised its discretion in a way that preserves its institutional advantages, and many of the arguments first raised in 2020 continue to be reiterated (Esteban Ramos 2021). While the discharge regime imposes significant sacrifices on private creditors, public administrations retain substantial privileges—even when their claims are formally subordinated in the insolvency hierarchy.

Under the current framework, penalties, interest, and surcharges owed to public authorities are explicitly excluded from discharge. Yet, it is debatable whether this outcome aligns with the normative justification for limiting the discharge of public claims. Paradoxically, the portion of public debt eligible for discharge includes those obligations most closely linked to social justice considerations—namely, debts owed to the Treasury and Social Security—whereas debts with little or no connection to redistributive objectives, such as traffic fines, remain non-dischargeable. This inconsistency calls into question whether the actual scope of the discharge exception faithfully reflects the underlying rationale for privileging public claims in the first place.

Conclusions

This contribution has highlighted some of the persistent challenges in Spanish law regarding the insolvency of natural persons. Johanna Niemi's comparative analysis and policy proposals have anticipated many of the debates currently unfolding in Spain, underscoring the need for a balanced approach that safeguards creditor rights while offering meaningful relief to honest but unfortunate debtors.

The current Spanish framework remains imperfect, and the analytical and theoretical insights provided by Niemi and others offer a valuable lens through which to assess its strengths and limitations. In particular, the requirement that debtors act in good faith serves as a critical safeguard. However, its effective enforcement is undermined by limited creditor participation and an overburdened judiciary. This dynamic creates a risk of abuse, whereby debtors may strategically exploit the system to evade legitimate repayment obligations, thereby undermining the integrity of the insolvency regime.

Since Niemi's early work on consumer bankruptcy (Niemi-Kiesiläinen 1999), the connection between discharge and the welfare state has become more evident—offering important insights into the conflicting treatment of debts owed to public administrations under Spanish law. The limited dischargeability of tax and social security debts, although formally permitted under the CJEU's ruling provided there is a legitimate public interest justification, remains a point of contention. While the rationale—that these debts are vital to sustaining public services and social welfare—is compelling, the partial discharge mechanism introduced by Spanish law arguably falls short of advancing the broader policy objective of enabling a genuine fresh start. This selective approach to dischargeable debts illustrates the ongoing difficulty in balancing creditor protections with social equity.

Niemi's scholarship continues to emphasise the need for a nuanced and context-sensitive approach to these issues—one that takes into account both the economic and social dimensions of insolvency law. Her work has laid the foundations for a more debtor-friendly paradigm, but further evolution is necessary for the Spanish system to fully realise these principles. Future reforms should aim to enhance creditor engagement, alleviate the burden on courts, and revisit the treatment of public claims in order to construct a more equitable and functional insolvency framework. Only through such comprehensive improvements can the law truly achieve its goal of providing a fair second chance to individuals facing financial hardship.

References

Bibliography

Arias Varona, F.J. (2013) 'Financial crisis in Spain and consumer protection in the absence of special rules for consumer insolvency'. *SSRN Electronic Journal*. Available at: https://doi.org/10.2139/ssrn.2569160 [Accessed 4 August 2025].

Arias Varona, F.J., Niemi, J. and Hupli, T. (2020) 'Discharge and entrepreneurship in the preventive restructuring directive'. *International Insolvency Review*, 29(1).

Asensio, C.G. (2024) 'Exoneración del pasivo insatisfecho y crédito público (Comentario a la Sentencia del Tribunal de Justicia de la Unión Europea de 11 de abril de 2024, Asunto C-687/22)'. *Revista General de Insolvencias & Reestructuraciones*, (13).

Cuena Casas, M. (2014) 'Ley de emprendedores y exoneración de deudas o fresh start'. *Anuario de Derecho Concursal*, (31).

Cuena Casas, M. (2016) 'El nuevo régimen de segunda oportunidad. Pocas luces y muchas sombras'. *Anuario de Derecho Concursal*, 37.

Cuena Casas, M. (2022) 'Reforma concursal: Régimen de segunda oportunidad y ejecución de la vivienda habitual', *HayDerecho*. Available at: https://www.hayderecho.com/2022/07/26/reforma-concursal-regimen-de-segunda-oportunidad-y-ejecucion-de-la-vivienda-habitual/ [Accessed 1 October 2024].

Cuena Casas, M. (2024) 'Riesgo de abuso del deudor en el régimen de segunda oportunidad?', *HayDerecho*. Available at: https://www.hayderecho.com/2024/05/19/riesgo-de-abuso-del-deudor-en-el-regimen-de-segunda-oportunidad/ [Accessed 27 September 2024].

Díaz Moreno, A. (2024) 'Pronunciamiento del Tribunal de Justicia de la Unión Europea sobre la exclusión por el legislador español del crédito público del conjunto de deudas susceptibles de exoneración'. *Análisis GA&P*.

Esteban Ramos, L.M. (2021) 'Crédito público y segunda oportunidad en el texto refundido de la ley concursal española'. *Boletim da Faculdade de Direito. Universidade de Coimbra*, XCVII.

Fachal Noguer, N. (2022) 'Exoneración del pasivo insatisfecho y vivienda habitual del concursado'. *Almacén de Derecho*. Available at: https://almacendederecho.org/exoneracion-del-pasivo-insatisfecho-y-vivienda-habitual-del-concursado [Accessed 1 October 2024].

García-Villarubia, M. (2022) 'La vivienda habitual y la exoneración del pasivo insatisfecho'. *Boletín Mercantil U&M*, (109).

Garrido, J.M. (2000) *Tratado de las preferencias del crédito*. Madrid: Civitas.

INE (Spanish Official Institute of Statistics) *Estadística del Procedimiento Concursal* (data available until 2020). Available at: https://www.ine.es/dyngs/INEbase/es/operacion.htm?c=Estadistica_C&cid=1254736177018&menu=ultiDatos&idp=1254735576550 [Accessed 4 August 2025].

IMF (2013) *IMF Country Report No. 13/245*. Available at: http://www.imf.org/external/pubs/ft/scr/2013/cr13245.pdf [Accessed 4 August 2025].

Kilborn, J. (2018) 'The rise and fall of fear of abuse in consumer bankruptcy: Most recent comparative evidence from Europe and beyond'. *Texas Law Review*, 96.

Kilborn, J. (2007) 'Two decades, three key questions, and evolving answers in European consumer insolvency law: Responsibility, discretion, and sacrifice'. Available at: http://dx.doi.org/10.2139/ssrn.1080252 [Accessed 4 August 2025].

Kilborn, J., Booth, C., Niemi, J. and Ramsay, I. (2011) *The World Bank Report on the Treatment of the Insolvency of Natural Persons*. Washington, D.C.: World Bank.

Langston, N. (2023) 'Discharge discrimination'. *California Law Review*, 111.

Niemi-Kiesiläinen, J. (1999) 'Consumer bankruptcy in comparison: Do we cure a market failure or a social problem?'. *Osgoode Hall Law Journal*, 37.

Niemi-Kiesiläinen, J. (2003) 'Collective or individual? Constructions of debtors and creditors in consumer bankruptcy'. In: Niemi-Kiesiläinen, J., Ramsay, I. and Whitford, W.C. (eds.) *Consumer bankruptcy in global perspective*. Oxford: Hart.

Niemi-Kiesiläinen, J., Ramsay, I. and Whitford, W.C. (eds.) (2003) *Consumer bankruptcy in global perspective*. Oxford: Hart.

Niemi-Kiesiläinen, J. and Henriksson, A.-S. (2005) *Legal solutions to debt problems in credit societies: A report to the Council of Europe*. Available at: https://rm.coe.int/16807004bd [Accessed 4 August 2025].

Niemi, J., Ramsay, I. and Whitford, W. (2009) *Consumer credit, debt and bankruptcy*. Cheltenham: Edward Elgar.

Porter, K. and Thorne, D. (2006) 'The failure of bankruptcy's fresh start', *Cornell Law Review*, 92.

Ramsay, I. (2012) 'Between neo-liberalism and the social market: Approaches to debt adjustment and consumer insolvency in the EU', *Journal of Consumer Policy*, 35.

Warren, E. and Westbrook, J.L. (2005) *The law of debtors and creditors*. New York: Aspen Publishers.

Primary Legal Sources

EU (2016) *Directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU*, COM(2016) 723 final.

9 Roaming along the Stony Road: Absolute and Relative Priorities in Corporate Restructuring

Tuomas Hupli

Abstract

This chapter critically examines the Finnish corporate restructuring framework under the Restructuring of Enterprises Act, highlighting its unchanged state since Johanna Niemi's 1995 doctoral thesis. A central concern is the protection afforded to shareholders of insolvent companies, while creditors bear the financial burdens through significant reductions to their claims. The chapter emphasises Niemi's influential perspective that insolvency law ultimately affects human lives, not just financial transactions. It also explores the moral and legal implications of the order of priority in insolvency proceedings, which the EU leaves to individual Member States. The chapter discusses the limitations imposed by the Finnish Supreme Court's ruling in KKO 2003:73, particularly regarding the application of the absolute priority rule (APR) in cross-class cram downs. It concludes by assessing the potential for future reform through ongoing legislative efforts, such as the debt-to-equity swap project, while acknowledging the enduring constraints of existing statutory law.

Creditors and Shareholders in Insolvency Proceedings

In her PhD (Niemi-Kiesiläinen 1995:362, footnote 10), Johanna Niemi states that 'reshaping the structure of the debtor company can only be done with the consent of the company itself'′. This holds true in corporate reorganization proceedings under the Finnish insolvency regime, governed by the Restructuring of Enterprises Act (8.2.1993/47 with amendments, hereinafter referred to as the ResEntAct). The current state of the relevant Finnish law is the same as it was thirty years ago, when Johanna Niemi defended her thesis.

The purpose of this chapter is to provide a critical approach to the fact that the shareholders of an insolvent company are protected from the measures of restructuring, while the creditors are left to bear the consequences of those measures, which typically involve significant cuts to their claims. As a long-time teacher, mentor and, finally, a colleague, Johanna Niemi has taught me to delve into the deeper structures of insolvency law; no matter whether the debtor is a small or medium-sized enterprise (SME) or a multi-national corporation, or whether a single creditor is an institutional credit provider or natural person, the problems of insolvency law ultimately concern human beings. The question is not only about the lack of money but also—even primarily—about the preconditions for a decent human life, i.e. the significance of money as a crucial means in the efforts aiming at achieving the potential of human beings and the communities built by them (including private companies and other forms of collaboration).[1]

[1] The connections between insolvency law and human rights are culminated in consumer bankruptcy, understood as not only the traditional liquidation proceedings but also the various means of debt arrangements for private individuals. See, e.g., Niemi-Kiesiläinen 1999: 473-503. Inspired by Johanna's teaching and research, and by the writings of Donald R. Korobkin, I tried, in my doctoral thesis, to put in place the human rights-dimension also to the theory of corporate insolvency law. See Hupli 2004: 57-69 (developing the idea which I call 'value relativism' as a contrast to the purely utilitarian goals of

When evaluating the alternative measures of an ideal regime of insolvency law, the general view is, however, insufficient. Certain fundamental details must also be considered, since the details are the ultimate results of the basic principles. The order of priorities is a manifest example of problems where moral values and the law unite. In the following sections of this chapter, the competing principles, governing the order of priority in insolvency proceedings, are evaluated in the context of Finnish statutory law and case law. This order of priority can be easily labelled as a merely technical detail, but there is, in fact, a lot at stake. First, EU insolvency law has left it to the Member States to choose the order of the competing principles, and second, the treatment of the owners and the subordinated debts in insolvency proceedings may even affect the competitiveness of a particular Member State.

Types of Conflicts in Collective Insolvency Proceedings

Insolvency proceedings are usually considered undertakings between the insolvent debtor and the creditors of debt, i.e. creditors of borrowed capital (or creditors of the compensation for damages). Indeed, the problems which often lead to insolvency proceedings mainly concern the debtor's ability to fulfill the obligations of their debt liabilities. In corporate insolvency law, this focus is a 'natural' result since company law is based on the fundamental idea that the claims of company owners can only be legally satisfied after the claims of the creditors have been met (or, at least, secured by the test of insolvency). In other words, traditional bankruptcy liquidation results from the debtor's failure to satisfy the claims of the creditors.

In liquidation bankruptcy, the shareholders of the debtor company typically lose their entire investments; even the creditors typically only receive a small share of the returns, which usually has little financial importance. Despite the fact that a traditional bankruptcy results in economic loss for all of the affected parties, i.e. both the owners and the creditors, bankruptcy, in its classic form, is based on two different conflicts: one between the debtor and its creditors, and another one among the creditors themselves. The conflict between the debtor and the creditors concerns the efforts of enforcing the creditors' claims, while the conflict among creditors is ultimately a question of equality between them.

The law of corporate restructuring, in turn, is designed to avoid the brutality of bankruptcy liquidation by providing the tools for seeking, planning and deciding on the measures of business restructuring, aimed at offering a better economic result as compared to the meaningless share of the insolvent debtor's assets. The law of corporate restructuring also introduces a 'third party' into the conflict: the shareholders of the debtor company. Since the purpose of business restructuring is not the dissolution of the debtor entity but to preserve it and revitalise its potential in some capacity, the regime of corporate restructuring forces the legislators to consider whether the owners of the debtor company should participate in the recovery of a troubled company. This question is ultimately a matter of legal policy. However, the general theory of the law of limited liability companies would require that the owners, even in the restructuring proceedings, bear the negative effects of the residual claim; the owners must lose their investment entirely unless all claims of the borrowed capital are fully satisfied.[2]

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economic 'efficiency') and 2004:70-89 (presenting and evaluating the 'Rawlsian' contractarian models, created especially by Donald R. Korobkin, to justify the regime of corporate restructuring).

2 The theory of residual claims (and claimants) is one of the cornerstones of any legal system based on market economy. The very content of the theory requires that the residual claimants of corporations are 'the parties who suffer increasing injury as the corporation does progressively worse and who likewise

The Order of Priority: Absolute or Relative?

The requirement of 'wiping out' the shareholders of an insolvent corporate debtor, unless debt creditors are fully satisfied, reflects the legal (and moral) maxime of *absolute priority rule* (hereafter also the 'APR'). In contrast, a competing principle, the *relative priority rule* ('RPR') has recently gained attention in the insolvency law of the European Union (see, e.g., Ballerini 2021 and Krohn 2021).

More specifically, Article 11(1)(c) of the EU Directive on restructuring and insolvency[3] indicates the RPR: a restructuring plan may be confirmed and become binding upon dissenting voting classes through a so-called cross-class cram down, provided, *inter alia,* that the plan ensures that dissenting voting classes of affected creditors are treated *at least as favourably* as any other class of the same rank and *more favourably* than any junior class. The very idea of the RPR is expressed by the words 'at least as favourably' and 'more favourably', indicating that the Member States, in their national laws, are not strictly bound by the APR.[4] As a result, under Article 11(1)(c) of the Directive, junior classes *may* receive some form of compensation, such as payment or another interest of economic value, even though the more senior classes are not fully satisfied under the restructuring plan.

In the following, I evaluate the distinction between the APR and the RPR by using Finnish law as an example to illustrate the fundamental problems. According to the statutory Finnish law on corporate restructuring, neither the absolute nor the relative priority rule applies to the relations between the owners of the debtor company and the creditors of the borrowed debt. The investment of the owners remains intact, regardless of how dramatically the claims of the creditors must be decreased to restore the solvency of the company. As to the ranking between the classes of creditors under Finnish law, the requirement of APR is only applied in cases of cross-class cram down; the APR is not required when the restructuring plan is supported by all of the classes of creditors (let alone when the unanimous consent between the creditors is achieved). Despite that, the Supreme Court of Finland has held, in the ruling *KKO 2003:73,* that the APR should be applied as a general rule, regardless of the support the plan has gained among the creditors.

Statutory Law, Ratio Legis and the Supreme Court Ruling KKO 2003:73

Statutory Law and its Purpose

ResEntAct provides three alternative conditions for confirming a restructuring plan. According to Sections 50–51 and 54 ResEntAct, the plan may be confirmed on the basis of: 1) the unanimous consent of all creditors, 2) the acceptance of the majority of creditors in all classes of them and, as an ultimate opportunity, 3) cram down, i.e. acceptance by at least one class of creditors.

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enjoy increasing gains as the corporation does progressively better', see *Kim* 2021:43-44. In the research of insolvency law, it has been stated that '[T]he residual owner—typically defined as the investor who will reap the marginal dollar of the firm's gain or suffer the marginal dollar of its losses—is a frequently-invoked hero of economic theory' (*LoPucki* 2004:1343-1344).

3 Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency).

4 Article 11(2) of the Directive provides the Member States with an option to adopt or retain the APR in domestic laws.

The absolute priority rule is laid down in Section 54, Paragraph 1(5) ResEntAct, which stipulates that a restructuring plan is approved via cram down provided that 'creditors with claims which have a lower priority than the group of creditors voting against approval, other than one composed of secured creditors, are not to receive payment'. The absolute priority is an *additional safeguard, which compensates for the lack of majority approval in cram down scenarios, where creditors may reject the plan or abstain from voting.* If absolute priority was a general requirement for plan confirmation, the section in question would be redundant. The provision clarifies that absolute priority does not apply when the majority of creditors approves the plan.

Here, parallels can be drawn to US Bankruptcy law, which has been a key influence for the Finnish ResEntAct. Herbert (1995:331) has depicted the US situation in the following words: 'so long as the debtor does not resort to cramdown, and so long as the plan meets the best interest of creditor's test, the debtor may propose almost anything'. Similarly, Finnish legal literature highlights that absolute priority serves as an additional safeguard for cram down plans, compensating for the absence of majority support (Hupli 2004: 325).

The Government Bill 182/1992 for the ResEntAct further illustrates the flexible approach to creditor equality in reorganisations by stating that the creditors of the same ranking must be treated 'similarly or at least in an equal manner' during debt adjustment (89). This underscores a more flexible principle of equality between creditors, compared to the rigid absolute priority rule.

The Finnish Supreme Court Ruling KKO 2003:73—Courts Disagreeing

The observations above show that the APR is not a general requirement for the confirmation of the restructuring plan; it is also shown that absolute priority must be applied only in cram down. Provided that the plan is supported by the majorities of all of creditor groups, the absolute priority rule *may* be applied, but is not mandatory, since other options are available. Nevertheless, the Finnish Supreme Court, in its ruling *KKO 2003:73,* has held the following:

> Since the debtor's obligation to pay the subordinated, convertible loan had been abolished in the restructuring plan, the creditor's right to convert the loan into shares of the debtor company also had to be abolished.

In the restructuring case which led to the Supreme Court ruling KKO 2003:73, the plan proposed by the administrator (i.e. the insolvency practitioner) included the full extinction of the receivable based on the subordinated convertible bond. This decision was grounded on the absolute priority rule, as creditors with higher ranking claims did not receive full payment. The subordinated creditor did not oppose the full reduction of its cash receivable, but claimed that the right to convert the cash into equity should remain in force. The District Court, dismissing the creditor's claim, confirmed the plan as proposed by the administrator. Thus, at the end of the restructuring proceedings in the District Court, the creditor of the subordinated loan had lost both the right to receive a cash payment and the right to convert it into shares in the debtor company.

On Appeal, the Court of Appeal of Helsinki reversed this decision, allowing the convertible bond to remain valid in respect of the right to convert. After the debtor had applied for and obtained a leave to appeal, the Supreme Court repealed the decision of the Court of Appeal and, thus, ordered the decision of the District Court to be followed.

The reasoning of the District Court, the Court of Appeal and the Supreme Court in *KKO 2003:73* does not clarify whether or not the debtor needed to resort to cram down in order to get the restructuring plan confirmed. The District Court merely stated that the convertible debt 'could not be satisfied on the basis of the restructuring plan since the debts with higher priority were not fully satisfied'. Similarly, the Supreme Court held that the obligation to pay the subordinated loan was to be abolished in the restructuring plan, because the obligation to pay the claims in higher ranks had been reduced. The Supreme Court even stated that: 1) on the basis of the fact that the obligation to pay the subordinated loan was abolished, there was no more credit that could have been converted into equity, and 2) this would have been an 'undisputed' result. But it was not undisputed; instead, the applicability of the absolute priority rule was the *very reason for the dispute.*

In contrast, the Court of Appeal reached a different conclusion and preserved the creditor's right of conversion. Its reasoning rested on two arguments, both derived from ResEntAct Section 44. First, the abolition of the right to convert violated the rule of *least intrusive means* in debt settlement. The abolition, in other words, interfered with the creditor's rights more than necessary to achieve the purpose of the restructuring plan, or to fulfill the requirements laid down in the ResEntAct concerning the mutual position of creditors (Section 44(3)). Secondly, according to the Court of Appeal, the abolition of the right to convert was not a permissible means of debt relief, listed exhaustively in the ResEntACt (Section 44(1–2)). However, the exhaustive list only concerns the means of debt relief which can be applied *by force*. Nothing prevents the creditors from accepting other measures of relief, such as debt-to-equity swap.

The reasoning, and the resolution of the Court of Appeal aligns with the wording and the purpose (*ratio legis*) of the ResEntAct. Unfortunately, the Supreme Court departed from this reasoning without explaining its rationale. Interestingly, the case *KKO 2003:73 did not involve* a cram down.

The Supreme Court ruling KKO 2003:73 raises several concerns. The first is that its reasoning and outcome is inconsistent with the ResEntAct, since the application of the absolute priority rule was divorced from the level of creditor support for the restructuring plan. The ruling is a curious one, since it contradicts both the letter and purpose of the ResEntAct. In practice, whenever the status of subordinated loans is negotiated in the restructuring proceedings, those who are aiming at wiping out those loans and their creditors, can easily refer to the preliminary ruling of the highest instance.

The second concern in the case is that it disregards the principle of *least intrusive means*, as the Supreme Court failed to address whether the abolition of conversion rights met the standard of minimal interference, a key tenet of debt adjustment under the ResEntAct. Finally, a third problem in the case is its impact on subordinated creditors and financing, since the ruling risks fostering passivity among subordinated creditors and, in the long term, weaken the supply of mezzanine financing in Finland. The argument that there was no more debt to be converted, since the duty to pay the subordinated loan by cash was abolished by the restructuring plan, is nothing short of 'a magic trick' to seemingly resolve the situation (without actually doing so). It cannot be an overwhelming intellectual performance to order that the converted sum of money would be the sum still unpaid at the moment when the restructuring plan came into force.

Concluding Remarks

Due to KKO 2003:73, it is important—at least in Finnish legal doctrine, but also more generally within the European Union—to identify the measures by which the APR remains limited only to the cross-class cram down, i.e. the measures to protect the will of the majority of creditors in restructuring proceedings.

To approach a solution, a couple of fundamental issues should be clarified.

Firstly, the concept of priority in corporate restructuring should *not be identified* with the order of priorities in bankruptcy liquidation. The discussion—including the judgment KKO 2003:73—on the absolute and relative priorities has completely ignored the fact that in restructuring proceedings, the creditors' right to receive payments is not realised from any static mass of assets, as in traditional bankruptcy. Instead, the payments depend on the debtor's reversible solvency, achieved through the implementation of the restructuring plan.

The second fundamental issue is EU insolvency law's lack of compulsory use of the absolute priority rule, even in cross-clam cram downs. Article 11(1)(c) of the EU Directive on Restructuring and Insolvency establishes relative priority as the default rule, with absolute priority offered only as an optional framework for Member States.

Finally, it seems unlikely that European harmonisation of insolvency laws would provide a solution to the problems caused by the ruling in KKO 2003:73. At the Finnish national level, there is a project of law drafting concerning the debt-to-equity-swap. This project might offer an opportunity to alleviate the present state of the law. No matter whether this opportunity materialises or not, judges, insolvency practitioners, as well as scholars, are bound by the statutory law which, for reasons explained above, requires the APR to be applied in cram down only.

References

Bibliography

Ballerini, G. (2021) ‘The priorities dilemma in the EU preventive restructuring directive: Absolute or relative priority rule?’, *International Insolvency Review*, 30, 7–33.

Herbert, M. (1995) *Understanding Bankruptcy*. Legal Text Series. New York: Matthew Bender IRWIN.

Hupli, T. (2004) *Täytäntöönpanointressi yrityssaneerauksessa. Insolvenssioikeudellinen tutkimus saneerausvelkojan oikeusaseman perusteista*, with the English abstract under the title ‘Creditors’ Interests in Business Reorganization’. Helsinki: Finnish Lawyers’ Association.

Kim, S.E. (2021) ‘Tracing the Diverse History of Corporate Residual Claimants', *Southern California Law Review Postscript*, 95, PS43–PS44.

Krohn, A. (2021) ‘Rethinking priority: The dawn of the relative priority rule and the new “best interests of creditors” test in the European Union’, *International Insolvency Review*, 30, 75–95.

LoPucki, L.M. (2004) ‘The Myth of the Residual Owner: An Empirical Study’, *Washington University Law Quarterly*, 82, 1341–1403.

Niemi-Kiesiläinen, J. (1999) ‘Consumer Bankruptcy in Comparison: Do We Cure a Market Failure or a Social Problem?’, *Osgoode Hall Law Journal*, 37(1/2), 473–503.

Niemi-Kiesiläinen, J. (1995) *Luonnollisen henkilön velkavastuu insolvenssioikeudessa*, with the English summary under the title ‘Liability for Debt in Insolvency Law’. Helsinki: Finnish Lawyers’ Association.

Section IV: Legal Symbols, Language and Experiment

10 Becoming a Judge – Symbols, Strategies and Support in Perceived and Performed Lived Autonomy

Moa Bladini, Wanna Svedberg Andersson & Sara Uhnoo

Abstract

This chapter explores how junior judges in Sweden learn, embody, and enact judicial autonomy, with a particular focus on the early stages of their professional training. Moving beyond the ideal of the judge as an abstract, detached decision-maker, we employ the concept of 'lived autonomy' to analyse how autonomy is experienced and performed in everyday professional life. Drawing on interviews with clerks and senior judges about their experiences as junior judges, we examine how autonomy is shaped by relational, temporal, and spatial dimensions in the early stages of judicial life. We show that autonomy is not a static trait acquired at a specific point in the training trajectory but elastic, and context dependent. Clerks' experiences vary depending on institutional structures, collegial support, and opportunities for responsibility. Some navigate their novice status strategically to build competence, while others feel thrown into solitude, challenged by a sudden shift in expectations. Our findings highlight that judicial autonomy is relationally constructed and institutionally situated, produced through both formal procedures and informal practices. Ultimately, the chapter contributes to a more nuanced understanding of how judges become autonomous professionals and why supporting relational and organisational conditions is crucial for fostering judicial independence in practice. Through this study, we pay tribute to Johanna Niemi, whose scholarship on professional identity and lived legal experiences continues to inspire research into everyday life in the legal profession.

Introduction

> I am being a bit abstract now, but […] actually, [when thinking about 'autonomy'] one thinks about the constitution in some way, that no authority or no one should be able to influence how I judge an individual case. One might consider the lottery system [used to allocate cases to judges]. Then I also think about things that make one feel that the role has become less autonomous. For example, digital and administrative systems and managing the high workload […]. That my [digital] calendar is being booked by others. […] Then I also think that I am independent, objective, and so on. That is kind of a given in the role of a judge.

In the above quote, Chief Judge Magnus[1] describes autonomy from the perspective of everyday life as a judge. The concept of the autonomous subject holds particular significance in the legal field (Gustafsson 2014; Nedelsky 2011; Svensson 1997). According to Rawls (2005:514), the 'ideal judge as being objective and autonomous should take her starting point in the original position, placed under "the veil of ignorance"', detached from context and relationships. This traditional view assumes the autonomous subject to be wise, insightful, and capable of self-reflection, and to use critical thinking and sound judgement, with the freedom to make decisions independently (Bladini 2013; Svedberg 2013; Svensson 1997). However, this view reflects a normative ideal rather than a lived reality (von Gerber 2014). In

[1] The names of the judges are fictitious because of research ethics and confidentiality requirements.

this chapter, we explore Swedish junior judges' daily professional practice, both discursively and in lived experience, through a situated understanding of autonomy. This was developed as part of the *Autonomy of the Judge in Theory and Practice: Strengthening the Independent Judiciary*[2] project.

In this chapter, we honour Johanna Niemi, whose dedication has inspired a generation of younger scholars through her commitment, curiosity, and pursuit of knowledge. She has made a lasting impact on the field of law, and her approaches have not only broadened legal research but also deepened our understanding of justice. Her efforts to highlight the lived experiences of both women and men within legal frameworks have inspired us.[3] In this chapter, we draw on Niemi's (2020) work on the construction of professional identity to explore junior judges' autonomy and develop the concept of lived autonomy from an everyday life perspective. Drawing on her insights into how law operates in people's lives, we explore how theoretical concepts, such as autonomy, take shape in legal practice.[4]

As in most democracies, the independence of courts and judges is enshrined in the Swedish Constitution, which establishes independent courts as essential to the rule of law, ensuring equality, political independence, and judicial legitimacy (Regeringsformen [The Instrument of Government] 1:11; 11:3). While extensive research explores constitutional frameworks designed to strengthen judicial independence (e.g., Graver 2023; Seibert-Fohr 2012), there is no clear link between such regulation and resistance to undemocratic regimes (Steuer 2022; Fleck 2024). For example, as Graver (2023) has shown, judges are often loyal to the lawmaker, regardless of whether the regime is democratic or totalitarian. While some judges have engaged in acts of civil disobedience, historical examples suggest that most judges tend to adapt to the prevailing political order rather than actively resist it.

However, judicial independence is not merely an abstract constitutional principle; it is also grounded in judges' actions and practices. Hence, it is important to consider the practical role of judges who engage daily in case evaluation (Steuer 2022; Fleck 2024). Focusing on the most exposed judges, those who train on the bench, we argue that to gain a deeper understanding of the complexity of judges' autonomy, the ideal of independence must be complemented by an embodied perspective on how judges express, learn, and demonstrate autonomy in their everyday professional lives.

Lived Autonomy from an Everyday Life Perspective

In this chapter, we explore how autonomy—defined as the ability to express one's will and make decisions—is enacted in junior judges' everyday practice. Using the concept of lived autonomy from an everyday life perspective (abbreviated to *lived autonomy*) (Bladini & Svedberg Andersson 2020; Svedberg Andersson & Bladini 2021), we examine how judges

2 The project is funded by the Swedish Research Council, 2023–2026.

3 Niemi was the opponent at Bladini's doctoral defence, which focused on objectivity ideals in legal decision-making. In response to the critique of the traditional, distanced, positivist ideal, she posed a challenging and insightful question: could it be that the text itself also lacked life and embodiment? Bladini explained that the empirical material consisted of legal texts rather than social practices. Yet the question remained. Since then, considerable time has been devoted to studying the social practice of judging, bringing life and bodies into both analysis and writing. For this provocation, and the inspiration it sparked, deep gratitude is due. Thank you, Johanna. As part of her impact on younger scholars, Niemi served on the grading committee for Svedberg's doctoral thesis.

4 In particular, Niemi (2018), *Law and Crisis*, and Niemi (2020), *Constructing the identity of a lawyer*.

learn, embody, and perform autonomy in their early professional lives,[5] and how it can be shaped by relational, temporal, and spatial conditions.

Inspired by Smith (1987, see also Svedberg 2013), the concept of *everyday life* captures the human being as a subject embedded in everyday life. In addition to Smith's focus on routines, we incorporate activities; cognitive, bodily embedded, and shared memories; as well as symbols, patterns, knowledge, and experiences. Drawing on Listerborn's (2007) use of Simone de Beauvoir and Toril Moi, we understand judges' bodies as 'situated'—shaped through interaction with others, space, and societal norms. Just as Listerborn critiques the myth of objectivity and highlights how women's embodied experiences are shaped by discourse and collective memories, we consider how symbols in everyday life and courtroom settings influence how judges embody and perform autonomy. Moreover, as we will show, the relational, temporal, and spatial conditions that shape lived autonomy do not do so uniformly but vary across stages of a judicial career. Autonomy may be experienced as more fragile, negotiated, or externally conditioned in the early stages—such as during clerkship—while appearing more consolidated or routinised in later stages. This elasticity in autonomy, captured in the concept of *lived autonomy*, contrasts with the traditional ideal of judicial autonomy as a contextless state of wisdom, self-reflection, critical thinking, and independent decision-making that judges may strive to uphold.

We explore judges' lived autonomy as an elastic and experience-based concept, using ethnographically inspired qualitative methods that combine interviews and field observations in five District Courts (DCs) and two Courts of Appeal (ACs). Judges were shadowed during trials, deliberations, case preparation, and informal settings, such as coffee breaks, allowing for reflection and informal conversations that revealed the gap between discourse and practice (McDonald 2005). So far, we have conducted 24 interviews (individually or in groups) with 13 senior and 13 junior judges, including clerks. Drawing on discourse analysis and Niemi's (2018) work, we examine how judges express, learn, and demonstrate autonomy in their everyday professional lives, including the underlying assumptions and power dynamics.

The Path Towards Becoming an Autonomous Judge

The typical path to becoming a judge in Sweden is long. Maya Angelou's (2011) poem, 'We delight in the beauty of the butterfly but rarely admit the changes it has gone through to achieve that beauty', serves here as a metaphor for the junior judge's journey toward autonomy, paralleling the painful transformation process and the butterfly's quest for perfection. In line with the notion of judicial autonomy as both an achievement and a static condition, presumed to be attained upon completion of formal judicial training, the Swedish judicial education is designed to cultivate autonomous judges through a structured, time-bound trajectory that combines education, practical experience, and supervision. After briefly outlining the structure of judicial training below, we examine the initial steps in the judicial role and illustrate how individual judges' autonomy, i.e., their ability to express their will and make decisions, is not a static condition but is rather elastic and situational.

The judges' training programme in Sweden is structured stepwise towards autonomy. After completing two years as a law clerk (*tingsnotarie*), it is possible to apply for the judges' training programme. This four-year programme begins with one year at a Court of Appeal

[5] In the case of judges, various elements of their everyday life, both professional and personal, influence their autonomy. While these spheres are inseparable, this chapter focuses on the professional dimension.

(AC) as a legal clerk (*hovrättsfiskal*), followed by two years at a District Court (DC) as a junior judge (*tingsfiskal*). During the fourth and final year, the junior judge returns to the AC as an acting associate judge (*t.f. assessor*).

The first year at the AC is largely a learning position, marked by significant dependence, limited personal responsibility in legal decision-making, and ongoing evaluation. It represents a critical learning phase where the individual's proposals are scrutinised. In contrast, the following two years at the DC primarily involve presiding, i.e., serving as a judge in court cases. Senior judge Johan describes this journey:

> The first year is extremely dependent. You present proposals, which are evaluated. It's like a year of oral exams. Tough, but once you get through it, you know you're doing a good job. A baptism by fire (*ett stålbad*). Over the next two years, you will be completely alone in the DC, which is almost even scarier. Then you return to the AC, with more independence.

The progression outlined illustrates a structured journey towards judicial autonomy. Judge Johan refers to the first year as 'a year of oral exams', designed to build foundational knowledge and skills. However, as discussed below, it can also threaten the individual judge's feeling of autonomy, as constant scrutiny can lead to self-doubt and reliance on external validation. The subsequent transition to working 'completely alone' for the next two years in the DC signifies a major shift in both time and place. This phase introduces a stark contrast, moving from a highly supervised setting to one of solitary decision-making. The isolation can be intimidating/daunting, as the individual must apply their training independently, without immediate feedback. This stage is crucial for reinforcing autonomy, as it requires the young judges to rely on their own judgement and expertise. Nonetheless, as we will show, the sudden lack of support can also induce anxiety, highlighting the delicate balance between autonomy and the need for relational support.

The fourth and final year, marked by a return to the Court of Appeal as an acting associate judge with increased independence, signifies the culmination of a training process in which time and experience have forged a more confident and self-reliant professional. This phase reflects a mature feeling of autonomy, reinforced by the relationships built during the initial years and skills honed through solitary practice. The ability to operate with greater self-sufficiency underscores the importance of a supportive yet challenging training environment. Overall, the interplay of time, place, and relational dynamics shapes the journey towards professional autonomy. The phases of initial dependence, solitary practice, and eventual return to a more collaborative setting illustrate the multifaceted process of learning and the ongoing threats and reinforcements to the feeling of autonomy.

After completing four years of the judges' training programme, the junior judge is appointed as an associate judge (*assessor*) and is expected to gain broader professional experience by working with qualified legal assignments outside the DC and AC for a few years, for example, as a legal expert in a government department, in another governmental body, or as a judicial secretary at the Supreme Court. After this stage, it is possible to apply for a position as a (senior) judge.

The position of a junior judge encompasses all the stages outlined above. To gain a deeper understanding of the complexity of judges' autonomy, the remainder of this chapter focuses on the youngest judges. We explore how *law clerks*, during the two-year period preceding their entry into the judges' training programme, describe their initiation into adjudication by analysing the initial stages of this process and how they navigate the challenges of being

entirely new to the role. Subsequently, we explore the various pathways, from feeling inexperienced to becoming more confident and competent and how these pathways differ based on organisational structures as well as procedural and legal developments. This is followed by a discussion of the isolation that frequently characterises the clerkship period, highlighting both its intimidating aspects and its potential for professional growth. Finally, we address the importance of relationships with colleagues, both senior and junior, as either sources of support or potential challenges to autonomy.

Navigating the Novice Stage

In our interviews, we asked the clerks how they navigated the two-year period preceding their entry into the judge training programme. At the time of the interview, Amalia had only been a clerk for six months. Although she did not yet preside over her own cases, she could no longer call herself a newcomer. This in-between position prompted ambivalent feelings, as Amalia explained:

> It is a good thing, but perhaps I waited a little too long, hiding behind being new, before I decided that I had to leave that and fill those shoes. I am now in a position to do that. I have incredible colleagues who are always willing to help if needed.

Amalia illustrates how autonomy is not simply acquired at a fixed point but is negotiated over time. Her admission of 'hiding behind being new' suggests that autonomy is not solely a matter of competence but also one of self-perception and confidence. Initially, she hesitated to inhabit her role fully, using the 'new' label as a temporary shield against the demands of autonomous adjudication. The metaphor of 'filling the shoes' signals the moment when she actively assumes the responsibilities expected of her. Her account also highlights the relational nature of autonomy, indicating that her transition is not an individual achievement, but rather one supported by her colleagues, whose guidance reinforces her ability to act autonomously. In this sense, autonomy is both constructed and sustained through interaction with others.

While Amalia initially clung to the notion of being new to delay the responsibilities and experiences of autonomy, another former clerk, Maria, employed the same status in a contrasting manner—strategically using it to accelerate her sense of autonomy rather than postpone it.

> If I felt that I was being difficult, then I would feel that every question I ask affects my appraisal,[6] but I don't. And sometimes I've thought that I take the opportunity to be a little extra inquisitive in the beginning, because they will only remember the ending anyway. That was kind of my strategy as a clerk as well. I was, well, a bit unbearable at first. So, I learn things and become independent as quickly as possible, and it works. You have to be a little shameless, and then it works, but it also requires having someone to ask. No, but I think it helps to be a little unpretentious. As I said, it also depends on the workplace. I don't think my approach would work in all courts. But I'm not complaining, and I don't really think the court is either. Because I feel like I've become very independent quite quickly.

This quote illustrates that autonomy is not merely granted but actively acquired through strategic engagement. Unlike Amalia, who temporarily resists full autonomy, Maria leverages

[6] Following the completion of their two-year period as clerks, the clerks receive a written appraisal from senior judges, which can play a significant role in shaping their future within the judiciary.

her novice status to legitimise extensive questioning, thereby accelerating her path to the feeling of being autonomous. She frames her approach as a calculated strategy—capitalising on the expectation that beginners are permitted, even encouraged, to ask questions—while acknowledging that such tactics depend on the specific organisational culture of her court. The effectiveness of her strategy relies on the presence of senior colleagues willing to answer her questions, indicating that autonomy is relationally dependent. Thus, autonomy is not simply an individual trait, but rather it is negotiated, displayed, and made possible through social interaction. These two contrasting examples show that autonomy is a process performed, challenged, and shaped by institutional, relational, and situational conditions.

Organisational Implications of Autonomy

The pathways from feeling new to becoming experienced differ depending on organisational and procedural context, for example, whether the court is large or small, the number of clerks, and the regulatory framework governing their adjudicative authority. Clerk Helena, who had worked as a lawyer at a law firm for several years before beginning as a clerk, expresses a sense of great responsibility and trust, which contributes to the feeling of autonomy. In her DC, the clerks gain full authority after nine months: 'That means you judge on your own, with the three lay judges and someone taking the notes in simpler notary cases. Then you sit there as the chairperson in a high-backed chair', she explains. Sitting in the high-backed chair grants her the formal role of chairperson and reinforces her image as an autonomous judge. When she was granted full authority a few months ago, it was initially 'very nerve-wracking, exciting, and overwhelming. And a bit scary!' Now, with a little more experience, she is starting to feel 'a bit more confident', indicating a clearer feeling of autonomy. She continues discussing how often clerks get to preside:

> Previously, one might have chaired a few times per term, but [due to new legislation to fast-track simpler cases], we sit almost every third week. One clerk recently resolved more cases in a week than previous clerks did during their entire time here. It's very exciting; we are becoming highly skilled.

This quote reflects a sense of pride and suggests that clerks have ample opportunities to learn and feel a sense of autonomy. Providing court clerks with more frequent practice can also be viewed as the organisational acceleration of the process by which clerks develop autonomy. Helena describes her first time as the presiding judge as 'very scary, but everyone here [at her DC] is very helpful, while also being meticulous in ensuring that I am now independent'.

Helena's experience illustrates how increased responsibility and structured support contribute to a gradual development of judicial autonomy. However, the process of becoming autonomous is not uniform; it is shaped by organisational structures, individual aspirations, and the level of trust placed in clerical staff. While Helena highlights the importance of frequent adjudication in building confidence, other clerks describe different pathways to autonomy shaped by their working relationships and the specific roles they are entrusted with during their clerkship. In the following account, former clerk Maria describes working closely with the chief judge during her clerkship, because there were very few other judges at the DC, and how she gradually assumed a role that blurred the lines between training and independent judicial work:

> I think we had something of an understanding. I had expressed that I wanted to draft as many judgements as possible. So, when she [the chief judge] had 'grey cases' [simpler cases], I was the one drafting the judgements. She told me, 'This is no longer

> training for you.' Instead, I was given more complex tasks. I rarely had to present cases unless I was uncertain. I was entrusted with preparing a significant amount of material independently. So, when I started as an assistant judge (*fiskal*), I didn't really feel like I encountered anything entirely new compared to my time as a clerk. The only difference is that now I am the one making the decisions. It gives a different sense of creativity. I remember that the most challenging aspect of working at the AC as an assistant judge—especially towards the end—was that everything had to be presented to a judge. […] I found that frustrating because, in a way, it hindered my ability to move things forward at a pace that felt natural.

These accounts illustrate how judicial autonomy is actively constructed through institutional structures. Helena's experience highlights a structured path to autonomy, where frequent adjudication and systematic support gradually reinforce independence. In contrast, Maria's autonomy emerged through trust and informal delegation, blurring the boundary between training and full judicial responsibility. Together, these examples show that autonomy is a dynamic, context-dependent process shaped by organisational conditions, the distribution of responsibility, and professional trust. While some clerks gain autonomy through structured exposure to decision-making, others negotiate it within relational and institutional frameworks. Ultimately, judicial autonomy is both practised and performed, continuously shaped by the surrounding legal and organisational environment.

The Feeling of Being Alone and its Consequences for Autonomy

Below, clerk Helena describes her development from lacking the authority to judge and being there merely to learn, to becoming qualified to judge independently. She characterises it as a sudden shift in how the more senior judges related to her:

> For so many years, we have been assessed or supervised by someone else who told us what was right or wrong, and then suddenly everyone just switched and said, 'Now you are your own judge; we cannot tell you what to do'. And I thought everyone switched very quickly, which is good, because I have never felt that anyone has tried to influence me in the slightest, and if I ask for help, everyone is very careful to say, 'This is what I think, but you do as you want', and that is important, within the bounds of the law, of course.

Judges' decision-making, including justification of the decisions, is arguably the aspect of their profession most defined by autonomy. Helena reflects on her initial experience stepping into the role of a judge, where she was expected to demonstrate a certain level of autonomy. Rather than receiving guidance and support from senior judges, she was now expected to express her will and make independent decisions.

This experience of being suddenly on one's own is described as troublesome by another clerk, Jesper. He took up his position immediately after graduating from law school. At the time of our interview, he was halfway through the training period. When we entered the courtroom to conduct the interview, he chose to sit in the chair's high-backed chair, quite fitting for an interview about his autonomy. He mentioned that while he was satisfied with his position as a clerk, it could be challenging at times. He further stated that he had no interest in continuing his judicial career at the court: 'It has never been part of my plan. I am here mainly for the credentials. When I started as a clerk, I hadn't ruled out the possibility of staying in the judiciary, but now I have.' He elaborated more on why:

> Now I have a greater insight into what it is like for judges. They are incredibly skilled lawyers, and they work extremely hard, but … it is also quite isolating. You meet a lot of people, but in this role and in this chair [he refers to the judge's chair he is sitting in] … you are, it's like there's a shield between you … in some way.

Jesper stresses the isolation of judging, explaining that it is not only in relation to others in the courtroom but also inherent in the role: 'When you have to sit in judgement over someone, you must maintain a certain distance'. He expresses discomfort with this, noting the paradox of constant interaction with lay people in court while needing emotional and professional detachment (cf. Bergman Blix & Wettergren 2018). His reference to a 'shield' illustrates the barrier that judges feel is necessary to preserve impartiality and authority (c.f. Rawls 2005; Maroney 2011). This reveals the emotional demands of the judiciary, where the need for objectivity can create a feeling of isolation. Along similar lines, Niemi (2020) has shown that the legal profession is strongly associated with a professional identity based on objectivity, impartiality, and neutrality—core principles emphasised in legal training. However, she argues that such ideals must be critically examined by situating legal actors within broader contexts of power, temporality, and space, allowing more nuanced understandings and fostering possibilities for self-reflection.

Colleagues: Supporting and Challenging Autonomy

The interviews with judges clearly demonstrate that in a relational world, individual autonomy is always bound and context dependent. Clerk Helena describes how she, even though she was qualified to judge independently, received strong support from more experienced colleagues:

> I don't feel there is any prestige; everyone takes their time. It is okay to ask the questions you need to ask. This was very comforting when I had to sit in that [high-backed] chair. I went over all possible scenarios [beforehand], and everyone took their time to answer [any questions]. Everyone assured me that nothing could go too far wrong, and that they were present [to guide her] if there was anything, and everyone was keen that it should go well, and one felt safe.

The relational support seems important for Helena to dare to feel safe, because in the end, she says, 'you must rip off the band-aid'. The first few times as a presiding judge, it should feel slightly uncomfortable. In line with the assurance Helena received from more experienced judges that nothing could go wrong, clerk Maria recalled how, on her first day at the DC, the chief judge approached her and, in an attempt to reassure her, said that the court was not an emergency hospital—no one would die if she made a mistake. Clerk Helena also describes how supportive and respectful treatment from experienced prosecutors can strengthen her autonomy: 'I find it very reassuring […] because we can get a lot of help from the prosecutors. And the prosecutors here are incredibly helpful; they know we are in training, they know roughly when we started'. This is very much a central relational aspect of the feeling of autonomy (cf. Bergman Blix & Wettergren 2018 on the collective aspects of judging). This can be contrasted with other stories in our dataset, where clerks have recounted making mistakes in the courtroom and feeling particularly exposed to prosecutors' or defence lawyers' decision.

As demonstrated above, young judges often describe themselves as alone in the courtroom when making decisions in the role of presiding judge, despite the collegial support available and the presence of lay judges in the room. This is interesting, as it suggests that lay judges

are not perceived as actively contributing to the legal decision-making process but rather as serving a transparency function. One way to understand this is that the legal judges, including clerks, are responsible for leading the proceedings and often experience a profound feeling of sole responsibility for the legal outcome. Moreover, this sense of solitude extends beyond young judges; more senior judges also report feeling alone in their decision-making, even when others—such as lay judges—are present in the room.

However, another clerk, David, notes that he has received support from the lay judges, although he emphasises that this support is not directly related to the legal aspects:

> When we sit in a criminal case, we sit with lay judges, and in those instances, there are certain matters that the entire court must decide on. And then, of course, you are supposed to ask the lay judges as well. […] I might even have benefited from their experience. Many of them have a great deal of experience in handling proceedings, even if they may not have legal expertise.

As Helena underlines, support from senior colleagues appears to be a crucial aspect for clerks in their new role. In our interviews, the relational aspect is highlighted, and many interviewees report that senior judges maintain an open-door policy to signify their availability and readiness to provide guidance on any inquiries. In addition, the digital communication system offers a direct channel to junior and senior colleagues. Another strategy employed by clerks and more senior judges is to announce a recess during proceedings to create time and reflective space for handling uncertainties and ambiguities that arise during the hearing. This provides the presiding judge with an opportunity to reflect, consult lay judges or other judges, leave the courtroom to seek out colleagues for advice, or contact them by other means (via phone or digitally).

Relationships with others, such as prosecutors, lay judges, or senior colleagues, can be supportive but may also have the opposite impact. Clerk Jesper was asked if he had experienced a ‘really difficult situation’ where he felt that he could not uphold his role as a judge. He answered that it happens from time to time, although he could not recall any specific situation: ‘But if you’ve missed something and the senior judge is sitting there sighing, or anything in administrative support, something goes wrong, or you miss something, then you feel very small, really’. Furthermore, Jesper emphasises the relational aspects as central to his feeling of autonomy as a judge, when recalling what it was like to work closely with a particular judge:

> It usually works very well, but with one person, it worked very poorly. If you earn the trust of the person you’re working with, you can grow; but if you don’t gain that trust, you can become stuck, like a frightened rabbit. You start to doubt yourself and your abilities, and then you don’t feel autonomous at all. And then you just become anxious.

Jesper’s reflection highlights the significant impact of relational dynamics on professional development in relation to trust. His experience underscores how trust from senior judges can foster growth and confidence, while a lack of trust can lead to self-doubt and anxiety. Jesper’s metaphor of being like a frightened rabbit vividly conveys the vulnerability and insecurity that can arise in unsupportive environments. This insight emphasises mentorship and positive collegial support in cultivating judicial competence and autonomy, while indicating the importance of strategies for fostering trust and supportive relationships within judicial training programmes. Jesper has a good relationship with the judge with whom he currently works:

> She sits with me and wants to discuss how she envisions working on a task and includes me in the process. The other person might have just come, dropped a task in my lap, and said: 'Fix this'. And then I felt uncertain and wondered, 'where do I even start?' But with one who includes me, I feel loyal and recognised.

He continues to reflect on his autonomy in these situations: 'I might not feel as autonomous in that task (where the mentor goes through it with me) as I would if I had been assigned it on my own. But I do get guidance, and it's part of my training'. He adds: 'But with the previous mentor, where I felt uncertain, I felt like a deer in the headlights', suggesting a sudden onset of panic or paralysis when faced with a stressful or overwhelming situation. This vividly conveys the feeling of being caught off guard and frozen by fear, highlighting the psychological impact of unexpected pressure or attention.

Another aspect of the relationships between judges, clearly related to the power dimension, is that clerks and other judges in training are under constant assessment and evaluation from either a senior judge (*rådman*) or fellow judge in training (*fiskal*). This can cause both pressure and uncertainty for clerks in relation to these more senior judges. Chief Judge Magnus reflected on the significance of the evaluation and how it is exercised by judges:

> At the beginning of my career [when being evaluated], I think I was lucky—at least that's how I see it now. It's like a minefield that one must navigate through. And if there happens to be someone eccentric or highly punitive in one's way who becomes one's boss or suchlike, then one might … well, maybe things won't go so well for them.

Magnus highlights the power imbalance and describes the potential exposure that clerks may face.

Concluding remarks

Understanding someone's action [or autonomy] in a specific situation as navigating complex relationships in a particular space and time runs contrary to the view that action is the outcome of an isolated subject's clear and conscious decisions (Wettergren, Uhnoo & Bladini 2024).

In the spirit of the subject of the Festschrift, Johanna Niemi, we explored the professional identity of judges. The aim was to contribute insights and bridge the gap between the abstract ideals of autonomy and their manifestation in legal practice. In this chapter, we have focused particularly on the clerks, providing insight into their everyday lives and their transformation into judges. However, this should not be read in line with the traditional understanding of a linear journey towards a state of full autonomy. In general, this appears to be a bumpy and multifaceted journey in which time, place, and relational dynamics significantly influence a judge's growth and confidence. The progression from training to becoming a judge involves continuous learning, the challenge of asserting authority as a judge, and the importance of professional relationships in shaping a judge's career and daily practice. As Niemi (2020) suggests, judges' professional identity and autonomy are deeply influenced by these dynamics.

We explored the *lived autonomy* of judges by focusing on clerks and how their feeling of autonomy is shaped and constrained by relational, temporal, and spatial dimensions. While judicial independence is a formal legal principle, and training is developed in line with the traditional ideal, and in that way incorporated in the everyday life of the judges in training,

our findings suggest that autonomy is also an experienced reality, influenced by organisational structures, professional interactions, and the physical and digital spaces in which judges operate.

The analysis highlights that clerks experience vulnerability and exposure, at times feeling like deer in the headlights or frightened rabbits. They are under constant surveillance and evaluation by more senior judges, while also being dependent on their support and encouragement. Although judges often describe their role as solitary, their autonomy is continuously negotiated through relationships with other clerks, junior and senior colleagues, lay judges, and prosecutors, who can support or challenge their independence. Organisational aspects, such as procedural regulations and digital communication systems, impose constraints but also create opportunities for autonomy. Temporally, high workload and close deadlines shape judicial discretion, sometimes reinforcing and at other times limiting a clerk's control over decision-making. Spatial arrangements, from courtroom dynamics to open-door policies, further influence the experience of autonomy, signalling either accessibility or isolation.

Ultimately, judicial autonomy is not a fixed condition but a lived and dynamic process, shaped by the interplay of professional relationships, institutional structures, and everyday practices. A key observation is the contrast between the traditional notion of autonomy and the experience of lived autonomy, particularly in the context of judicial training. While traditional autonomy is viewed as a static condition, lived autonomy is seen as flexible and dynamic. Rather than following a linear progression toward possessing autonomy, lived autonomy is fluid, imperfect, and shaped by the complexities of daily life and one's environment.

Just as we have found Professor Niemi to be a supportive role model who has contributed to our journey towards becoming autonomous researchers, the preliminary findings indicate that trusting and supportive relationships, particularly with older, more experienced judges, are essential for young judges in training to develop their feeling of autonomy.

References

Bibliography

Angelou, M. (2011). *I Know Why the Caged Bird Sings*. Pearson Education Limited.

Bergman Blix, S. and Wettergren, Å. (2018). *Professional emotions in court: a sociological perspective*. Routledge.

Bladini, M. and Svedberg Andersson, W. (2020). 'Swedish rape legislation from use of force to voluntariness – critical reflections from an everyday life perspective'. *Bergen Journal of Criminal Law & Criminal Justice*, 8(2): 31.

Bladini, M. (2013). *I objektivitetens sken. En kritisk granskning av objektiivtetesideal, objektivitetsanspråk och ligitimeringsstrategier i diskurser om dömande i brottmål*. Makadam.

Fleck, Z. (2024). 'Sustainable rule of law and democracy – another perspectiv'e. In *Honour of the inauguration of Prof. Petra Bárd*.

Graver, H.P. (2023). *Heroes in Judicial Robes*. USAID, Justice for All Program. ISBN 9786177627752.

Gustafsson, H. (2011). *Dissens. Om det rättsliga vetandet*. Göteborg: Juridiska institutionens skriftserie, Skrift 9.

Listerborn, C. (2007). *Kroppen som situation: om kön, makt och rum. Del 1, Begreppsutveckling*. Rapporter och notiser/Institutionen för kulturgeografi och ekonomisk geografi vid Lunds universitet, 168; Lund: Lunds universitet, Inst. f. kulturgeografi och ekonomisk geografi.

Maroney, T.A. (2011). 'The persistent cultural script of judicial dispassion'. *California Law Review*, 99: 629–681.

McDonald, S. (2005). 'Studying actions in context: a qualitative shadowing method for organizational research'. *Qualitative Research*, 5: 455–473.

Nedelsky, J. (2011). *Law's Reactions. A Relational Theory of Self, Autonomy, and Law*. Oxford: Oxford University Press.

Niemi, J. (2018). 'Law and Crisis: Reflections on How Legal Problems Are Constructed and How They Can Be Studied'. *Retfærd: Nordisk Juridisk Tidsskrift*, 41(3-4): 76–90.

Niemi, J. (2020). 'Constructing the identity of a lawyer'. In *Vänbok till Ulf Israelsson*, Umeå: Skrifter från Juridiska institutionen vid Umeå universitet, No. 44, pp. 229–235.

Rawls, J. (1999). *A Theory of Justice*. Cambridge: the Belknap Press of Harvard University Press.

Seibert-Fohr, A. (2012). *Judicial Independence in Transition*. Springer.

Smith, D.E. (1987). *The everyday world as problematic: a feminist sociology*. Northeastern series in feminist theory. Boston: Northeastern University Press.

Steuer, M. (2022). 'The Role of Judicial Craft in Improving Democracy's Resilience: The Case of Party Bans in Czechia, Hungary and Slovakia'. *European Constitutional Law Review*, 18(3): 440–465.

Svedberg W. (2013). *Ett (o)jämställt transportsystem*. Lund: Bokbox förlag.

Svedberg Andersson, W. and Bladini, M. (2021). 'Autonomy and Beyond – Voluntariness in the Light of Lived Autonomy'. *Retfærd*, Nr. 3 & 4.

Svensson, E.-M. (1997). *Genus och rätt, en problematisering av föreställningen om rätten*. Uppsala: Iustus förlag.

von Gerber, Y. (2014). *Autonomy – Ideal or Reality?* Doctoral thesis, Lund University.

Wettergren, Å., Uhnoo, S. and Bladini, M. (2024). 'Rationality, Objectivity, and Autonomy in the Legal Sphere'. Available at: https://zif.hypotheses.org/1132 [Accessed 19 June 2025].

11 The Human Body in Market Capitalism: Nothing More Than a Commodity

Eva-Maria Svensson

Abstract
Various internet platforms for user-generated content, monetised via monthly subscriptions, tips, and pay-per-view, have become popular and generate substantial income. More than just social media networks, these platforms allow content creators to upload subscription-based images and video-on-demand services accessible to paying subscribers. The content may be diverse but is predominantly sexual.

In this chapter, I explore the phenomenon in which (mostly) women trade sexual services, as well as videos and images of their own bodies, on such platforms. I reflect on this phenomenon using the concepts of self-commodification and intrinsic value from a structural perspective. This phenomenon aligns with a reductionist view of the human body, serving market capitalism and the broader economisation of all spheres of life, where the intrinsic value and immaterial aspects of human beings are rejected.

Are there any alternatives? Taking a perspective beyond individual free will, and with the help of the concept of human dignity in the EU Charter of Fundamental Rights and the corresponding concept of intrinsic value, I argue in favour of perceiving this trading as exploitation and a violation of human dignity.

Introduction

The trade of humans for the purpose of forced labour, sexual slavery, commercial sexual exploitation or human trafficking is condemned as a violation of human rights by international conventions, but legal protection varies globally. Except for children, to define such trading as trafficking, the person who is traded must be forced or persuaded by someone else. But what if the human who is traded is not forced or persuaded to do so, but on the contrary trades their body voluntarily, out of free will, to earn money?

Today, there are several popular social platforms trading images of bodies uploaded by people themselves, claiming their agency and free will as autonomous individuals (cf. Bladini et al in this volume). One of the most popular is OnlyFans. The website has been claimed to empower the content creator. Yet, the platform has also been accused of attracting young people by offering them an easy way to earn money but instead luring them into the sex and pornographic industry. The digital exchange of human bodies, videos and images of them is a contemporary example of the discursive domination of commercial language. From an individual perspective, it can be argued that the creators offer their body out of free will and that it is comparable to any other kind of labour. From a structural perspective, nevertheless, it may be compared to other forms of violation of humans, such as trafficking and prostitution. Free will, in such a structural understanding, is irrelevant—or at least not the most important factor.

In some jurisdictions, initially Sweden and today also a few others, selling sexual content online and prostitution might be considered as a practice that is an effect of a patriarchal and neoliberal society, a society in which some bodies (often a woman but not always) can be

traded for the pleasure of someone else (often a man but not always). So-called prostitution, or 'sex trade', as it is referred to in the Swedish and Finnish legislation, can be understood as a practice which involves not only the trading parties but also everyone else, due to the impact the practice has on the relationship between men and women in society in general. This structural understanding of the practice has led to the criminalisation of the buyer, but not the seller, in these jurisdictions. In other words, it is the buyer, the one who demands a human body to fulfil his needs, who is to blame, not the seller.

In this chapter, I will advance the discussion on commercial language and commodification of not only sex but also the human body, as apparent on digital platforms such as OnlyFans. The focus is on the normative aspect: what does such a practice, in which human bodies are offered as commodities, conceptualise and treat the human being, and what is the impact of such platforms on human beings? To reflect on the diverging perspectives, two concepts will be used: 'self-commodification' and 'intrinsic value'.

With self-commodification, I address the phenomenon where we make ourselves and our bodies commodities on a market. I draw upon and add to other definitions of self-commodification as a reorientation in how we define ourselves as something that is mediated by the consumption of goods and images, or as a reorganisation of our personal lives and relationships based on the model of market relations (Belk 2020; Ibrahim 2018; Johansson & Bengtsson 2016; Jyrkinen 2005; Davis 2003). The phenomenon of self-commodification is moreover related to and placed in a broader context of an ongoing economisation of life (see e.g. Brown 2015; Edström et al. 2016; Lewis 2013; Bauman 1998). The economisation and its intimate relationship to neoliberalism is obvious also in 'commodity activism', understood as a deliberate form of civic political engagement, even when it is feminist (Repo 2020; Ylöstalo & Lamberg 2024). Such activism may seem empowering, but from my point of view, it appears to be a dead end.

By intrinsic value, I refer to the opposite of instrumental value. The latter term is easier to define, referring to when a value is derived from being a means for something else. An intrinsic value, in turn, is a value in itself. The legal concept of dignity is an example of an intrinsic meaning, used, for example, in the inviolable concept of human dignity (Art. 1 of the EU Charter of Fundamental Rights).

What We Talk About When We Talk About Buying Sex

Language is never neutral, as most feminist, and probably also non-feminist, scholars today would agree; it contains certain presumptions and has particular consequences for how to understand and deal with the issue addressed.

Law reforms made the 'purchase of sexual services' a criminal act in Sweden (1999)[1] and later—albeit in a more limited form—also in Finland (2006). In Finland, it was restricted to cases where the purchase was from a person who has been subjected to trafficking or procuring. In the article *What We Talk About When We Talk About Buying Sex*, published in 2010, Johanna Niemi argued that the commercial language used by Finnish and Swedish lawmakers for transactions in which sex is exchanged for money may be a double-edged sword. Although the discourse on 'prostitution', 'trafficking' and 'buying sex' behind the reforms gives the signal that the customers are responsible for the 'sex trade', the use of

[1] From July 1, 2025, purchase of sexual services online is also considered a criminal act.

commercial language may, according to Niemi, disguise the sexual abuse and coercion connected with trafficking (in Finland) and prostitution or purchase of sex (in Sweden).

As Johanna claimed, '[c]ommercial language is often normalised as the natural way of talking about transactions in which sex is exchanged for money. There is no doubt that the way we talk about a phenomenon also frames the problem and defines the cluster of possible solutions to it', with references to Carol Bacchi (1999) and J. G. Raymond (1998) (Niemi 2010: 159).

Johanna writes in the conclusion that '(t)he pro-prostitution movement has argued that criminalisation objectifies and victimises the trafficked persons'. She claims that it is not only the criminal law language, but 'the *combination* of commercial and criminal law language [that] leads to the speaking of trafficked persons as victims' (Niemi 2010: 169, my emphasis). In her analysis of the two law reforms in Finland and Sweden, she particularly scrutinises '[…] the way in which the commercial language neutralises the activity of the traffickers and the buyers of sex to such a degree that obvious sexual exploitation can go unrecognised. If we did speak about exploitation of forced and cheated women and children, instead of trafficking, it would be logical to see the buyers of sex as participants in the exploitation, instead of as market actors' (Niemi 2010: 169).

What We Talk About When We Talk About Our Bodies as Commodities

Today, many internet platforms offer creator- and user-generated content, monetised via monthly subscriptions, tips, and pay-per-view. They have become popular and generate vast amounts of money. Interest in such platforms surged during the pandemic. More than just using a social media network, content creators can upload subscription-based images and video-on-demand services, accessible to paying subscribers. The content may be diverse but is predominantly sexual. One of the most important, and perhaps the most publicly known, platforms providing sexual content is OnlyFans, launched in the UK in 2016. This platform was initially directed towards the sex industry and prostitution, but over time it has also attracted artists, influencers, gamers, and fitness coaches—even though it is still mostly used by pornographic creators (Wijk 2021/2024; Dickson 2020; BBC News 2021). The creators include both amateurs and professionals. As of May 2023, OnlyFans had 3 million registered creators and 220 million registered consumers (Mann 2023). Dolan (2022) found that the typical user of OnlyFans is white (68,9%), married (89,5%), male (63,1%), and heterosexual (59%).

The phenomenon is relatively new in the Nordic region, and there are, so far, only a few studies in this context. Studies based on interviews with various groups in the Nordic context are of particular interest here, as the interviewees' responses provide an overview of different ways of talking about platforms like OnlyFans. In a research overview conducted in September 2023, I identified 12 studies on the topic, mostly at the master's thesis level from Sweden and Norway. Most of these studies collected data through interviews, and the interviewees were primarily women acting as creators. Interestingly, none of the studies included interviews with users.

Five different types of studies were identified:

Five studies with content creators, in which interviewees were asked to describe their own experiences of the platform (Bäckström & Tedla 2021; Nordström 2021; Halvorsen 2022; Lagerström 2022; Wistrand 2022);

Two studies in which young people were asked about their attitudes toward internet pornography and commercial sexuality (Bergroth 2021; Lindblom Reiz 2022);

Two studies on how mass media portrayed OnlyFans (Muhrén Sjölander & Robertsson 2022; Eriksson & Christians 2023);

Two theoretical analyses of the platform (Höij & Nordell 2021; Litzén & Axelsson 2021);

One study exploring the connection between sugar dating and OnlyFans (Johansson 2021).

On a general level, two positions were found and expressed in the studies: a pessimistic and an optimistic one. The positions are based on different worldviews emerging in the discursive construction of OnlyFans and its creators. The pessimistic position is associated with discourses around sex-negativity, pornographisation, generation, radical feminist, heteronormativity and victimisation. The optimistic position is instead connected to discourses around sex-workers, heteronormativity (as in the pessimistic position), empowerment and entrepreneurship (Höij & Nordell 2021). The so-called optimistic position is evidently using a 'language of the marketplace' (Niemi 2010). Through framing the activity in a commercial language, it appears as an activity which is going on between equal parties and as such is neutral and 'normal', like selling and buying other commodities like coffee or bread. These positions are comparable to the positions used in debates about trafficking and prostitution.

What I would like to point at is that this construction of divergent discourses misses a third position, a position which has been important in the Swedish context (Westerstrand 2008; Yttergren & Westerstrand 2016). This third position derives from human dignity, manifested in the building of the Nordic welfare state in two aspects. First, as Esping-Andersen has argued, the welfare state model strives for de-commodification of human beings through social insurance. In short, he argued that if social insurance is universally granted by the state as a legal right based on citizenship instead of performance, the status of the individuals is granted de-commodification vis-à-vis the market (1990). Even though feminist scholars have criticized the typology by Esping-Andersen as e.g. ignoring the role of the family, the characteristic of the Nordic welfare state as having a high degree of de-commodification is not questioned (Borchorst 2009). Second, a significant characteristic of the construction of the Nordic welfare state has been gender equality between men and women (Sörensen & Bergqvist 2002; Svensson & Gunnarsson 2012). Women's independence from their partners and families has been considered to be achieved through income from participation in the labour market, and/or social insurance. Even though women in reality still are less independent than men, due to lower income, more responsibility for and effort in care work etc. (SCB 2024), gender equality impregnates the Nordic welfare state. Furthermore, a gender equal society fits badly with the idea that men can freely buy women's bodies. Trading women's bodies has clearly been declared as contradictory to gender equality and as violence against women, a position which in Sweden for example led to the first prohibition ever criminalising (exclusively) the buyer of sex and not the seller (Swedish Gender Equality Agency 2022/2024).

In the interviews with the content creators several themes appeared, most of them possible to fit into either an 'optimistic' or 'pessimistic' position.[2] One theme mentioned in the

[2] I strongly object to the labelling of the two positions as simply 'optimistic' and 'pessimistic', due to the linguistic-cognitive association and impact. However, I use these terms anyway, since they are used in the studies.

interviews was that OnlyFans enabled female sexual emancipation and an opportunity to express one's identity. On the other side, they also thought that it limited their agency, being normative as regarding the relationship between women (as objects) and men (as subjects) and as leading to stigmatisation of 'content-creators' (Bäckström & Tedla 2021; Wistrand 2022).[3] The interviewees also reflected on who controls the content. Some thought it was the creators who controlled the content, and others considered it to be the customers or the buyers, since they decided the content through their demand. Some brought up that the creator role is commodified, characterised by competition and that it is anonymised, stigmatised and socially characterised as feminine (Nordström 2021; Lagerström 2022). Furthermore, it was pointed out that the platform might act as a gateway to prostitution, and that 'sugar dating' may be facilitated through OnlyFans (Johansson 2021). The interviewees viewed content creation on the platform as a way to earn money, while at the same time expressing criticism of the gig economy, which forces people into precarious jobs that are highly dependent on market forces and capital. In addition, the interviewees considered that the pandemic increased the need for digital sexual arenas, due to limitations on physical meetings, rising unemployment, and the need for new sources of income (Bäckström & Tedla 2021; Litzén & Axelsson 2021). The broader context of a platform-mediated gig economy, into which OnlyFans fits well, is also discussed in other studies (see e.g. Easterbrook-Smith 2022). Some respondents also reported experiences of hate and harassment on the platform (Bäckström & Tedla 2021).

Some of the studies focused on young people, interviewing them about their attitudes towards internet pornography and commercial sexuality. Their responses revealed an ambivalence toward pornographic platforms and commercial sexuality. On the one hand, they expressed concern over the possible normalisation of the trade in bodies for sexual purposes as sex work. On the other hand, OnlyFans was considered better than other so-called sex work alternatives, as creators were presumed to have greater control and agency. According to the interviewees, OnlyFans might also be seen as a critique of normative femininity (Bergroth 2021; Lindblom Reiz 2022).

The analyses of interviewees' responses in studies focusing on how mass media portrayed OnlyFans provide further insights into public perceptions of such platforms. According to one study, mass media to some extent supports the marketing and normalisation of OnlyFans by portraying creators as successful, wealthy, and empowered (Eriksson & Christians 2023). However, another study found that Sweden's public broadcaster reported on OnlyFans in a factual and nuanced manner (Muhrén Sjölander & Robertsson 2022). This latter study also revealed that mass media depicts female and male creators differently, reinforcing patriarchal structures and contributing to a sexualised portrayal of women on OnlyFans. Swedish mass media also portrayed OnlyFans as a platform where children are present (Eriksson & Christians 2023). Other identified themes included the notion that increased technological possibilities bring both greater freedom and greater risks, and that creators often dissociate themselves from producing pornographic content.

The final category of studies offered various theoretical analyses (Höij & Nordell 2021; Litzén & Axelsson 2021). The theoretical perspectives reflected themes emerging in other studies. One explanation was based on a sex-liberal feminist lens, aligned with an optimistic

[3] Also in this context, I wish to point out that the term content-creator is biased since it is formulated as 'optimistic': a certain position, attributing the one who is offering images of her/his body free will and agency.

position and using terms such as 'sex worker', 'free will', 'empowerment', and 'entrepreneurship'. This perspective is rooted in a neoliberal, market-liberal, and individualistic ideology. Another explanation, based on radical feminist thought, reflected a more pessimistic position in which women (or others producing content) are viewed as victims, and the content is seen as pornographic and heteronormative. This viewpoint is grounded in an anti-patriarchal and structuralist ideology. A third explanation interprets OnlyFans within the framework of a platform-mediated gig economy, where workers occupy weak positions in the labour market and belong to the precariat (Standing 2011). A final explanation places the phenomenon within the broader context of commodification and economisation, in which commercial language is applied to nearly all aspects of life.

Broader Context: Neoliberal Markets and Self-Commodification

According to Johanna Niemi (2010), commercial language is not only used in transactions where sex is exchanged for money. She highlights a broader context of commercialisation: "This article can be seen in the broader context of a change toward commercial language in the way we talk about sexuality." She refers to Marjut Jyrkinen (2005), who has analyzed the commercialization of sexuality in broad terms, noting a shift toward seeing sex as a commodity, an object of exchange, and as a leisure activity. This change has been facilitated by access to telecommunications technology and the Internet, but according to Jyrkinen the marketing and advertising of ordinary products by sex and sexualities are also contributors. Although Jyrkinen puts prostitution in the context of an overall *commodification* of sexuality, Monto (2004) observes the commodification in the speech of the sex buyers (Niemi 2010: 160).

Using oneself as a commodity in the interest of maximising the personal 'exchange value' or 'market worth' means an envisioning of oneself as a marketable object. This brings us back to the concept of *self-commodification*. To commodify something is to relate to it as an object that can be bought and sold, as an object that has 'exchange value' on a market. In a market economy, everything has the potential to become a saleable commodity; human bodies, human organs, tissues, cells and genes are no exception. This is facilitated even more through a biological reductionism of the body.[4] In a biomedical conception of the body, as well as in different totalitarian utopias, biological reductionism tends to reduce the whole person to its biological body (Benoist & Cathebras 1993).

To view the human body as a commodity is contradictory to the intrinsic value of dignity human beings have (Universal Declaration of Human Rights). Human dignity constitutes the basis of fundamental rights, declared as inviolable (EU Charter of Fundamental Rights, Title I). As such, it must be respected and protected (Article 1). A society in which the body is allowed to be a commodity has violated human dignity for all and for the coming generations. In other words, a commodification takes place no matter who renders the body a financial source.

There is a growing scholarly focus on how economic language, accompanying capitalism and a neo-liberal ideology, impregnates almost everything. The very idea of democracy is being transformed, a transition from deliberative participatory democracy to distinct electoral democracy has already taken place (Ålund et al. 2017). Wendy Brown (2015) has claimed

[4] There is a prohibition in the EU Charter of Fundamental Rights (Article 3) on making the human body and its parts as such a source of financial gain, in the fields of medicine and biology. Due to the increased risk in these fields, this article provides a protection from the reductionist view on human bodies.

that the role of law in this transformation becomes a means to economise new spheres and practices, and to be a medium to spread neoliberal rationality beyond the economic sphere including constitutive elements of democratic life itself. Citizens in such a context are perceived as consumers who freely choose welfare goods in a free market (Edström et al. 2016; Lewis 2013; Bauman 1998). According to Brown (2015), the neoliberal ideology is to become the dominant way people think about themselves, their lives and their social world. Moreover, this transformation indicates a change of the expectations on the state, from an active welfare state to a passive state whose primary function is to ensure individual rights (Kenyon et al. 2017).

According to Ntina Tzouvala, even the very 'standard of civilisation' constitutes a capitalist dualistic argumentative pattern in a profoundly oppressive way. She claims that international law plays an important role in reproducing the conditions of global capitalist expansion, and thus in the construction and maintenance of a fundamentally unequal world.

On the one hand, according to the 'logic of improvement', the equal distribution of rights, duties, privileges and so on is made dependent on the adoption of the imperatives of capitalist modernity. On the other, this promise is constantly deferred, as 'the logic of biology' puts in motion the often-unarticulated assumption of inherently unsurpassable differences between Western states and the rest of the world (Tzouvala 2020: 212).

Along the lines of a capitalist ideology, human beings are considered commodities, 'human capital'. According to Marx, everything, also intangible things like virtue, love and conscience will be commodified in the end (Leopold 2015). Industrialisation turned human beings into commodities, depending on paid work on the labour market. The welfare state was built to counter the negative effects of such dependency. De-commodification refers to 'the extent to which individuals and families can maintain a normal and socially acceptable standard of living regardless of market performance' (Esping-Andersen 1990: 86). While commodification is the transformation of nature, goods, services, ideas, people and other living creatures into commodities or objects of trade, de-commodification would be the 'extent that workers can leave the labour market through choice' (Saunders 2017). As indicated above, according to Esping-Andersen's scale, the Nordic countries were in the 1980s considered to be the closest to de-commodification in his study. These countries have complemented the labour market with social welfare benefits in case of inability to work, for example because of illness or disability, being unable to find a job, care responsibilities and old age. Consequently, even if people are expected to be commodities on the labour market, the negative effects of this norm (if not fulfilling it) are balanced with a generous welfare program. Thus, the welfare state can be seen as at least an attempt to mitigate the commodification of people in the capitalist era.

With deteriorated security on the labour market, with more unsafe employment and the gig-economy, in combination with a dismantled welfare system, many people now find themselves in a situation where they are solely depending on their own abilities to support themselves. In this uncertain context, the negative effects of people being commodified increase. In such a context the human body is increasingly seen as a commodity which can be used to create revenue. In this context, self-commodification is increasing, e.g. through social media. Many social media influencers commodify themselves by offering online journals, advice, thoughts, experiences along with photographs and videos, and make money by selling books, self-branding, blog subscriptions and advertorials. Trust and an increased audience are built by expressing a conversational style, a seemingly real experience by a real person,

allowing users to connect to the blogger as a friendly voice offering advice (Duffy & Kang 2019; see also Edström et al 2016).

The Exchange of Bodies on Online Platforms and the Pervasiveness of Commercial Language

The exchange of bodies and images of bodies on platforms such as OnlyFans can be understood as self-commodification, characterised by commercial language and a market ideology in which everything and everyone can be treated as a commodity with financial value. This is in stark contrast to the ideal of de-commodification represented by the welfare state model. De-commodification was a strategy intended to counteract the market rationality that treats human beings as commodities. It was a key element of the ambitions underpinning the Nordic welfare model—an emphasis that has diminished amid ongoing transformations marked by increasing marketisation (Gustafsson & Svensson 2024). In its place, under the intensifying influence of the neoliberal gig-economy and market ideology, commodification has reached new levels.

The market ideology finds allies in the sex-positive movement (also referred to above as the optimistic position). This movement, which promotes a liberal, individualistic worldview, embraces commercial language while seemingly denying the existence of unequal power relations and exploitative practices. It has opposed what is often labelled the sex-negative movement (also referred to above as the pessimistic position), which is criticised for objectifying and victimising those involved in the sex trade. The sex-positive movement instead proposes a language of transactions between autonomous individuals, where sex is exchanged for money. But is this view not inherently objectifying and commodifying of sex and the bodies involved? This question has been important in the Swedish legislative context. The Swedish committee report (SOU 1995:15) on pornography—closely linked to prostitution—stated: ‘Pornography mediates a view on women as commodities, objects; the same view on women which is the precondition for prostitution’ (my translation). This connection has also been identified by other scholars (Farley et al. 2023; Farley & Donevan 2021; Farley 2020).

The so-called sex-positive attitude—asserting the right to make individual choices to sell one’s body as a sex worker—is less prevalent in the Nordic context than elsewhere. However, I wish to question the ‘positiveness’ of viewing sex as a commodity. On the contrary, I argue that such a view is reductionist and, in fact, deeply negative. It fails to acknowledge sex as an act of mutual pleasure, one that is inherently irreducible to a commodity. From my perspective, it is the commodifying gaze on women that objectifies them—not the criminalisation of acts that result from such commodification. The use of objectifying and victimising language, in my view, reflects a broader societal transformation that commodifies human beings.

This argument may be further developed using the concept of self-commodification, which takes place within an environment marked by a double loss: first, the loss of individuals’ ability to rely on the market for their well-being; second, the loss of the welfare state, which sought to protect citizens from the precarity of market dependence. Popular social platforms such as OnlyFans, on which people upload images of their bodies and claim to do so voluntarily and autonomously, represent a contemporary example of how commercial language permeates social life and public discourse.

Concluding Words

In this chapter, I have explored some contemporary phenomena using the concepts of commercial language and self-commodification, while suggesting alternatives to the prevailing discourse that treats human beings as commodities to be traded. The concept of intrinsic value may further enrich this critique, as it reminds us of the importance of perceiving human beings as subjects, not objects.

I agree with Johanna Niemi's observation that commercial language may be a double-edged sword. I would go further and argue that such language is detrimental to human dignity, as it reduces the human body to a commodity—even in the form of self-commodification. Commercial language profoundly shapes how we understand ourselves and others.

References

Bibliography

Bacchi, C.L. (1999) *Women, Policy and Politics: The Construction of Policy Problems*. London: Sage.

Bauman, Z. (1998) *Globalization: The Human Consequences*. London: Polity Press.

BBC News (2021) 'OnlyFans to ban sexually explicit content'. *BBC News*, 20 August. Available at: https://www.bbc.com/news/business-58273914 [Accessed 19 June 2025].

Belk, R. (2020) 'Commodification as a Part of Marketization'. In: Roy Chaudhuri, H. and Belk, R. (eds) *Marketization*. Singapore: Springer.

Benoist, J. and Cathebras, P. (1993) 'The Body: From an Immateriality to Another'. *Social Sciences & Medicine*, 36(7), 857–865.

Bergroth, K. (2021) "Man vill ju bygga upp ett samhälle där kvinnors kropp inte är något som går att köpa..." Göteborgs universitet, Institutionen för journalistik, media och kommunikation.

Borchorst, A. (2009) 'Woman-friendly policy paradoxes?'. In: Melby, K., Ravn, A-B. and Carlsson Wetterberg, C. (eds) *Gender Equality and Welfare Politics in Scandinavia*. Bristol: Policy Press.

Brown, W. (2015) *Undoing the Demos: Neoliberalism's Stealth Revolution*. New York: Zone Books.

Bäckström, S. and Tedla, M. (2021) "Easy Cash, Utnyttja män". Göteborgs universitet, Institutionen för journalistik, media och kommunikation.

Davis, J.E. (2003) 'The Commodification of Self'. *The Hedgehog Review*. Institute for Advanced Studies in Culture.

Dickson, E.J. (2020) 'Sex Workers Built OnlyFans. Now They Say They're Getting Kicked Off'. *Rolling Stone*, 18 May. Archived from the original on 23 April 2021. Retrieved 15 May 2021.

Dolan, E.W. (2022) 'New study explores the sexual attitudes and characteristics of OnlyFans users'. *PsyPost*, 11 October. Available at: https://www.psypost.org/new-study-explores-the-attitudes-and-characteristics-of-onlyfans-users/ [Accessed 10 November 2022].

Duffy, A. and Kang, H.Y.P. (2019) 'Follow me, I'm famous: travel bloggers' self-mediated performances'. *Media, Culture & Society*, 42(2), 172–190. Available at: https://journals.sagepub.com/doi/10.1177/0163443719853503 [Accessed 23 August 2024].

Easterbrook-Smith, G. (2022) 'OnlyFans as gig-economy work'. *Porn Studies*, 10(3), 252–267.

Edström, M., Kenyon, A.T. and Svensson, E-M. (2016) *Blurring the Lines*. Göteborg: Nordicom.

Eriksson, J. and Christians, J. (2023) "Där det finns sexualiserade kvinnor..." Jönköping University, Hälsohögskolan, Avd. för socialt arbete.

Esping-Andersen, G. (1990) *The Three Worlds of Welfare Capitalism*. Princeton: Princeton University Press.

Farley, M. and Donevan, M. (2021) ‘Reconnecting Pornography, Prostitution, and Trafficking’. *Atlánticas*, 6(1), 30–66.

Farley, M. (2020) ‘Prostitution, the Sex Trade, and the COVID-19 Pandemic’. *Logos*, 19(1).

Farley, M. et al. (2023) *Pornography Production Harm in Sweden*. Available at: https://www.prostitutionresearch.com/wp-content/uploads/2023/10/PornographyProduction-HarmSweden-1.pdf [Accessed 23 August 2024].

Gustafsson, H. and Svensson, E-M. (2024) ‘Is the rights-based approach to social justice (really) the right way?’. *Nordic Journal on Law and Society*, 7(2).

Halvorsen, M.S.K. (2022) *Female Empowerment through OnlyFans?* Oslo Universitet.

Höij, A. and Nordell, C. (2021) *Onlyfans – prostitution eller porrevolution?* Karlstads universitet.

Ibrahim, Y. (2018) *Production of the ‘Self’ in the Digital Age*. London: Palgrave Macmillan.

Johansson, A. (2021) *"I någon mening köper jag ju sex, men..."* Göteborgs universitet.

Johansson, B. and Bengtsson, S. (2016) 'On-Line Life in a Commercialised World'. In: Edström, M., Kenyon, A.T. and Svensson, E-M. (eds) *Blurring the Lines*. Gothenburg: Nordicom.

Jyrkinen, M. (2005) *The Organisation of Policy Meets the Commercialisation of Sex*. Helsinki: Hanken.

Kenyon, A.T., Svensson, E-M. and Edström, M. (2017) 'Building and Sustaining Freedom of Expression'. *Nordicom Review*, 38(1).

Lagerström, J. (2022) *Kreatörsrollen på Only Fans*. Stockholms universitet.

Leopold, D. (2015) ‘Karl Marx’. In: Pritchard, D. (ed.) *Karl Marx. Philosophy*. Oxford University Press.

Lewis, J. (2013) *Beyond Consumer Capitalism*. Bristol: Polity Press.

Lindblom Reiz, N. (2022) *Onlyfans – Empowering eller kvinnoförtryck?* Göteborgs universitet.

Litzén, J. and Axelsson, W. (2021) *Min kropp, mina regler...* Jönköping University.

Mann, J. (2023) ‘OnlyFans now has more than 3 million content creators and is a 'global business', says the CEO’. *Business Insider*, 13 May. Available at: https://www.businessinsider.com/onlyfans-has-more-than-3-million-creators-global-business-2023-5 [Accessed 24 May 2023].

Monto, M. (2004) ‘Female prostitution, customers, and violence’. *Violence Against Women*, 10, 160–188.

Muhrén Sjölander, O. and Robertsson, B. (2022) *Hips tik tok when I dance...* Uppsala universitet.

Niemi, J. (2010) ‘What We Talk About When We Talk About Buying Sex’. *Violence Against Women*, 16(2), 159–172.

Nordström, J. (2021) *"Jag är inte ett offer, utan typ en gudinna".* Lunds universitet.

Raymond, J.G. (1998) ‘Prostitution as violence against women’. *Women’s Studies International Forum*, 21(1), 1–9.

https://www.sciencedirect.com/science/article/pii/S0277539596001021 [Accessed 23 August 2024].

Repo, J. (2020) ‘Feminist Commodity Activism’. *International Political Sociology*, 14, 215–232.

Saunders, P. (2017) *Welfare to Work in Practice*. Abingdon: Taylor and Francis.

Standing, G. (2011) The Precariat – The new dangerous class. London: Bloomsbury.

Svensson, E-M. and Gunnarsson, Å. (2012) ‘Gender Equality in the Swedish Welfare State'. *feminists@law*, 2(1). Available at: https://journals.kent.ac.uk/index.php/feministsatlaw/issue/view/5 [Accessed 20 January 2025].

Tzouvala, N. (2020) *Capitalism as Civilisation*. Cambridge University Press.

Westerstrand, J. (2008) *Mellan mäns händer*. Uppsala universitet.

Wijk, F. (2021/2024) ‘Så funkar den kontroversiella sajten Onlyfans’. *Göteborgs-Posten*, 6 March, updated 14 June 2024.

Wistrand, L. (2022) *Onlyfans: -frigörelse eller förslavning?* Örebro universitet.

Ylöstalo, H. and Lamberg, E. (2024) 'Commodified State Feminism'. *International Political Sociology*, 18(2).

Yttergren, Å. and Westerstrand, J. (2016) ‘The Swedish Legal Approach to Prostitution’. *NORA*, 24(1), 45–55.

Ålund, A., Schierup, C. and Neergaard, A. (eds.) (2017) *Reimagineering the Nation*. Bern: Peter Lang.

Official Documents

SCB (2024) *På tal om kvinnor och män. Lathund om jämställdhet 2024*. https://www.scb.se/webbrapporter/le0201/lathund2024/ [Accessed 20 January 2025].

SOU 1995:15 *Könshandel*. Betänkande av 1993 års prostitutionsutredning.

Swedish Gender Equality Agency (2022/2024) *Prostitution policy in Sweden*. https://swedishgenderequalityagency.se/... [Accessed 20 January 2025].

The 1948 Universal Declaration of Human Rights

The EU Charter of Fundamental Rights

12 Before and After the Law – Experimenting with Law, Violence and Autofiction-Ethnography

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Abstract

In this article, we trespass the boundaries of academic writing in an attempt to alter law's discourses. We, as a fictional I, reminisce and revisit the lessons we learned during our legal training and our own research, as well as our personal lives. Our aim is to critically analyse the law as a discourse that reproduces (interpersonal) violence in society, while simultaneously claiming to designate both legal and moral responsibility for it. This idea can be traced back to critical legal studies and feminist critique. We wish to creatively challenge and acknowledge some of the underlying mechanisms of violence in law. To do this, we use what we call autofiction-ethnography as a style. Our experimentation with academic methodology is a tribute to Johanna Niemi's groundbreaking research on law and gendered violence and her work on the discursivity of law.

* * *

In 2003, I, a student of the Faculty of Arts, attended the course Men, Women, Violence and the Law. One of the teachers was Professor N, who, in one of her lectures, mentioned Kubrik's movie *Eyes Wide Shut*. Professor N asked us students whether we had seen the movie and whether we had found its casual approach to violence against women disturbing. Only a few raised their hands. I don't think I did. That course was one of the reasons I decided to apply to study law. Having studied gender studies, I had become interested in gendered violence and realised that I wanted to do something about it. Law seemed like the obvious choice.

But there was a gatekeeper sitting before the Law. I asked to enter the Law, but the gatekeeper said he couldn't grant me entry—not before I had performed some tasks. As a young woman, I was a bit wary of what 'tasks' might refer to, but luckily it was just that I had to answer a riddle. Or a riddle it seemed to me, although the gatekeeper called it 'a case'. He stated:

> There is a top-secret party, in which rich and powerful men are having sex with gorgeous women. It is fair to assume they are paid to have sex with the men. They are all wearing masks; no one's identity is known. Someone is playing the piano blindfolded. The next day one of the women is found dead. According to the autopsy, she died from a drug overdose. It is revealed that she has, against strict prohibition, told someone about the secret party. Now, what do you do?

I thought 'the case' sounded awfully familiar. Had I attended a party like this? I couldn't remember. 'Well', I said, trying to think like a lawyer:

> Perhaps there was sexual violence at the party. Perhaps some of the women were underage or on drugs and didn't know what was happening. Or maybe they had been trafficked. Can you consent to sex if you don't know whom you're having sex with? Oh, and there could be something suspicious in the death, maybe she had been murdered, and it was framed as a drug overdose!

I thought I had done pretty well, covering all potentially legally relevant aspects of 'the case'.

'You watch too much *True Crime*', sighed the gatekeeper. 'Well, I guess I could let you pass, as we get funding according to the number of students we have. But remember, there are other gatekeepers, and they are very powerful and scary. I can't endure even a glimpse of them. As soon as you go through the gate, you are on your own.'

So, I entered through the pompous gate, feeling quite proud but also anxious. Almost immediately there was another gate with another keeper. This one was not terrifying at all. She was blindfolded and dressed in some kind of sheet. I was impressed with her ability to hold up a scale with one hand without ever putting it down, it seemed. The only scary thing about her was her sword, but it looked like it hadn't been used, like, ever. And she was blindfolded, so I figured she couldn't hit me even if she tried. I made my presence known with a little cough. The gatekeeper reacted immediately with some Latin phrases I couldn't understand.

I was prepared for another riddle, and that's what I got: 'Is a "yes" always a "yes" and a "no" always a "no"?' Someone else might have been confused, but I certainly wasn't. 'This is basic', I thought to myself but didn't say out loud as I didn't want to come across as arrogant. 'You can say "yes" or "no" to sex and mean "maybe", "yes" or "no" —for example, in a role play situation. Or, you can indicate a "yes", "no" or "maybe" by staying silent'. I thought about the time I was woken up by my boyfriend having sex with me. It was all very embarrassing because I couldn't remember whether I had passed out before or during the sex. Was it even relevant in this context? I wasn't sure. Getting back on track, I continued: 'Legally speaking, whether a "yes" is a "yes" or a "no", or a "no" is a "no" or a "yes" depends on circumstances, as "the meanings of different expressions can be strongly situational"' (Finnish Government Bill 13/2022: 54).

'Good, you are a quick learner', said the gatekeeper. Encouraged by her words, I continued. 'It all comes down to the question of intent—or in some jurisdictions, to gross negligence. So, a "no" is a "no" if and only if there is intent or gross negligence on the defendant's part'.

'You seem to have an idea of how criminal law works', said the gatekeeper, but she wasn't done with me. 'So, tell me, what is the difference between "the law in books" and "the law in between the lines" —and please, no Marxist connotations!' I wondered whether she could judge me fairly, given that she didn't even see me. How could she be sure of my identity? Or that I didn't cheat? Putting these worries aside, I continued, but this time with some hesitation. 'Well, there are degrees to "yes" and "no", so perhaps the "maybes" between a "yes" and a "no" can be described as a continuum. A continuum of non-dissent!' I was proud of myself, as 'non-dissent' sounded a lot more legal than 'maybe'.

'If you think about it, non-dissent is actually very common', I continued. 'I mean, sometimes you say "yes" even if you don't really want to, and don't say "no" when you would want to'. Another memory sprung to my mind, with another boyfriend, who once said 'you better not say "no" to me right now'. He had been upset about something, and sex was his way to relax. 'I don't think this is relevant at all', I thought to myself. 'This is not the kind of stuff the law is really meant to deal with outside of the hypotheticals in textbooks'.

Out loud I said hesitantly: 'I do remember reading something about external expressions of voluntariness and internal emotional and cognitive states'.

> In Sweden, for example, where negligent rape is criminalised, the dissonance between the victim's external expression and internal state is still, ultimately,

> assessed in the light of external expressions, as 'the right to sexual self-determination means that a person can choose to participate in something that they might prefer not to do' (Swedish Government Bill 2017/18:177: 33; see also Jokila 2010). In practice, it comes down to 'the court's interpretations of the defendant's interpretations of the victim's inner voluntariness, external voluntariness and of how he acted as a response to this' (Wallin et al 2021: 12). I think it pretty much describes the legal assessment of intentional rape as well; it's all about appearances.

'Anyway', I said, getting back on track, 'one could argue that the law doesn't actually operate with the "continuum of intent", where the lowest level of criminal responsibility is x or y. Instead, the law operates with a "continuum of consent" —and that is "the law in between the lines"'. The gatekeeper was listening closely, and I could tell I had hit the nail on the head. 'You have now passed my test', she declared, but she also felt the need to warn me about the other gatekeepers ahead and how terrifying they would be. Having done so well this far, I wasn't worried.

So, there I was, an enthusiastic freshman and an insider of Law! I was so proud of myself; I gathered the courage to participate in student festivities and got properly wasted. I don't remember much about the parties, but I remember there was a lot of laughter. With me, at me—whatever. However, it quickly became clear that the way I spoke was less than eloquent, my humour was tacky, and I didn't know how to express proper femininity. I guess my aesthetic values did not constitute good taste (Bourdieu 2010; Skeggs 2004). 'I really need some help with my appearance', I thought.

And so did the academic community, it seems, since at the next gate there was a slender and pleasant-looking woman with an upper-class aura. 'Where are you going, dear?' she asked. It took me a while to realise that she too was a gatekeeper, although a softly spoken one. 'Dressing like a female lawyer, my dear',[1] she said smilingly, 'means projecting a professional and polished image while also expressing individual style. You might want to invest in well-fitted, tailored suits in classic colours. Wear button-up blouses in solid colours or subtle patterns under your suits. Avoid low-cut tops or anything too revealing'. She looked at my Debbie-Harry-printed shopper bag and continued: 'Avoid overly trendy or casual styles and stick to classic silhouettes. Keep accessories minimal and understated. A simple watch, pearl stud earrings and a structured bag are good choices. Avoid anything too flashy or distracting'. She scanned my unpolished nails and messy hair that I wore in a bun. 'Make sure your hair is well-groomed and styled neatly. Keep makeup natural and professional-looking. Nails should be clean and well-manicured. Overall, the key to dressing like a female lawyer is to be polished, professional and conservative in your fashion choices. Remember that your appearance is a reflection of your professionalism and credibility in the legal field. You must learn not to stand out'. I knew I had to lose some weight (the thinner the more credible!), but a suit sounded a bit much.

Puzzled with all these subtle distinctions that always seemed to erect an invisible border between me and 'them', I continued my journey, desperately trying to adapt to wearing block heel pumps (they were fashionable at the time) and to remember to stretch my legs straight at every step. The last thing I expected in the lecture halls was to hear the traditional folklore song 'Oh how fair my sweetheart is' (*Minun kultani kaunis on*). I thought I had lost my way,

[1] The quotations of the gatekeeper were generated with AI.

but I had, in fact, stumbled upon a lecture by Professor N! As her fan girl, my expectations were high. But why was she playing this song?

Professor N talked about how deeply rooted the ridiculing of women is in our culture. She used the song as an example:

> :,: Oh how fair my sweetheart is, although she's all skin and bone :,:
>
> Oh my, day and night /
>
> Although she's all skin and bone
>
> :,: Her hair is dark brown, although it's all shaggy :,:
>
> Oh my, day and night /
>
> Although it's all shaggy
>
> :,: Her eyes are blue and bright, although she's all cockeyed :,:
>
> Oh my, day and night /
>
> Although she's all cockeyed
>
> :,: Her mouth is fine, although it's all mighty wide :,:
>
> Oh my, day and night /
>
> Although it's all mighty wide
>
> :,: When I take her to a fair, even the horses hee-haw :,:
>
> Oh my, day and night /
>
> Even the horses hee-haw[2]

I felt irritation. 'Does she really need to be such a killjoy? Why cancel our cultural gems, performed not just by the folk but our leading names of high culture?!'[3] (Believe it or not, I knew some of those names.) Professor N said she disliked the song because it was such a prime example of the disgusting ease with how women were systematically ridiculed. 'What's this got to do with law and legal studies?' I thought to myself. Yet, still feeling awkward in my pumps, I slowly became painfully aware of my own shaggy hair and mighty wide mouth. I heard Professor N describing how an emotional practice is formed through humour, how a cultural product becomes unquestioned and how the emotions attached to it shape what we can and should laugh at (Scheer 2012). 'Might being a lawyer have something to do with the choice of whom to laugh at?', a voice began to ask in my head. 'When you grew up, the gendered body and sexuality were always targets of ridicule; being a fat woman, feminine male or gay was a joke, let alone being trans', the voice continued.

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2 Translated by the author.

3 Shostakovich 1939: Allegretto in 'Suite on Finnish Themes'.

Lost in these complicated thoughts, I ended up wandering out of the lecture hall and found myself at another gate. ‘Nothing’s ever enough’, I muttered to myself as I tried to muster up some energy to tackle another riddle. But this gatekeeper looked different, and this time I actually recognised her.

The gatekeeper whispering to me had the face of Sara Ahmed when she said: ‘Wherever you find the figure of the killjoy, you will find a fantasy of happiness’ (Ahmed 2023: 13). It was clear by the time that she was not guarding any of the main gates of Law. Had I stumbled upon a secret passage? If I passed through here, would anyone ever take me seriously as a lawyer? Still, I figured I should listen to this gatekeeper. Perhaps far ahead in the future, now a mourning mother to a young transwoman who took her own life, I’d look back at these gatekeepers of the habitus of the lawyer. Would I then wonder if we ever stood a chance? Would I then think of being a feminist killjoy as a shot at survival, a way to expand the borders of liveable life? (Butler 2004; Karhu 2022). And it might just be that then I’d think that law has something to do with the liveability of lives. And maybe then I would return to this gate.

But all that would be later. Right now, the place was filling up with fog. I went forward a bit hesitantly, and after wandering about a while in the darkness, I stumbled on a narrow gate. I still did not see anyone there but heard an authoritative voice asking, ‘And whom are you representing?’ ‘I represent all the women who have been abused’, and then added quickly, ‘objectively, of course’.

The gatekeeper looked unimpressed and said: ‘You must put aside such altruistic aims. Here, in court, you act either as a judge, a public prosecutor or a defence counsel. And there is no room for politics or activism. We concentrate purely on the facts of the case and the law’. I was mortified. Why did I think that after solving the cases at the previous gates I could now move on to matters of principle and even politics and morality?

After I voiced my wish to choose the role of a judge, the gatekeeper started explaining the case: ‘The rubric of trafficking in human beings in the criminal code is slightly misleading as the offence covers a wide range of exploitation instead of only criminalising trafficking per se. For instance, under certain conditions, some more serious cases of domestic abuse can constitute the offence of human trafficking’. I was sure the academic research and textbooks I had read did not mention anything about this, but I nodded and the gatekeeper continued.

> We have a case in which the accused is prosecuted for both procuring and physically abusing his live-in girlfriend. The procurement and abuse have continued for years, and the victim has expressed her wish to quit prostitution several times. However, it is unclear why she continued regardless. There is no straightforward evidence on the accused explicitly pressuring her, although he told her to continue since she made a lot of money and he was not willing to earn his living, let alone provide for the victim or their child. The public prosecutor claims that the accused is guilty of trafficking human beings because he has used violence in addition to taking advantage of the dependent position and vulnerable state of the victim to take control over her on the purpose of subjecting her to sexual abuse. The several occasions of violence and procurement are undisputed. The defence counsel argues that, as these acts are not connected in any way, they do not constitute the offence of trafficking human beings; although unfortunate, some relationships simply are unequal—even violent. This might be the case between the victim and the accused, but the victim has not been vulnerable or under the control of the

> accused. The defence counsel even highlights the obviously independent and capable appearance and manner of the victim at the court: 'Someone as capable of defending herself as this woman cannot be a victim of human trafficking, can she?' (see case T-2018-2 in Koivukari et al 2022; cf. Niemi 2010).

The gatekeeper looked into my eyes and asked: 'As a judge, what is your decision? Is the accused guilty of assault and pandering, or is he guilty of trafficking human beings?' I was puzzled. I thought it was obvious the victim was vulnerable and possibly even under the control of the accused. How could the abusive behaviour not affect the victim's decision to continue prostitution, even against her will? But then there was this trump card—the 'legality principle', I think it was called. Hence, I decided I must go against my gut feeling and said, 'The accused cannot be guilty of trafficking human beings because there is no evidence that he pressured the victim'.

'So, what kind of circumstances or qualities would make the victim vulnerable or dependent, hence exposed to exploitation?' asked the gatekeeper. Again, I thought I must emphasise the principles of criminal law rather than express my personal view on the case. 'Well', I started gingerly,

> I think vulnerability must be a rather permanent characteristic of the victim, such as physical or mental disability. It seems the victim does not have any disabilities but instead appears capable of defending herself and is independent along with making a living for the family.

The gatekeeper seemed contemplative, and it took a while before they said:

> Good enough. Let us move forward to another case. In this one, we have a 23-year-old victim who, according to the evidence, has been abused by several men since she was 17. Additionally, she has experienced traumatic events in her childhood and adolescence, as a result of which she has suffered from depression and self-destructive thoughts. Moreover, the victim had been recently treated by doctors, as she had behaved in a threatening manner with a knife after having felt provoked. Now, what do you think of this case, the vulnerability of the victim and the possibilities of the accused to become aware of and take advantage of the vulnerability? (Case T-2020-7 in Koivukari et al 2020).

To me, it was quite obvious that the victim in this case was vulnerable to abuse. In my previous studies, I read about sexual revictimization, and according to the studies, traumas and childhood physical and sexual abuse predict revictimization (e.g. Walker & Wamser-Nanney 2023). I started mumbling about the obvious vulnerability of the victim as the gatekeeper withdrew themself to the darkness. I became hesitant. Had I come to the wrong conclusion after all? Suddenly the gatekeeper reappeared, booming angrily 'Law is not pure guesswork, we expect much more of you'.

I had no idea what had made the gatekeeper so angry. As the revictimization is such common knowledge, the question must be a trick question, I thought. It suddenly struck me that this whole vulnerability theme must be a trick question, since I remembered studies arguing that previous violence and fear of the women are not considered when their self-defence actions against their spouses are evaluated in court (Ruuskanen 2005; Jokila 2010; Jokila & Niemi 2019). Moreover, I remembered that criminal law is criticised for narrowing down the events

to one specific time and space without paying attention to the characteristics of the parties, their relationship or previous abusive behaviour (Alaattinoğlu & Niemi 2022).

I realised I must forget everything I had learned before; Law simply works differently. 'The incident with the knife proves that the victim was able to defend herself in a difficult situation, and the accused could not know of her vulnerability and knowingly take advantage of it', I started. 'It is possible the accused interpreted the victim's past so that she understood the nature of prostitution and what it demands. So, while the victim was vulnerable because of her previous traumatic experiences, she was not vulnerable in a way meant in the provision on human trafficking'.

The gatekeeper remained silent, and I wondered how I was supposed to know whether my answer was right or wrong. And how to tell the difference? Would someone explain it to me at any of these gates? 'You are the judge', the gatekeeper said, whisked their hand and disappeared. I felt like I had finally achieved something, some authority in law. So, what was this uneasy feeling I had?

Feeling confusingly deflated, I proceeded and wasn't surprised to see yet another figure somewhere not too far away. Having just earned the title of 'judge', it felt unfair. I looked at the gatekeeper, who was sitting on a chair in front of the gate. But I could not see their face. I tried to peer at the gatekeeper more closely, but no luck. I thought it might be a woman, nevertheless. Weird fog still hovering everywhere, a stressful exchange with the previous gatekeeper and now this one who I can almost see, but when I was grasping a picture, the picture dissolved. All this started to make me quite anxious and impatient.

So, I requested, perhaps a bit more firmly than I intended, that the gatekeeper let me in. Let's get those riddles out of the way, and I'll be on my way. The gatekeeper said nothing for a long time. My anxiety grew, but I waited. 'Why are you here?', she finally asked. I was caught off guard. What did she mean, why was I here? I was here because I had come through the previous gate, and the one before that and the one before that. In fact, I suddenly felt quite proud of myself for coming such a long way. 'I am here because I asked to enter the Law. And then there were a bunch of these other gates and gatekeepers, and I solved their tasks and they let me proceed', I explained. The gatekeeper sat still, her face still indistinct, still silent, until she spoke again: 'Why did you ask to enter the Law?'

I was confused. Was this one of the riddles? I started to formulate an answer in my head, maybe something along the lines that law offers an interesting vantage point to society at large, law is an important and fundamental part of society and it does help that law entails a very positive employment prospective. But were these really the reasons I first asked to enter the Law? Suddenly, it felt difficult to claim that was the case. But if not these, what was the reason? It felt like it was centuries ago.

Then I remembered. There was the course by Professor N. And I thought, if this is law, maybe I could be part of law, too. Maybe I could even help someone through law; maybe I could change things. In that moment, I felt ridiculous. I asked to enter the Law because I wanted to do something about gendered violence—not to solve riddles that rather indicate how such a naive project is not within the interest of the law at all. I thought back on my journey until now. Why had I come this far? Why didn't I just turn back and go do something else"? "I believed that when I reached the last gate, I would have collected all the pieces, and all I had to do was to organise them. And then everything would make sense. I suppose I believed that, after the last gate, clear cases from real life would flow through my hands and I would solve them using my finalised education, which had provided me with an overall

picture, unequivocal in every way. Singularity of reasoning and definitions would absorb me" (Valtonen, 2023: 168). [4]

Exhausted, I decided to speak my mind instead of uttering rehearsed replies. 'I wanted justice, and I thought law would be the right place to start', I admitted, albeit a bit ashamed. Is it not exactly proof of the most serious case of naivety that one would desire something like justice? And it is definitely a sign of subjectivity, which a serious legal scholar is supposed to be purified from.

Surprisingly quickly, the gatekeeper asked: 'What is justice?' I remembered from the courses that law and justice do not have a simple relationship, to say the least. Some would argue that they do not have anything to do with each other; rather, research of law should be purified from such ambiguous elements, or that other things, such as recognition of a legal system, are more important (Kelsen 1967; Hart 2012). Moreover, what appears just might be very different for different people. To some, justice might mean following the rules, whereas others would consider it as finding a solution that works for all parties (Gilligan, 1998). But if everyone is treated exactly the same, the differences between people and their actual situations would make sure that the outcome would still not be just (Alaattinoğlu & Niemi, 2022: 313).

Hesitantly, I began my answer. 'I think it might be helpful if the issue is approached by reformulating the question a bit…', I suggested. As the gatekeeper stayed silent, I took that as a cue to continue. 'What I mean is, perhaps we should ask: justice to whom? Because what is considered justice can depend on the one who speaks. And if that person thinks a certain situation is just, it can mean that someone else does not feel that way', I reasoned. In my mind, I anticipated the next question to be related to a fair trial or other procedural issues, which would aim to guarantee that the outcome of a trial feels just to everyone. Instead, the gatekeeper asked: 'For whom did you want justice?'

At this point, I apparently could not hold up any appearance of a serious legal scholar anymore and confessed. 'I wanted justice for women. For anyone oppressed… And for myself'. Was that not the truth? That I hoped that by helping someone else, I could help myself. That by seeing how violence would be condemned in a case of someone else, the violence that I had experienced would be given a name and a judgement, too. But what good would it do to me that someone with the authority of law would tell me that my experiences, or anyone else's for that matter, were not just? We cannot break time or will time backwards (Nietzsche, 2006). And perhaps that is the only justice law can offer. Law cannot see but backwards. Law reaches towards the crime but can never really grasp it. It is already gone (Poesia 2024: 28–29.)

The gatekeeper said nothing. Neither did I. How could I continue from here? If I abandoned justice, what would remain? Is it not somewhat of a consensus in contemporary legal academia that law strives to create justice in accordance with rational, transparent and equal standards? (Lahti, 2016). If I refused this promise, what would be instead?

After a while in silence, I started to think. Although law may not be capable of delivering justice, maybe it is still capable of something else. Perhaps through law, it would still be possible to help someone. But to work within the law this way must be without illusion or idealism. It should rather be a way of using laws against those very same powers that create so much suffering. This strategy is always accompanied by a critique of the law and its

[4] Adapted by the author.

institutions (Vergès 2019: 8). Such struggle is one for power, and to yearn for justice is to yearn for powerlessness that we experience in the face of past events, which we cannot change. But perhaps, if we abandoned this goal, "we could see that these struggles are played on multiple fields and for objectives with different temporalities and that there exists a vast world with resistance and a refusal to yield" (Vergès 2019: 8).[5] Instead of justice, we can find other people.

I looked at the gatekeeper—or aimed to—her face still difficult to focus on. 'I think I might be ready to continue', I told her. She nodded. I made my way to the other side but turned to look back for a moment. 'Do you have a lot of traffic here usually?', I asked as I suddenly realised, I had not encountered anyone else except the gatekeepers. The gatekeeper got up from her chair. 'Here no one else can gain entry since this entrance was assigned only to you. I'm going to close it now'. When I looked at her, I could finally see her face: my own.

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Why not just write 'normally'? With this piece of writing—inspired by Kafka (2009) —we place ourselves in the continuum of feminist writing and research. Feminist theorists have for long understood objectivity as situated in and calling for critical reflection about the epistemic relevance of the social location of the researcher (see e.g. Haraway 1988; Charmaz 2012; Lipton and Mackinley 2016). Assuming a position of being above the studied subject prevents one from seeing the effects that being affectively moved has on interpretation (Paasonen 2011: 23). Autoethnographic approaches and studying 'through the self' have been considered to provide more meaningful knowledge as well as enable researchers to bring to fore invisible or silenced experiences (Ellis et al 2010; Harju 2023; Pearce 2020). Autoethnography can be done using a variety of approaches that range from structural forms of autoethnography to more explorative forms of writing (Rannikko and Rannikko 2021; Ellis et al 2010). Mixing academic autoethnography and creative autofictive approaches into what we call *autofiction-ethnography* and the entanglement of four authors are ways to explore the limits of academic writing, on one hand, but on the other hand, they are also ways of overcoming—or at least circumventing—some problems embedded in 'researching through oneself'. Harju (2023), for example, reminds us that autoethnographic writing comes with risks and is in no way immune to neoliberal tendencies within academia. This piece of writing is an exercise in communicating the confusing, the ridiculous and the painful with some distance—but without false objectivity.

[5] Adapted by the author.

References

Bibliography

Ahmed, S. (2023). *The feminist killjoy handbook*. London: Allen Lane.

Alaattinoğlu, D. and Niemi, J. (2022). 'Sokea rikosoikeus ja feministinen kritiikki'. In Yli-Hemminki, E., Melander, S., and Nuotio, K. (eds.), *Rikoksen ja rangaistuksen filosofia*, 313–329. Helsinki: Gaudeamus.

Bourdieu, P. (2010) [1979]. *Distinction: A social critique of the judgment of taste*. Translated by Nice, R. Cambridge, Mass: Harvard University Press.

Butler, J. (2004). *Undoing gender*. New York: Routledge.

Charmaz, K. (2012). 'Writing feminist research'. In Hesse-Biber, S. N. (ed.), *Handbook of feminist research: Theory and praxis*. Thousand Oaks: Sage Publications.

Ellis, C., Adams, T. and Bochner, A. (2010). 'Autoethnography: An overview'. *Forum: Qualitative Social Research*, 12(1), Art. 10.

Gilligan, C. (2003). *In a different voice: Psychological theory and women's development*. Cambridge, Mass: Harvard University Press.

Haraway, D. (1988). 'Situated knowledges: The science question in feminism and the privilege of partial perspective'. *Feminist Studies*, 14, 575–599.

Harju, O. (2023). 'Vulnerability as best practice? 'Minority' autoethnography in hostile worlds'. *Tiede & Edistys*, 48(1), 28–41.

Hart, H.L.A. (2012) [1961]. *The concept of law* (3rd ed.). With a postscript by Bulloch, P. A. and Raz, J. Oxford, New Zealand: Oxford University Press.

Jokila, H. (2010). *Tahdonvastainen suostumus ja liiallisen luottamuksen hinta. Raiskauksen ja muiden seksuaalirikosten oikeudellisen tiedon konstruktiot*. Helsinki: Suomalainen Lakimiesyhdistys.

Jokila, H. and Niemi, J. (2019). 'Rape law and coercive circumstances'. In Skilbrei, M., Stefansen, K., and Bruvik Heinskou, M. (eds.), *Rape in the Nordic Countries: Continuity and Change*, 120–136. Abingdon: Routledge.

Kafka, F. (2009) [1925]. *The trial*. Translated by Mitchell, M. Oxford: Oxford University Press.

Karhu, S. (2022). 'Gender skepticism, trans livability, and feminist critique'. *Signs*, 47(2), 295–317.

Kelsen, H. (1967). *Pure theory of law*. Translated by Knight, M. Berkeley: University of California.

Koivukari, K., Korkka-Knuts, H., Mahmood, V. and Melander, S. (2022). *Ihmiskauppa ja sen lähirikokset: Säännösten soveltamiskäytäntö*. Valtioneuvoston selvitys- ja tutkimustoiminnan julkaisusarja 2022:18.

Lahti, R. (2016). 'Rikosoikeus 2020-luvulla. Cesare Beccarian Rikoksesta ja Rangaistuksesta (1764) kansainvälistyvään ja eurooppalaistuvaan rikosoikeuteen'. In Keinänen, A., Kukkonen, R. and Kilpeläinen, M. (eds.), *Oikeustieteen moniottelija: Matti Tolvanen 60 vuotta*, 167–180. Edita.

Lipton, B. and Mackinlay, E. (2017). *We only talk feminist here: Feminist academics, voice and agency in the neoliberal university*. Cham: Springer International Publishing.

Niemi, J. (2010). 'What we talk about when we talk about buying sex'. *Violence Against Women*, 16(2), 159–172.

Nietzsche, F.W. (2006) [1883–1885]. *Thus spoke Zarathustra: A book for all and none*. Del Caro, A. and Pippin, R. (eds.), translated by Del Caro, A. Cambridge: Cambridge University Press.

Paasonen, S. (2011). *Carnal resonance: Affect and online pornography*. Cambridge, MA: The MIT Press.

Pearce, R. (2020). 'A methodology for the marginalised: Surviving oppression and traumatic fieldwork in the neoliberal academy'. *Sociology*, 54(4), 806–824.

Poesia (2024). *Poesiavihkot*, 42, Lysis.

Rannikko, A. and Rannikko, P. (2021). 'Autoetnografia ja vaikenemisen kulttuuri'. In Ryynänen, S. and Rannikko, A. (eds.), *Tutkiva mielikuvitus*. Gaudeamus.

Ruuskanen, M. (2005). *Hätävarjelu ja parisuhdeväkivalta. Rikosoikeudellinen ja diskurssianalyyttinen tutkimus*. Helsinki: Suomalainen Lakimiesyhdistys.

Scheer, M. (2012). 'Are emotions a kind of practice (and is that what makes them have a history?) A Bourdieuian approach to understanding emotion'. *History and Theory*, 51(2), 193–220.

Skeggs, B. (2004). *Class, self, culture*. London: Routledge.

Valtonen, E. (2023). *Tainnutuskehto*. Helsinki: Kosmos.

Vergès, F. (2021). *A decolonial feminism*. Translated by Bohrer, A. J. London: Pluto Press.

Wallin, L., Uhnoo, S., Wettergren, Å. and Bladini, M. (2021). 'Capricious credibility – Legal assessments of voluntariness in Swedish negligent rape judgements'. *Nordic Journal of Criminology*, 22(1), 3–22.

Walker, H.E. and Wamser-Nanney, R. (2023). 'Revictimization risk factors following childhood maltreatment'. *Trauma, Violence, & Abuse*, 24(4), 2319–2332.

Primary Legal Sources

Finnish Government Bill 13/2022. Hallituksen esitys eduskunnalle seksuaalirikoksia koskevaksi lainsäädännöksi.

Swedish Government Bill 2017/18:177. En ny sexualbrottslagstiftning byggd på frivillighet.

Section V: Personal Encounters

13 The Queen of Interdisciplinary Dialogue

Päivi Honkatukia

Abstract

In this chapter, I contemplate my joint research journey with Johanna. Over the years, we have worked together in the same research institution and in joint research projects addressing gender-based violence and related phenomena. Here, I discuss Johanna's unique qualities, open-mindedness, courage, interest, and skills in facilitating fruitful interdisciplinary dialogue, which I have witnessed and benefitted from. These activities have been essential in bringing together scholars and activists working around gendered violence, but also in inspiring collective interdisciplinary imagination. Through her activities, Johanna has contributed to building essential capabilities for researchers around her to flourish and become part of interdisciplinary collectives and knowledge production on gendered inequalities and their solutions in society.

Introduction

In this chapter, I reflect on my long-standing collaboration with Johanna Niemi, to whom this book is dedicated. As a scholar and friend, she has contributed to my development as a researcher in profound ways. In the chapter, I wish to highlight a particular feature of Johanna's scientific ethos that I have had the privilege to benefit from, namely her commitment to and enthusiasm for interdisciplinary interaction and dialogue. The contingencies of life and good fortune, of course, contributed to our match, but without this characteristic of hers, we might not have started to work together—one being a scholar of law and the other an empirical sociologist. Our joint research journey has taught me a great deal about the nature of interdisciplinary interaction and discussions and has shed light on both the possibilities and challenges.

In the title of this chapter, I have nominated Johanna the 'queen of interdisciplinary dialogue', and in the following, I will delve into this attribute of hers. My aim is to capture and ponder the value of her ethos of knowledge production, teaching, and impacting policies on legislative frameworks and societal discussions in the field of socio-legal studies, particularly in relation to such a sensitive and contentious topic as gendered violence.

In doing this, I use the renowned capabilities approach formulated by Martha Nussbaum (2011). Together with Amartya Sen (2001), Nussbaum is a pivotal figure in the development of this approach to evaluating human well-being beyond traditional economic measures. The capabilities approach focuses on real freedoms and the ability of individuals to pursue lives they value—their capabilities—rather than just their economic wealth or material resources. In this chapter, I argue that capabilities are imperative to well-being but also to fostering interdisciplinary dialogue. I use the capabilities approach as an inspiration to make visible some aspects of Johanna's agency in creating space and possibilities for researchers around her to flourish and pursue research in a way they find comfortable for themselves.

The rationale for using Nussbaum's thinking to talk about Johanna's scientific career is that, besides human well-being in general, genuine interdisciplinarity requires conditions that provide individual scholars with possibilities to flourish as who they are, act according to their values, and be acknowledged as valuable scholars and human beings. Even though

creating the possibilities for this cannot be left to the efforts of single individuals, some individuals can play key roles in the process: those in leading positions possessing charisma, stamina, and moral ambition can inspire others around them in significant ways (Bregman 2025). From my perspective, it appears that Johanna's legacy has blended with her active role in creating and maintaining communities that have been open to, and valued, interdisciplinary dialogues.

Some Early Recollections

In a book celebrating Johanna's work in academia, it feels appropriate to start with some recollections. My first encounters with Johanna coincided with my first steps as a researcher. To make sense of them, I draw on the concept of a 'critical moment' (Honkatukia et al. 2020; Honkatukia et al. 2024), which has been used in the field of youth research to understand young people's subjective ways of making sense of their life events or chains of events that they view to have had a decisive impact on their lives (Thomson et al. 2002; Thomson & Holland 2015). I use this concept here to illustrate Johanna's enduring impact on me as a researcher in the field of socio-legal studies.

Our collaboration began at the turn of the century, which I regard as one of the critical periods of my career as a researcher. I was taking my first steps in the contested research field of criminality, violence, and criminal justice. My then ongoing doctoral research concerned young women's relationships to criminal offending—both in terms of their personal experiences and as a broader societal phenomenon. In the Finnish criminological field in the 1990s and early 2000s, studies of crime as a gendered question were rare—with some notable exceptions, such as Tarja Pösö's (1986) seminal study on female prisoners. Perhaps not surprisingly, while contemplating the theoretical underpinnings of my study, I found myself reading what feminist scholars in the criminological field outside Finland had written about gender and crime. In particular, their discussions on gendered social control caught my attention (e.g. Chesney-Lind 1997; Heidensohn 1986; Smart 1977). I was greatly inspired by how these scholars problematised the gender-neutrality of criminology as a discipline, which was built almost exclusively on studies of men. Being excited about the possibility of bringing something new to this field in the Finnish context, I soon found myself doing empirical fieldwork and interviewing young girls aged 13 to 16 in schools and youth clubs about their interpretations of crime and delinquency as youth-related questions as well as their experiences of gendered social control in their everyday lives.

While exciting, stepping onto a largely unbeaten path involved a great deal of uncertainty. At times, it became clear that my interests were rather marginal in the criminological community. I studied mostly minor offences, such as shoplifting, and young women's experiences of social control instead of 'serious criminality', such as homicides, drug-related crimes, or economic criminality. While I was, in many ways, fortunate to have excellent supervisors (the late Kauko Aromaa and the late Tuula Gordon), conducting this kind of study was, at times, nerve-racking and filled with feelings of insecurity.

From this time, around the spring of 1998, I have a vivid recollection of Johanna. We already knew each other from being colleagues at the National Research Institute of Legal Policy (NRILP) in Helsinki. By then, she had recruited me for her new research project. We did not, however, know each other well. Furthermore, she was at that time a visiting scholar at the University of Wisconsin-Madison in the US. One morning, to my surprise, I received an email from her from the United States, in which she offered to read my thesis. I, of course,

appreciated this offer and immediately sent the entire manuscript of about 250 pages to her. Only a few days later, I was even more surprised when I received a straightforward email from her with an encouraging message: my study would indeed become a doctoral thesis and, according to her evaluation, it was almost ready. She only had a few suggestions on how to strengthen the theoretical framework.

Johanna's frank but encouraging comments meant a great deal to me, and I remember well the enlightening feeling, a mixture of relief and joy. It felt like she had indeed 'seen' me as a researcher with potential and appreciated my work. In hindsight, her generosity could also have been motivated by her inclination to get me involved with a new project she was leading. Nevertheless, this single email provided me with a decisive moment and a much-needed burst of energy and confidence to finalise my study with renewed vigour.

In the foreword of my thesis, I thanked Johanna warmly for her 'forthright and invigorating' comments and support (Honkatukia 1998). Today, over 25 years after this short email exchange, I still think that the notions of 'forthright and invigorating' describe well Johanna's pragmatic yet enthusiastic ethos as a legal scholar and a colleague. She is interested in a wide range of societal questions and approaches them in a confident, fearless, and curious manner.

Creating Interdisciplinarity is Creating Capabilities

Johanna is well known for her interdisciplinary mission, particularly her interest in advancing dialogue between law, gender studies, and social scientific methods in knowledge production on legal phenomena and questions (e.g. University of Turku 2025). She has highlighted the importance of integrating feminist legal studies with traditional legal thinking and has sought to advance the understanding of how the categories of sex and gender fundamentally modify both legal processes and societal structures, even if their impact is often complex and, hence, difficult to trace and conceive in a straightforward way (Niemi 2019a).

Throughout her career, she has tirelessly discussed the need to explore this impact by using methodological insights from the social sciences and then evaluating the possible omissions or discriminatory features of traditional legal thinking. Leading by example, she has encouraged others to do the same. Interdisciplinarity as an ethos is described as a means of understanding 'the holistic complex of interrelationships' (Stember 1991: 3). It is often perceived as an attempt to integrate knowledge and methods from different disciplines to address complex problems. More precisely, it can be defined as the 'integration of the contributions of several disciplines to a problem or issue', where this integration 'brings interdependent parts of knowledge into harmonious relationships' (ibid: 4).

This aim may sound promising and sensible, but to genuinely achieve it is by no means easy, self-evident, or straightforward. Disciplines have their own traditions and core assumptions, and attempts to achieve dialogue can cause fundamental tensions, misunderstandings, and pass-talking in attempts to consolidate concepts, theoretical frameworks, and methodologies derived from different disciplinary traditions. It requires time to be able to identify what these tensions are and their origins. Understanding the different underpinnings of diverse scientific approaches, finding ways to reconcile them, and establishing common ground for collaboration requires longstanding efforts and joint commitment across disciplinary borders—collective discussions, learning from each other, and combining specific bodies of expertise to approach, for example, the legal system and its related issues from a new angle (Niemi-Kiesiläinen et al. 2007).

Advancing interdisciplinarity can occur on different fronts (Cooke et al. 2020). First, scholars from various disciplines can collaborate to identify multifaceted issues that impact the phenomenon under study. Second, promoting interdisciplinarity can involve activities that attempt to integrate diverse perspectives or combine insights from different scientific fields to create innovative new ways of conceptualising the issue under study or tools for approaching it in empirical knowledge production. Third, interdisciplinarity can refer to initiatives to organise holistic learning that spans traditional disciplinary boundaries.

Johanna has been active in advancing interdisciplinarity between the legal and social sciences (gender studies in particular) in all three ways described above. While it is not possible to present a comprehensive analysis of Johanna's academic legacy here, in what follows I will elaborate my claim of Johanna being the 'queen of interdisciplinary dialogue' by using Martha Nussbaum's (2011) capabilities approach, which she developed on the basis of her collaboration with Amartya Sen. While Sen's approach is broad and flexible, focusing on the enhancement of individual capabilities and the removal of obstacles to freedom, Martha Nussbaum (2011) expands on Sen's work by providing a more detailed and specific list of central human capabilities. She identifies ten essential capabilities necessary for a dignified life: *life* (living a full life to its natural end); *bodily health* (having good health, including reproductive health, nourishment, and shelter); *bodily integrity* (freedom of movement and security against assault); *senses, imagination, and thought* (using senses and imagination, and having access to education); *emotions* (forming attachments and experiencing emotions such as love and grief); *practical reason* (being able to form a conception of the good and engage in critical reflection); a*ffiliation* (living with and showing concern for others, and having self-respect); *other species* (living with concern for animals, plants, and the environment); *play* (engaging in recreational activities); and *control over one's environment* (participating in political choices and having property rights). Nussbaum argues that these capabilities should be guaranteed to all individuals up to a certain threshold to ensure human dignity.

Overall, it is rather self-evident that Johanna's career and scientific contributions significantly enhance the key capabilities outlined by Nussbaum, such as those of *life*, *bodily health*, and *bodily integrity*. Her focus on gender justice is at the core of issues of bodily integrity and emotional wellbeing, advocating for legal protections against violence and discrimination. Through her research, she has called on researchers, decision-makers, law drafters, and civil servants—and society as a whole—to work together to provide basic capabilities for all citizens, including for women who suffer from violence in their intimate relationships. Her research and advocacy for gender equality in legal processes have clearly also advanced the capability of *control over one's environment*—everyone's entitlement to express opinions without fear of retaliation and take part in society in meaningful ways. By addressing systemic biases and promoting fair legal practices, Johanna has contributed to ensuring that all individuals, regardless of their backgrounds or life situations, have the freedom to express their views and participate fully in societal and political life. Furthermore, Johanna's academic contributions, including her publications and teachings, foster critical thinking and informed reasoning, which are crucial for the capability of *senses, imagination, and thought*.

In the next two sections, I will elaborate on Johanna's agency further, first by discussing how she has contributed to the use of imagination and senses in creating interdisciplinary knowledge, and second by considering her role in creating opportunities and spaces for intellectual interaction that are both playful and respectful.

Cherishing Curiosity

Johanna's efforts to strengthen multidisciplinary dialogue have provided me and many other colleagues with several capabilities. Here, I will discuss those of *senses, imagination, and thought*, as well as the capability of *practical reason*. The former refers to the possibility to use and express the senses and mind freely in a safe atmosphere and in pleasurable ways; to use imagination and thought in connection with experiencing, thinking, reasoning, and organising; and to take part in gatherings where these capabilities can be practised, as well as to have an entitlement to learn these issues. Practical reason, in turn, includes the ability to form a conception of the good and engage in critical reflection about the planning of one's own (the researcher's) life accordingly (Nussbaum 1999: 41–42).

To valorise how these capabilities relate to Johanna, I will share another recollection from the early phases of our collaboration, again from the turn of the century. We were a small research group led by Johanna, comprising doctoral students and early-career researchers in law and social sciences. Our aim was to study gendered violence and how it is addressed in the criminal justice process. To orient ourselves to the topic of the project and become familiar with the discussion on gendered violence and law, we decided to read Ngaire Naffine and Rosemary J. Owens' book *Sexing the Subject of Law* (Naffine & Owens 1997). This collection of essays critically examines the concept of the legal person from a feminist perspective. It explores how different branches of law conceptualise the 'person' and how these conceptualisations are influenced by cultural ideas of gender. We studied the book carefully and wrote a review reflecting our joint discussions (Honkatukia et al. 2001).

In the chapter 'Queen of the Desert', Naffine and Owens explore the theme of the book by using as a reference point the 1994 road-comedy film *The Adventures of Priscilla, Queen of the Desert*, directed by Stephan Elliott. This interesting choice inspired us and our capability of senses, imagination, and thought from the beginning. Having seen the film, we were fascinated by the analytical possibilities it offered. The film follows the journey of a group of drag queens through the Australian outback. It serves as a powerful metaphor for exploring how legal subjects are constructed and perceived. By using this film, the authors illustrate how cultural symbols and narratives influence legal thinking and practice. The characters in the film challenge traditional gender roles, and by so doing, the film highlights the biases and stereotypes that can pervade legal systems. The themes from the film allow Naffine and Owens to critically examine how these cultural representations impact the treatment of individuals within the legal system, particularly those who do not conform to conventional norms related to gender and sexuality. The film's popularity and vivid portrayal of marginalised identities made it an inspiring tool for discussing the broader implications of gender and law. It helped uncover the underlying biases in the legal system and advocated for a more inclusive and equitable approach to law.

Naffine and Owens' approach, analysis, and creative way of using this piece of art as a tool fascinated us. The book encouraged us to learn and understand the processes of the legal system in novel and creative ways, thereby nourishing our senses and imagination. Back then, we were not yet courageous enough to adopt art into our methodological toolbox, but 'Queen of the Desert' nevertheless encouraged us to explore the possibilities of knowledge production across disciplines—for example, those offered by social constructionism and discourse analysis—for making sense of conceptions underpinning the criminal justice system. We eagerly read methodological texts, organised seminars, and engaged in discussions with scholars from other fields to learn and apply the tools of social scientific research to the legal domain.

Having a shared and enthusiastic mission to identify and challenge the silent, gendered 'self-evidences' in legal thinking and in society was exciting and unifying. As a group, we were committed to contributing to social justice from a gendered perspective. As part of our daily work, we intensively pondered the gendered nature of violence, analysed empirical material, wrote and published articles and chapters, organised seminars and events, supported each other and commented on each other's work, edited books, prepared presentations, and organised teaching on gendered violence. Traces of our work are visible in our numerous individually and collectively created written outputs: in doctoral theses, edited works, and other publications (e.g. Niemi et al. 2017; Niemi-Kiesiläinen et al. 2007; Ruuskanen 2005; Honkatukia 2001).

For me, working in this kind of inspirational collective was a pivotal moment or period par excellence in terms of the possibilities of interdisciplinary collaboration. Working as a member of this group coincided with my becoming an independent researcher and scholar (see, also, Bladini et al's chapter in this collection). We were social scientists and legal scholars who respected one another and wanted to learn from each other about the functioning of law and justice in practice, whereby we needed both an understanding of the underpinnings of the system itself and the social scientific methods and methodologies to study it. Our collaboration formed me into a researcher who does not identify tightly with any specific scientific field or discipline but tends to develop a kind of double-consciousness in navigating between disciplines (Itzigsohn & Brown 2015) in search of a comfortable standpoint to make sense of reality (Smith 1987; Harding 1993; 1986).

Johanna's active attempts to find capabilities and to create the space, interaction, and atmosphere for these capabilities to emerge were elemental. She created a legal environment in which individuals, especially women, can engage in society with dignity and equality. This approach not only advanced academic knowledge but also fostered a culture of intellectual curiosity and rigorous scholarship. While doing this, she served as a role model for us team members—showing willingness and readiness to engage with diverse viewpoints and forms of critical thinking to create new knowledge.

Retreats for all Senses – Fostering the Capabilities of Play and Affiliation

Johanna's efforts to foster interdisciplinary dialogue can also be analysed in light of three other capabilities, each encapsulating significant aspects of the relational nature of human life. The capability of *play* refers to being able to laugh, play, and enjoy recreational activities. The capability of *affiliation* captures important aspects of social interaction and friendships, such as the ability to live for and in relation to others, feel empathy, and show concern for other human beings from the perspective of equality and justice. The capability of *emotions* refers to the ability to have emotional attachments and experience affective states, such as loving and caring for others, longing, or being grateful (Nussbaum 1999: 41–42). The capability of emotions can even be understood to cover justified anger, even though this emotion is not explicitly listed as a positive capability. In the book *Anger and Forgiveness*, for example, Nussbaum (2016: 35–37, 50–52) develops the concept of 'transition anger' to highlight change rather than revenge as a response to it. Anger can, therefore, at least implicitly be included in the emotional range that humans should be able to experience and reflect upon—especially when it relates to justice, dignity, and care. Hence, according to Nussbaum, negative emotions such as anger can be morally evaluated and cultivated in ways that support human flourishing.

To enhance these capabilities, Johanna has the unique ability to create a supportive and inclusive environment where diverse perspectives are equally valued. She has hosted gatherings and events that have brought colleagues and students together in a relaxed and welcoming atmosphere. Many of us have visited Johanna's home in different constellations, enjoying dinners and cosy gatherings where we have engaged in discussions on topical societal, legal, and political questions in an appreciated atmosphere. Johanna's invigorative hospitality is a testament to her belief in the importance of joy and sensual, embodied well-being to balance and sometimes also inspire work, whether in the form of seminars, collective work, or solo writing.

Over the years, Johanna has also invited colleagues to her family house in the countryside for seminars or retreats. Besides engaging in intensive scientific discussions involving moments of flow—being fully immersed in collective discussions (Price 2021)—our embodied and affective senses have also been nourished during these events. We have been served excellent breakfasts, lunches, and dinners collectively prepared by us. We have also engaged in various recreational activities, such as walking in the forest, saunas, swimming in the lake, and enjoying cultural artefacts. These retreats were not only academic events but also opportunities for meaningful connections and intellectual exchange in a relaxed atmosphere. Importantly, we have had fun and laughed a lot, too! All of this has fostered our sense of community and shared purpose across disciplinary boundaries. Hence, it can be claimed that sociability, conviviality, and fun are crucial elements in meaningful knowledge production on gendered inequalities and their solutions in society.

Analysing Johanna's agency through the capability of *emotions* brings forth her empathy, her caring relationship with her colleagues, and her emotional intelligence, which she has shown to her students and colleagues. While Johanna has sometimes pushed us younger scholars to test our limits, she has usually done so in gentle ways, thus encouraging her colleagues to thrive both academically and personally and offering support in dealing with difficult issues or emotions that each of us has encountered in doing research in a highly sensitive field. She has shown interest in her colleagues' families and has been there to greet newborn members of the families. At the same time, Johanna has always emphasised the importance of maintaining a balance between work and personal life, advocating for free time and activities beyond professional commitments. This balanced perspective has meant that Johanna has been able to design her own work environment and schedule to minimise distractions and allow for deep, focused work periods—and balance that with outside work activities that bring well-being to her life. She has also encouraged her colleagues to do the same.

Johanna's Legacy in the Post-#MeToo Era

Above, I have given some examples of my experiences of Johanna's particular ways of contributing to meaningful knowledge production on gendered violence across disciplinary boundaries. What, then, has been the impact of her work and our joint efforts to render visible and problematise legal thinking from the perspective of gender?

Johanna's unwavering commitment to defending social justice from a gendered perspective is visible not only in the academic sphere; she has also been active in creating a more equal society. She could be characterised as an activist, and she has been involved in civil society organisations defending human rights and social justice. A more accurate term might be a knowledge activist, with a mission to impact society through scientific knowledge. She has not been afraid of speaking up or taking a stand, whether in the media, scientific discussions,

or decision-making processes. I am convinced that history will remember her as a true defender of human rights.

Recent developments in society have made visible both a growing recognition of gender-sensitive policies and their value in criminal political decision-making. This includes mainstreaming gender considerations into all levels of policymaking and ensuring that legal reforms are informed by an understanding of the gendered nature of violence. The relationship between Nordic, particularly Finnish, criminal policy and the gendered phenomenon of violence is multifaceted and contested, as we have learned from Johanna's and her colleagues' analyses (Alaattinoğlu et al. 2020; Niemi 2019b). Modern Finnish criminal policy has largely been gender-neutral, meaning it has not specifically addressed gender as a significant factor in criminal behaviour or victimisation. Moreover, the Finnish approach to gendered violence has often been characterised by a tension between gender-neutral and gender-specific policies. For example, while the term 'family violence' is commonly used, it has been criticised for obscuring the power imbalances and gendered dynamics of violence, making it seem like an interactional problem within the family rather than a crime predominantly perpetrated by men against women and children. The gender-neutral approach tends to overlook the unique experiences and needs of women, particularly in dealing with domestic violence in the criminal process (Niemi-Kiesiläinen 2004). The evolution of Finnish criminal policy reflects a broader Nordic trend towards recognising and addressing the gendered dimensions of violence. While significant progress has been made, ongoing efforts are needed to ensure that policies are both gender sensitive and effective in combatting violence against women.

Even if many of the aforementioned issues have moved in a positive direction, there still exist profound tensions between advancing sensitivity towards victims' gendered experiences and needs and the tradition of the Finnish, or more broadly Nordic, criminal policy. We have written about this in an article, 'The Invisible Victim in Criminal Policy' (Kainulainen et al. 2021). While Finnish criminal policy has been sensitive to the needs of offenders, it has often failed to recognise the needs of victims, particularly victims of intimate and sexual violence. This has been because of the unfounded fear among the criminal policy planners of victims' revengefulness and the possible impact of this on society's willingness to punish the offenders. We argue that this fear is mostly unfounded. Victims are usually not revengeful and do not demand tougher sentences, as is often believed, but instead desire processual justice: they expect fair treatment and recognition that they have been wronged. In the article, we provide suggestions for how to integrate victims' perspectives more firmly into what has been called a humane and rational criminal policy. This article is but one example of Johanna's instrumental work in highlighting these kinds of tensions and vulnerabilities related to gendered violence and advocating for a more balanced approach that considers the victim's perspective without making criminal policy more punitive. Her ability to navigate these complex issues and bring attention to often overlooked aspects of criminal justice exemplifies her commitment to social justice and her impact on the field.

Recent decades have witnessed progress and a strengthening of victims' possibilities for accessing justice and support. Violence, which has previously remained private suffering, is now more often discussed openly as a public concern. Since the beginning of 2023, Finland has had consent-based legislation on sexual offences. This and other legal reforms have been backed by international examples and pressure as well as the indispensable work done by civil society activists and organisations. It can even be claimed that the 21st century has witnessed an unprecedented politicisation of gender and sexuality, highlighting the claims for

sexual and bodily integrity as a basic human right (e.g. Horeck et al. 2023). Johanna's meticulous research and brave trespassing of scientific and other boundaries have provided a great impetus for these developments.

At the same time, old and new tensions continue to shape the landscape of public discussion. Issues such as sexual and reproductive health (e.g. the right to abortion), sex education, and LGBTQ+ rights remain fields of ongoing struggle in most, if not all, parts of the world (Berthet 2022). Gendered forms of violence are still not eradicated from our societies; instead, they find new forms and platforms, most recently via communication technologies and artificial intelligence (AI). Furthermore, new ways of denying and belittling gendered forms of violence have occupied the space. For example, the concept of 'himpathy' has been introduced (Manne 2018) to capture the excessive sympathy shown towards male perpetrators of gendered violence in the post-#MeToo era and following the implementation of consent-based legislation in many countries, often at the expense of female victims.

Johanna's leadership, example, and relentless commitment to challenging the societal norms and legal practices that perpetuate gender inequalities are still needed in collective feminist attempts to advocate for a more just and equitable treatment of victims within the legal system. Johanna's legacy is significant, especially in the context of ongoing societal changes. Her efforts in facilitating fruitful interdisciplinary dialogue, whether in the form of research groups, seminars, conferences, teaching or informal gatherings, have not only created and strengthened capabilities for scholars around her to flourish in their own ways but have also been essential in inspiring collective interdisciplinary imagination. This imagination has been essential in knowledge production on gendered inequalities as well as in envisioning their solutions.

Conclusion

Reflecting on my joint professional journey with Johanna pays tribute to the privilege of working in the sphere of Johanna's influence. Along with other scholars, I have benefitted greatly from her open-mindedness, courage, and interest in facilitating interdisciplinary dialogue. In this chapter, I have referred to her as the queen of interdisciplinary dialogue. This is my tribute to her and her work and long-lasting efforts. Johanna has been an inspiring role model for many, as well as a valued colleague and a considerate friend whose interest in interdisciplinary ponderings has been profoundly influential. Johanna has been courageous and brave in engaging passionately in difficult scientific discussions and not letting the challenges or sometimes harsh critique deter her. By initially inviting me into her circle, Johanna has very concretely offered me the opportunity to develop as a researcher working in an interdisciplinary domain of socio-legal studies.

Johanna's legacy continues to inspire and shape the field of interdisciplinary legal research. Her unique blend of curiosity and openness to other perspectives, as well as a firm dedication to social justice, serve as a model for all who strive to make a meaningful impact through their work. I regard Johanna's relentless interest, courage, and creativity in crossing disciplinary boundaries as not only invigorating but also imperative in creating possibilities for in-depth and better knowledge production on sensitive phenomena, such as gendered violence. Similar to Priscilla, the 'Queen of the Desert' in Stephan Elliot's film referred to earlier, Johanna has made visible gendered boundaries underpinning the legal system and their discriminatory consequences, especially for women and girls. Similar to Priscilla, the 'queen' who is 'queer' in a subversive way, Johanna, as the 'queen of interdisciplinary

dialogue', is an empowering character who possesses a great deal of subversive potential. With multifaceted finesse, she traverses disciplinary boundaries and facilitates collective dialogues. She delicately cherishes multiple capabilities to allow the research collective around her to take part in building a sustainable future based on social justice and where vicious phenomena such as violence have been eradicated. Johanna's curiosity, open-mindedness, and ability to incorporate joy, playfulness, and caring for others into her work have been essential in maintaining a balanced and effective approach to such sensitive and important issues. Long live the queen!

References

Bibliography

Alaattinoğlu, D., Kainulainen, H. and Niemi, J. (2020) 'Rape in Finnish criminal law and process – A discussion on, and beyond, consent'. *Bergen Journal of Criminal Law and Criminal Justice*, 8, 33–53.

Berthet, V. (2022) 'Norm under fire: support for and opposition to the European Union's ratification of the Istanbul Convention in the European Parliament'. *International Feminist Journal of Politics*, 24(5), 675–698.

Bregman, R. (2025) *Moral Ambition: How to Stop Wasting Your Talent and Start Making a Difference*. London: Bloomsbury Publishing.

Chesney-Lind, M. (1997) *The Female Offender. Girls, Women and Crime*. London: Sage Publications.

Cooke, S.J. et al. (2020) 'Diverse perspectives on interdisciplinarity from Members of the College of the Royal Society of Canada'. *Facets*, 5(1).

Harding, S. (1986) *The Science Question in Feminism*. Ithaca, NY: Cornell University Press.

Harding, S. (1993) 'Rethinking Standpoint Epistemology'. In: Alcoff, L. and Potter, E. (eds.) *Feminist Epistemologies*. New York: Routledge, 49–82.

Heidensohn, F. (1986) *Women & Crime*. London: MacMillan.

Honkatukia, P. (1998) *Sopeutuvat tytöt? Sukupuoli, sosiaalinen kontrolli ja rikokset*. Helsinki: National Research Institute of Legal Policy Publications 152.

Honkatukia, P. (2001) 'Rough Sex? Understandings of Rape in Finnish Police Reports'. *Journal of Scandinavian Studies in Criminology and Crime Prevention*, 2(1), 15–30.

Honkatukia, P., Kallio, J. and Määttä, M. (eds.) (2024) *Elämää korona-ajassa. Poikkeusolot nuorten aikuisten kokemana*. Tampere: Vastapaino.

Honkatukia, P., Kallio, J., Lähde, M. and Mölkänen, J. (2020) *Omana itsenä osa yhteiskuntaa. Itsenäistyvät nuoret aikuiset kansalaisina*. Available at: https://trepo.tuni.fi/handle/10024/123861 [Accessed 19 June 2025].

Honkatukia, P., Luukkainen, T., Mikkonen, T., Mäkelä, K., Niemi-Kiesiläinen, J. and Ruuskanen, M. (2001) 'Aavikon kuningatar: oikeussubjekti ja sukupuoli'. *Oikeus*, 28(1).

Horeck, T., Ringrose, J., Milne, B. and Mendes, K. (2023) '#MeToo in British schools: Gendered differences in teenagers' awareness of sexual violence'. *European Journal of Cultural Studies*, 27(5), 856–875.

Itzigsohn, J. and Brown, K. (2015) 'Sociology and the Theory of Double Consciousness: W.E.B. Du Bois's Phenomenology of Racialized Subjectivity'. *Du Bois Review: Social Science Research on Race*, 12(2), 231–248.

Kainulainen, H., Honkatukia, P. and Niemi, J. (2021) 'The Invisible Victim in Criminal Policy'. *Bergen Journal of Criminal Law and Criminal Justice*, 9(2), 8–21.

Manne, K. (2018) *Down Girl: The Logic of Misogyny*. New York: Penguin Books.

Niemi, J. (2019a) ‘Promoting Gender Equality’. In: Letto-Vanamo, P. and Ditlev, T. (eds.) *Nordic Law in European Context*. Ius Gentium: Comparative Perspectives on Law and Justice Series. Springer, 79–95.

Niemi, J. (2019b) ‘Excluding Power from a Narrative: Sexual Harassment in a Criminal Law Reform’. In: *Rape Narratives in Motion*, 17–41. https://doi.org/10.1007/978-3-030-13852-3_2

Niemi, J., Kainulainen, H. and Honkatukia, P. (eds.) (2017) *Sukupuoli, väkivalta ja oikeus*. Tampere: Vastapaino.

Niemi-Kiesiläinen, J. (2004) *Rikosprosessi ja parisuhdeväkivalta*. Helsinki: WSOY.

Niemi-Kiesiläinen, J., Honkatukia, P. and Ruuskanen, M. (2007) ‘Legal texts as discourses’. In: Gunnarsson, Å., Svensson, E.-M. and Davies, M. (eds.) *Exploiting the Limits of Law: Swedish Feminism and the Challenge to Pessimism*. Aldershot: Ashgate, 69–87.

Niemi-Kiesiläinen, J., Honkatukia, P., Karma, H. and Ruuskanen, M. (eds.) (2006) *Oikeuden tekstit diskursseina [Legal Texts as Discourses]*. Helsinki: Suomalaisen Lakimiesyhdistyksen julkaisuja, E-sarja 13.

Nussbaum, M.C. (2011) *Creating Capabilities: The Human Development Approach*. Cambridge: The Belknap Press of Harvard University Press.

Nussbaum, M.C. (2016) *Anger and Forgiveness: Resentment, Generosity, Justice*. New York: Oxford University Press.

Price, C. (2021) *The Power of Fun: How to Feel Alive Again*. New York, NY: The Dial Press.

Pösö, T. (1986) *Naisesta naisvanki? Tutkimus naisten rikollisuudesta*. Tampere: Tampereen yliopisto, Sosiaalipolitiikan laitos.

Ruuskanen, M. (2005) *Hätävarjelu ja parisuhdeväkivalta: Rikosoikeudellinen ja diskurssianalyyttinen tutkimus*. Helsinki: Suomalainen Lakimiesyhdistys.

Sen, A. (2001) *Development as Freedom*. Oxford and New York: Oxford University Press.

Smart, C. (1977) *Women, Crime and Criminology: A Feminist Critique*. London: Routledge & Kegan Paul.

Stember, M. (1991) ‘Advancing the social sciences through the interdisciplinary enterprise’. *Social Science Journal*, 28(1), 1–14.

Thomson, R. and Holland, J. (2015) Critical moments? The importance of timing in young people’s narratives of transition. In: Wyn, J. and Cahill, H. (eds.) *Handbook of Children and Youth Studies*. Singapore: Springer, 723–733.

Thomson, R., Bell, R., Holland, J., Henderson, S., McGrellis, S. and Sharpe, S. (2002) Critical Moments: Choice, Chance and Opportunity in Young People’s Narratives of Transition. *Sociology*, 36(2), 335–354.

University of Turku (2025) *Johanna Niemi – People*. Available at: https://www.utu.fi/en/people/johanna-niemi [Accessed 30 September 2024].

14 On Female Academic Bonds

Katarzyna Sękowska-Kozłowska

Abstract
In this short essay, I describe how I met Johanna, why she became an important figure in my scholarly life, and why feminist academic bonds matter.

A Girl

It all started with an amber necklace. I was sitting in a fancy restaurant in Vienna, happy and excited. It was one of those mixed emotions—feeling accomplished and privileged (*I'm so lucky to be here! This is life!*), alongside the fear of being an impostor at the same time. It was 2017, a few years after my PhD. I was a child of my time—born in communist Poland, growing up during the democratic and economic transition, finishing my studies just after Poland's accession to the European Union.

My family was a typical example of social advancement: my grandfather moved from the countryside to the city to work in a factory; my mother was the first to graduate from high school and work in an office. Finally, I was the first in the family to graduate from university and become an academic. I think I made really good use of the socio-economic circumstances of the time: free education, English lessons, trips abroad, and an Erasmus exchange.

In academia, where I started in 2005, I was blessed with having Roman Wieruszewski as a mentor—a person who was internationally active, open-minded, and always eager to involve his assistants in various projects. He had no objection to employing young women, which was not so obvious at the time. On the contrary, he developed a successful research unit (the Poznań Human Rights Centre), which became a very female-dominated team. From 2013 to 2018, Roman was a member of the Scientific Committee of the EU Agency for Fundamental Rights (FRA). At the time, the members of this body were preparing a co-authored book (Byrne & Entzinger 2020), and Roman invited me to write a chapter with him.

A dinner in a fancy restaurant in Vienna was part of the seminar for the authors. It was one of my first *serious* academic trips abroad. I had attended several international summer schools and conferences before, but I usually felt that I was lagging behind my peers—especially those from Western countries. I did not have any foreign LL.M. or PhD studies abroad, nor had I received any international scholarships or undertaken any international internships. Unrefined English, only a handful of non-Polish publications.

So when I attended the meeting of the eminent members of the FRA Scientific Committee, I felt slightly inadequate and simply looked for a friendly person to talk to. Next to me sat a lady wearing an amber necklace. It was a typical piece of Baltic jewellery, very popular in Poland. So, I asked this lady about her necklace, and we started talking.

That is how I met Johanna Niemi, one of the most important persons in my academic life.

A Woman

Johanna, at the time a member of the FRA's Scientific Committee, offered me her attention—much more than the usual dinner small talk. It turned out that we had many research interests

in common. I think she was the first feminist law professor I got to know more closely: a distinguished female legal scholar who was vocal about gender issues.

Later, I discovered that apart from women's and gender issues, Johanna was also an expert in procedural law, specialising in areas so far removed from gender equality issues (or perhaps not?) as insolvency. Probably her academic path has been typical of many eminent feminist scholars, who first gained expertise in *hard* subjects (even considered *male*) and then, as recognised academics, had enough resources (position, authority, credibility) to be taken seriously when engaging with gender issues.

That time in Vienna, Johanna invited me to the Nordic Law and Gender Conference in Turku, which was to take place the very next week, and luckily I was determined and crazy enough (especially as a mother of two small kids) to go.

Since then, I have returned to Finland several times and remain enchanted by the country and its people. For me, Finland is a kind of bridge between the Western and the post-Soviet worlds. I feel this especially in Helsinki, where Nordic design is blended with Art Nouveau and Russian influences.

As a visitor from the less affluent part of the EU, I have rarely felt overwhelmed by Finnish wealth and splendour. On the contrary, I am still impressed by its simplicity and modesty. The best example of this, for me, is Johanna's office as the Dean of the Faculty of Law at the University of Helsinki. A typical Polish (and perhaps not only Polish) Dean's office is a lavishly adorned space, always guarded by a (usually female) team of secretaries and assistants. When I visited Johanna as a newly elected Dean, I was very surprised by her small and cosy room. So democratic and easily accessible to all. I am still not sure whether the message of this room is about Finnish style, a feminist way of life, or simply about Johanna and her attitude to life. Or maybe it is all of the above.

Another thing is the sense of humour—so discreet, yet intelligent and sparkling. Is it uniquely Finnish or just typical of Johanna? Not important. Certainly, she has reached a master level, especially in the art of giving speeches. The tradition of toasting is a beautiful element of Finnish academic life, making conference dinners or PhD afterparties (Niemi 2020) very special. I adore Johanna's funny speeches and will return to one of them.

What I want to emphasise in writing about Johanna is the interest and support she generously offers to others. Not only to her doctoral students, faculty colleagues, and friends but also to many who happen to cross her academic path—such as myself. In the years since our first meeting, I have been invited to many initiatives co-organised by Johanna: events, book contributions, grant proposals. Thanks to the seminar in Lund in 2018, where we worked on the book Johanna co-edited (Niemi et al 2020), I made several new, wonderful academic friends. Networking is at the heart of academic life, and I am grateful to Johanna for creating new bridges and opening exciting doors for me.

The Women

Once I reminded Johanna how we met in Vienna and she told me: 'We started talking and I knew you were our girl'. *Our girl* means: being part of the international feminist academic community. These words were both moving and empowering and also gave me a sense of belonging.

It was very important, especially in those dark years when the national conservative populists ruled Poland. Conducting research on issues such as abortion or violence against women in a country with an openly anti-gender attitude was challenging. Johanna was always concerned about what was happening in Poland and how I was coping. Having colleagues like her in my corner was a great comfort and a symbolic *umbrella* of support that made me feel cared for.

Since 2016 and the rainy *Black Monday*—in other words, the first massive, nationwide rallies against the anti-abortion legislative measures in Poland—an umbrella has become a national symbol of protest against patriarchy and gender inequality. As the gender backlash spreads ever more intensively around the world, we must continue to carry our umbrellas and be ready to use them, not only in Poland.

That is why feminist academic bonds are so important. Gender equality is not a given. We still have to fight for it, in all countries and in all walks of life, including academia. I still remember a toast Johanna gave to her academic friends from Sweden. She told us a funny story about 'Swedish missionaries' who visited her faculty decades ago and converted her to feminism.

That is what academic life, at its best, is about. We meet people who expose us to new ideas, and some of them even change our lives. Sometimes, one conversation can give us more than a dozen books ever could.

So, the last thing I want to address is money. A strange subject for a commemorative essay, but very important here and worth speaking up about (another lesson learned from feminists). In academia, we often avoid talking about money. We used to think that others (especially peers from richer countries) were well-off, and that we were the unfortunate ones who had to struggle financially. That is not true.

The fact that I met Johanna in Vienna and was so eager to come to Turku the very next week would not have been possible without the generous young researcher funding I had. It was a happy coincidence that I had money for travel at the time and was able to spend it. Later, I used other funding opportunities to come to Finland, such as Erasmus+ or project conferences. Johanna also visited Poland when she was the Minna Canth Professor. This professorship, funded by the Academy of Finland in the name of the 19th-century writer and women's rights activist, is an excellent example of support for feminist researchers.

What I mean, more precisely, is that money flows slowly in the academic world. It usually takes a lot of energy to get funding that allows us not only to do research but also to travel. I wish it could be different, but this is the way it is in many cases. Yet, I think it is worth the effort.

After COVID, we are used to meeting online and attending conferences and seminars around the world without leaving our offices. However, virtual chats and coffees are just a shadow of real-life meetings—they only give a small chance to bond. Sometimes, you just need to move to get out of your comfort zone, attend a seminar dinner without knowing anyone, go to the sauna, or take part in a bizarre side conference event. Among the many small talks and passing acquaintances, you may meet someone who will turn the tide in your academic life.

References

Bibliography

Byrne, R. and Entzinger, H. (eds.) (2020) *Human Rights Law and Evidence-Based Policy. The Impact of the EU Fundamental Rights Agency*. Abingdon: Routledge.

Niemi, J. (2020) 'Becoming academic'. In: Strid, S., Balkmar, D., Hearn, J. and Morley, L. (eds.) *Does knowledge have a gender? A Festschrift for Liisa Husu on gender, science and academia*. Örebro: Örebro University.

Niemi, J., Peroni, L. and Stoyanova, V. (eds.) (2020) *International Law and Violence Against Women. Europe and the Istanbul Convention*. Abingdon: Routledge.

15 Episodic Encounters with Johanna Niemi and her Scholarship

Juho Aalto

Abstract

This reflective essay explores my intellectual and personal encounters with the scholarship of Johanna Niemi. Rather than offering a comprehensive academic analysis, the essay is structured as a series of episodic moments—both scholarly and personal—that illustrate Niemi's influence on my thinking. Drawing on themes such as gender, sexuality, legal subjectivity, and violence against women, the essay highlights Niemi's critical engagement with feminist legal theory, discourse analysis, and openness to interdisciplinary insights and her commitment to inclusivity, and social justice. Through these encounters, I reflect on the evolving nature of legal scholarship in terms of new materialisms and the importance of challenging binary frameworks in law in terms of sex and gender as a continuation of Niemi's work in the future.

Introduction

Reflecting on the breadth and depth of Johanna Niemi's scholarship—from procedural law (Niemi 2010) and insolvency law (Niemi 1984) to gender and sexuality (Niemi 2012) and violence against women (Niemi et al 2020)—one quickly realises that engaging fully with her work could constitute an entire research project. Rather than attempting a comprehensive academic analysis, this essay offers a personal reflection on my encounters with her scholarship and with Johanna Niemi herself. My focus is on how her work has shaped my thinking, particularly in challenging the presumed neutrality of law through the lenses of gender and sexuality.

This reflection is structured as a series of episodic moments, inspired by the narrative style of the *Star Wars* films. Much like the franchise's unconventional chronology, these episodes are not presented in strict chronological order but are instead organised around meaningful encounters—both intellectual and personal—that have left a lasting impression on me. These moments, drawn from memory and experience, represent what Donna Haraway calls 'situated knowledges', shaped by my perspective and context, and thus represent my experience of reality and the meaning I attach to it in this text (Niemi-Kiesiläinen et al. 2007: 77). Rather than engaging in detailed academic debate, this essay aims to highlight the personal inspiration, mentorship and intellectual curiosity that Johanna Niemi has embodied throughout her career—and her profound impact on mine.

Episode I - Calonia

I was a recent graduate from the University of Helsinki and was considering applying for doctoral studies. I asked around whether there was anyone in Finland working on themes related to gender and sexuality in law. A clear answer was repeated from many directions: Johanna Niemi. I was hesitant to contact someone with such an extensive understanding of the topic and a long publication track record. After some deliberation, I decided to send my master's thesis to, at the time, Minna Canth Professor Niemi, who promptly responded to my initial enquiry about a letter of recommendation. She invited me to meet her in the Faculty of

Law building, Calonia, in Turku. I sat on the train, filled with nervous thoughts about how she might receive me. At the very least, I thought, she had not dismissed me outright after reading my thesis titled *Lesbians, Gays, Bi-sexuals and Transpersons in Strasbourg – The Non-heterosexual Legal Subject under the Scope of the European Convention on Human Rights*. I checked my Instagram account and saw that I had shared a photo on 22 February 2019 from the somewhat clinical corridor in Calonia where Johanna's office was located.

At this point, I cannot guarantee that my memory is not playing tricks on me. I recall Johanna entering the corridor from a door next to the sofa where I was sitting and waiting. We went into her office and began discussing my thesis. I remember touching on possible explanations for the existence of homosexuality, where Johanna briefly interjected to ask whether such an explanation had ever been found (no definite answer exists to date). The conversation soon meandered towards gendered power relations in history. I remember pondering why homosexual relationships have historically been perceived as a threat to society, and I illustrated this with perhaps a far-fetched example: if, in history, women were exchanged as part of diplomatic relations between states to unite ruling families, then homosexual relationships between kings could have formed even stronger bonds—bonds imbued with power—than the, in today's terms, forced marriages between daughters and foreign princes. I remember the discussion as intellectually stimulating, at times entertaining and even humorous. I was genuinely surprised by how approachable Johanna was as a person.

At the end of our discussion, Johanna suggested that I apply for a doctoral degree under her supervision at the University of Turku. That suggestion—and my eventual decision to follow it—has had a profound impact on my thinking and, to some extent, on my sense of self.

Episode II – Feminism's Internal Challenges

At first, I was somewhat unfamiliar with Niemi's scholarship. On first glance, I noticed her strong commitment to the feminist tradition. I was lost amid the different schools of thought that form dividing lines within what is categorised as 'feminist' scholarship. I remember seeing Judith Butler's *Gender Trouble* (Butler 1995), alongside Janet Halley's *Split Decisions: Why and How to Take a Break from Feminism* (Halley 2008), and even David M. Halperin's *Saint Foucault: Towards a Gay Hagiography* (Halperin 1995) on Johanna's office bookshelf. It is hard to describe the feelings I had when I saw those titles. It was a mix of heart-warming joy and curiosity, infused with an odd sense of surprise.

I began reading Niemi's work in 2019 and soon noticed that her approach to law and gender—particularly with respect to subject formation—resonated with how I had intuitively come to understand myself. Her postmodern discourse-analytical studies on the formation of legal subjectivity struck a chord. Despite the recurrence of the 'scary' f-word (i.e. feminism) at the time, I soon came to realise that Johanna's work was critical not only of paradigmatic legal thought (the legal auditorium) but also of internal tensions within feminist scholarship. In some of her texts, Niemi explicitly refers to sexual minorities and people who fall outside the male/female binary (e.g. Niemi 2015). The more I read, the more I was struck by the openness to new forms of scientific inquiry embedded in her scholarship. For instance, Niemi has repeatedly asserted the idea that both biological sex and social gender are socially constructed (e.g. Niemi 2012, 2019).

Niemi's scholarship has arguably become more relevant than ever—some might say, sadly so. Today, debates continue over the true nature of sex and gender, and whether biology is 'truer' than what is often dismissed as 'gender ideology'. Once again, I cannot guarantee

where exactly we had this conversation, but I remember Johanna expressing her surprise at hearing, in discussions about the Istanbul Convention (the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence), that some opponents were framing gender as an ideology.

On 16 April 2025, the Supreme Court of the United Kingdom decided *For Women Scotland v The Scottish Ministers*, ruling that the terms 'man', 'woman' and 'sex' refer to 'biological sex' under the meaning of the British Equality Act 2010. The judgment effectively sanctions the existence of specific spaces lawfully restricted to 'biological' women or men. To date, biological women who identify as 'butch' have been removed from these single-sex spaces. Framing gender as ideological feels almost insulting to decades of work in gender studies and law-and-gender scholarship, where gender has long been approached as a critical, complex and constructed category.

Episode III – Violence against Women

A theme close to Niemi's heart is violence against women, which she has addressed extensively in her own publications and in the doctoral dissertations she has supervised (e.g. Leskinen 2022; Luján Pinelo 2023). Violence against women is a gendered issue, where women are often victims and men perpetrators. In Finland, as in other Nordic countries, women are frequently victims of violence in close relationships (e.g. Hydén 1994). However, the issue becomes more complex when we consider subject formation beyond the heteronorm and question the role of marriage as a foundational institution of society—as it is often framed by paradigmatic legal thinkers (e.g. Aarnio 1997: 282; Austin 1962).

In 2024, Finnish ice hockey player Janne Puhakka was found dead in the couple's shared home. Puhakka was killed by his ex-partner, Norwegian veterinarian and businessman Rolf Nordmo. Nordmo pleaded guilty to manslaughter and was convicted of murder. He has appealed the judgment. This case is thought-provoking in light of Niemi's scholarship: on the one hand, violence against women is a gendered issue; on the other, our understanding should not be confined to binary gender categories. Puhakka's death follows patterns of intimate partner violence that are all too familiar. It is well known that the most dangerous time for a woman is often the dissolution of a relationship, when the abandoned male partner may resort to lethal violence (Einiö et al. 2023). Yet we must also recognise that same-sex relationships have only recently gained broad social acceptance, decades after different-sex relationships. In Puhakka's case, both the victim and perpetrator were men. This suggests that factors other than gender might be at play in these troubling crimes.

Rather than approaching the problem solely through the gender framework—implied by the male/female binary and often carrying a brief for the feminine (e.g. Halley 2008)—it may be more fitting to examine it through the lens of sexuality. According to Rosi Braidotti, sexuality is a vital material force upon which the sex/gender dichotomy attempts to impose its primacy (Braidotti 2022: 188). From this perspective, such instances of violence can be conceptualised as exertions of control over another person's sexuate matter in its most brutal form. Perhaps the root causes lie in the capitalist notions of ownership embedded in the institution of marriage.

I recently watched a moving film from 2020 titled *Supernova*, directed by Harry McQueen. The film follows a gay couple, Tusker (Stanley Tucci) and Sam (Colin Firth), who have been together for 30 years. As they travel through the English countryside in a camper van, their holiday gradually transforms into a farewell journey. Tusker has been diagnosed with

dementia and plans to end his life to spare Sam the anguish of watching the disease progress. Sam learns of the plan during the trip and pleads with Tusker to abandon it, unable to imagine life without him. Tusker, however, explains his decision and asks Sam to let him go. In this narrative, death is framed as an act of love, and suicide is not portrayed as selfish within that context. It is rare for a film to bring tears to my eyes.

Violence in close relationships is sometimes dangerously romanticised, especially during separation, when jealousy can serve as a trigger (e.g. Enander et al. 2022). The example of *Supernova* illustrates death as a continuation of Tusker's existence as he wished to be in the relationship (sollen) before dementia. Nordmo, by contrast, claimed that he had no difficulty letting go of the relationship. However, he had sent messages to a friend expressing feelings of betrayal after Puhakka had met someone new following their separation. Nordmo chose to continue the relationship on his terms—by ending Puhakka's life (sein). In this latter case, the act of killing can be interpreted as an attempt to limit the other person's sexual agency through death, triggered by jealousy.

While the problem remains gendered—violence in close relationships still disproportionately affects women—marriage continues to be promoted as desirable. Perhaps queering that very premise could offer new insights.

Episode IV – Discourse Analysis and New Materialism

Niemi has applied social constructionism as a theoretical framework and critical discourse analysis as a method to examine how gender and sex are socially and juridically constructed. She has reflected on the philosophical similarities between discourse analysis and paradigmatic discourse theoretical work in assessing how legal discourses shape and produce social reality and identities (Niemi-Kiesiläinen et al. 2007).

In 2019, Amalia Verdu Sanmartin introduced me to something called new materialism, which led me to rethink my theoretical starting points. I soon noticed that queer legal theory, alongside postmodern feminist social constructionism—both of which I had been exploring—could not fully respond to my research questions. I found it untenable to regard sexuality, distinct from the expression of sexual orientations, as merely a social construction. At the same time, the existence of socially constructed sexual identity categories based on the sex/gender binary was clear (Aalto 2024). Marriage has historically been used to exclude same-sex couples from full human rights and to reinforce heterosexuality as the desirable norm. Nevertheless, I began to search for something more substantial.

Rosi Braidotti's posthuman feminism renders the sex/gender dichotomy obsolete—or at least less relevant. Once again, I was struck by Johanna's openness to emerging theoretical frameworks. However, as I explored her scholarship more deeply, I found clear signs of her engagement with material feminisms (Niemi 2015: 1037), including reflections on the 1990s debate between Rosi Braidotti and Judith Butler (Peltonen 2012). Niemi recognises the risks of overemphasising discourse at the expense of materiality. Notably, Butler has recently acknowledged that the materialist and trans critiques of her gender performativity theory—formulated some 35 years ago—are well founded (Butler 2024: 23). In new materialist thought, gender operates as a grid that captures and codes sexuate matter (Braidotti 2022: 188).[1] Yet gender, as discourse, also functions as an analytical tool to interrogate the very

[1] Braidotti references Moira Gaten's critique of the sex/gender distinction a text from 1989, which Johanna assigned to me at an early phase of my thesis project. At the time I did not understand much of it.

structures it helps create and sustain. As Niemi reminds us, all feminist traditions can offer valuable methodological insights for addressing problems in their particular contexts (Niemi 2015: 1025).

Today, the paradox of how to recognise 'women' while keeping the category open-ended remains a central tension within the sex/gender dichotomy. This question is divisive even among feminists. Niemi has pointed out that accepting the social construction of biological sex is particularly difficult (e.g. Niemi 2019). The recent UK Supreme Court ruling appears to fix the meaning of key terms in law. Yet, as Margaret Davies suggests, this may not 'solve' the fluidity of the social world. Who are these 'normal' biological women entitled to access sex-specific spaces? According to Davies, 'there is a norm in normal' (Davies 2018: 37). Those who claim to defend biological sex are in fact defending how biological sex is culturally expressed as gender. The UK Supreme Court judgment arguably places too much weight on discourse and too little on material bodies. The 'normal' woman may be little more than a product of stereotype and essentialism.

The wilful—and sadly successful—exclusion of trans women from women's toilets has already led to cases where so-called 'biological' women have been removed from public facilities (Dunbar 2025) for failing to conform to discursively normalised femininity. These women have included butch lesbians who neither conform to nor wish to perform traditional gender norms. In this sense, a new form of violence against women is emerging—one that results when biology is upheld as 'truer' than social gender. This example exposes material bodies to discrimination via discourse, and the law fails insofar as it insists on clear-cut binary categorisations of human beings.

Niemi has asked whether new materialism could be understood as the 'post' of discourse analysis (Niemi 2020: 502). I recall bumping into Johanna by the elevator doors on the third floor of the Turku Law Faculty. I told her that discourse analysis is rather entangled within new materialisms, because there is no before, after nor post. We both laughed, and the moment stayed with me. I agree with Niemi: all feminist traditions remain valuable today, depending on context—alongside matter in its physicality.

Episode V – New Beginnings

I have immense gratitude towards Johanna Niemi as a person, and my encounters with her scholarship have led to many surprises. One of the most meaningful aspects of getting to know Johanna is her genuine curiosity about scientific discovery and her unwavering commitment to promoting social equality through education and scholarship.

Johanna's work has remained open to insights from fields beyond law, especially in recognising the challenges connected to different ways of being in society. I can say that being a sexgendered man in a distinctively women-dominated field such as law and gender has not always been easy. As Niemi has stated: 'Finally, the emancipatory potential of law can only be understood when we start to see the legal system and legal discourses as constitutive of sex, gender and other identities' (Niemi 2019: 112).

Looking ahead, the challenge lies in understanding how matter and discourse are co-constituted. This is crucial for continuing the interrogation of binary sexgender, particularly in how legal institutions rely on binary knowledge while simultaneously shaping the very subjectivities they claim to merely regulate.

Episode VI – Retrospective of the Episodes

Looking back on my episodic encounters with Johanna Niemi and her scholarship, what stands out most is not only the intellectual depth of her work but also the openness, curiosity and generosity she brings to academic life. Her ability to challenge the neutrality of law through a feminist lens—while remaining receptive to evolving theories such as new materialism—has profoundly shaped my own scholarly path.

Johanna's work exemplifies how legal scholarship can be both critical and constructive, questioning dominant paradigms while offering new ways of understanding identity, power and justice. Her commitment to inclusivity, in recognising the experiences of sexual and gender minorities in both her research and educational roles, has made space for voices often marginalised in legal discourse. Through her mentorship and example, I have learned that academic rigour and personal authenticity are not mutually exclusive.

In a field where categories like sex and gender are often treated as fixed, Johanna Niemi's scholarship reminds us that law is not merely a reflection of society but a force that actively shapes it. Her influence has encouraged me to embrace complexity and to find confidence in my own voice—the one I now use to question binaries, without the fear of the f-word.

I remain entangled with the lessons from these encounters: that scholarship can be transformative, that mentorship matters, and that the pursuit of justice must always remain open to redefinition. Future inspiration lies in engagement with 'the indeterminate nature of nature as part of the nature we seek to understand' (Barad 2007: 62), as a path towards overcoming the sex and gender distinction. I am similarly very happy to know Johanna as a person whose witty sense of humour has made me feel welcome in many feminist encounters—and encounters with different kinds of feminists.

Thank you, Johanna!

References

Bibliography

Aalto, J. (2024) 'BinaryTech in motion: The sexgender in the European Court of Human Rights Jurisprudence'. *Leiden Journal of International Law*, 37(3).

Aarnio, A. (1997) *Reason and authority: a treatise on the dynamic paradigm of legal dogmatics*. Aldershot: Ashgate.

Austin, J.L. (1962) *How To Do Things With Words*. Oxford: The Clarendon Press.

Barad, K.M. (2007) *Meeting the universe halfway: quantum physics and the entanglement of matter and meaning*. Durham: Duke University Press.

Braidotti, R. (2022) *Posthuman feminism*. Cambridge: Polity Press.

Butler, J. (2024) *Who's afraid of gender?* London: Penguin Books.

Butler, J. (1995) *Gender trouble: Feminism and the subversion of identity*. New York: Routledge.

Davies, M. (2018) *Law Unlimited*. Abingdon: Routledge.

Dunbar, M. (2025) 'Woman says Boston hotel guard told her to leave bathroom because she "was a man''. *The Guardian*. Available at: https://www.theguardian.com/us-news/2025/may/06/boston-hotel-bathroom-same-sex-couple [Accessed 4 August 2025].

Enander, V., Krantz, G., Lövestad, S. and Örmon, K. (2022) 'The killing and thereafter: intimate partner homicides in a process perspective, part II'. *Journal of Gender-Based Violence* 6(3).

Einiö, E., Metsä-Simola, N., Aaltonen, M., Hiltunen, E. and Martikainen, P. (2023) 'Partner violence surrounding divorce: A record-linkage study of wives and their husbands'. *Journal of Marriage and Family*, 85(1).

Halley, J. (2008) *Split Decisions: How and Why to Take a Break from Feminism*. Princeton: Princeton University Press.

Halperin, D.M. (1995) *Saint Foucault: Towards a Gay Hagiography*. Oxford: Oxford University Press.

Hydén, M. (1994) *Woman Battering as Marital Act: The Construction of a Violent Marriage*. Oslo: Scandinavian University Press.

Leskinen, M. (2022) *Seksuaalinen itsemääräämisoikeus: Rikosoikeuden muutos ja feministisen oikeusfilosofian mahdollisuus*. University of Turku, Faculty of Law, PhD thesis.

Luján Pinelo, A. (2023) *Extreme Forms of Violence against Women in Europe. Femi(ni)cide in Germany*. University of Turku, Faculty of Law, PhD thesis.

Niemi, J. (1984) *Etuoikeudet konkurssissa: Selvityksiä*. Helsinki: Oikeusministeriö.

Niemi, J. (2010) *Civil procedure in Finland*. Alphen aan den Rijn: Kluwer Law International.

Niemi, J. (2012) 'Law and Gender'. In: Nuotio, K., Melander, S. and Huomo-Kettunen, M. (eds.) *Introduction to Finnish Law and Legal Culture*. Helsinki: Forum Iuris.

Niemi, J. (2015) 'Onko "oikeus ja sukupuoli" oikeudenala?', *Lakimies* 113(7–8).

Niemi, J. (2019) ‘Promoting Gender Equality’. In: Letto-Vanamo, P., Tamm, D. And Mortensen, B.O.G. (eds.), *Nordic Law in European Context*. Cham: Springer International Publishing.

Niemi, J. (2020) ‘Oikeus konstruktionistisena käytäntönä’, *Oikeus*, 49(4).

Niemi, J., Peroni, L. and Stoyanova, V. (eds.) (2020) *International Law and Violence Against Women: Europe and the Istanbul Convention*. Abingdon: Routledge.

Niemi-Kiesiläinen, J., Honkatukia, P. and Ruuskanen, M. (2007) ‘Legal Texts as Discourses’. In: Svensson, E.-M., Gunnarsson, Å. and Davies, M. (eds.) *Exploiting the Limits of Law: Swedish Feminism and the Challenge to Pessimism*. Abingdon: Routledge.

Peltonen, S. (2012) ‘Käsitteiden politiikkaa: Mistä puhumme kun puhumme sukupuolierosta?’. In: Lempiäinen, K., Leppänen, T. and Paasonen, S. (eds.) *Erot ja etiikka feministisessä tutkimuksessa*, Turku: UTUKirjat.

16 Johanna Niemi: The Academic Midwife[1]

Amalia Verdú Sanmartin & Aleida Luján-Pinelo

Abstract

An academic journey, such as Johanna Niemi's, involves several aspects of academic life including teaching, research, administrative work, and mentoring. In this article, we want to address other aspects of the academic legacy, which are rarely addressed and recognised: supervision. For this, we embark on a transformative journey of Johanna as main supervisor and Amalia Verdú Sanmartín and Aleida Luján Pinelo as supervisees; a journey that has different beginnings, from Spain, Mexico, and Helsinki, culminating in Turku, Finland. Our focus is the theme of 'becoming together'. We explore not only how different global experiences influence different aspects of academic endeavour, such as research and teaching, but also how different approaches, such as discourse analysis, diffractive reading, and epistemic plurality, come together to co-creating knowledge. Echoing the role of experience as a feminist methodology, we analyse how power narratives and practices continue to shape mentorship and educational processes in neoliberal postgraduate studies. In this article, our goal is to shed light on the multifaceted agency inherent in the intricate processes and practices of supervision and the challenges this role meets with neoliberal reforms in education. Ultimately, we stress the significance of comprehending and embracing the complexities within supervision, highlighting the collaborative and evolving nature of the learning journey.

Introduction

The invitation to collaborate in this commemorative book to celebrate Johanna Niemi's academic journey brought us to reflect on how Niemi's scholarship influenced our academic work. By thinking about this, we realised that both of us are more indebted to her due to her role as supervisor rather than in relation to her scholarship. We both felt ashamed that we have read so few of her publications, but at the same time this situation highlighted one amazing aspect of Johanna: she does not impose her ideas or methodologies on her supervisees (this is, at least, how we experienced it). On the contrary, it would be interesting to listen to Johanna's experience on dealing with these two supervisees with a strong (almost immutable) theoretical standpoint (new feminist materialism).

We, in line with other chapters, want to particularly acknowledge the important role mentoring, tutoring, and supervision have in becoming an academic (many times encompassing career mentorship). Drawing from feminist pedagogics, we recognise the

[1] An academic midwife, in the context of university education, is a metaphorical figure that describes someone who assists students in developing and articulating their own ideas, much like a midwife helps in the birth of a child. This concept, derived from feminist pedagogics, emphasises the role of PhD supervisors in guiding students to produce their own knowledge and work. The relationship supervisor-supervisee aims to deliver a 'body' of work, such as a thesis, through a supportive and collaborative process. This approach draws on feminist perspectives and the practice of accompaniment, which involves being with and supporting another person, challenging traditional hierarchical structures in education. The goal is to foster intimate, yet empowering, relationships that resist the constraints of neoliberal reforms in academia (see Fannin & Perrier 2017).

supervisor as an 'academic midwife' as a figure who assists students in developing and articulating their own ideas, much like a midwife facilitates the birth of a child. This metaphor, rooted in the practice of accompaniment, captures Johanna's approach: she supported and challenged us, but never dictated our paths. Her mentorship was not about hierarchy but about collaboration, resisting the constraints of neoliberal academia and fostering an empowering intellectual relationship.

Not only do we want to highlight the important role Johanna's mentoring played for each of us, as our experiences with her have naturally been different, and we also want to thank her forever for connecting us. Through her guidance, she has not only shaped our academic trajectories but also facilitated the creation of lasting intellectual and personal bonds.

University Policy Reforms or the Scholarly Trap

Because supervision is our guiding subject, we find it useful to reflect on its status in Finland. Finnish universities are increasingly shaped by neoliberal reforms in other countries—the neoliberal model prioritises economic gains over educational quality. This shift is openly stated and supported in the European Bologna reform and has been subject of critique by various scholars (Tjeldvoll 2008). In this scenario, The Ministry of Education and Culture in Finland is piloting a doctoral education reform to meet the objective of increasing both research and development funding (4% of the country's GDP by 2030).[2] This implies shortening PhD studies from four to three years and prioritising funding for flagship fields—leaving disciplines like Humanities and Social Sciences under supported. The University of Turku, where we are based, has received funding to implement this pilot in eight programs, none of these include Humanities nor Law (University of Turku webpage [no date]).

When the pilot program was announced and discussions began on how to restructure doctoral programs to compete for the Ministry's funding, concerns were raised about the shift from quality to quantity. This strategy was seen as a potential threat to the value and rationale of a PhD, potentially compromising research excellence and supervision standards (Elliot 2023). Neoliberal education implies the progressive commercialisation of higher education, conceptualising knowledge production as a commodity and students as consumers. Thus, universities are becoming the entrepreneurs of new educational businesses whose focus is on generating revenue and optimising costs in education and research.

For the cost-cutting Finnish university, PhD researchers have become cost-effective teaching resources, as well as sources to attract external funding. They often bring their own grant money, which entails shifting the responsibility for health insurance, pensions, and holidays cost from the university to the PhD candidate. Yet, these researcher's publications translate into public funding for the higher education institutions, effectively helping to increase the annual budget of faculties as defended PhDs generate additional government money for the university (Finnish Ministry of Education and Culture [no date].)[3] These reforms often overlook critical issues related to academic capacity, such as whether supervision quality can

[2] The pilot will initially fund 1,000 doctoral researchers annually, with numbers set to grow over time (Eurydice 2024). Of these, 800 positions will focus on the Research Council of Finland's flagship fields, while 200 will support other disciplines (Research Council of Finland 2024).

[3] Fannin and Perrier suggest that doctoral supervision is 'governed by structures of accountability, time pressures and objectifications of the supervisory relationship through calculations of workload, the quantification of supervisor time and other measures of "audit" culture such as the increasing use of progress monitoring, and a production-line process of generating PhDs' (2017: 136).

be maintained under increased pressure, or how intercultural and interdisciplinary supervision will be effectively supported. This situation also presents an ethical dilemma to supervisors who must balance their options between progressing in their own academic careers and providing quality mentoring (Brabazon 2016). As a result PhD candidates may find themselves more vulnerable than ever—with power imbalances between supervisors and supervisees becoming more intensified.

The pressure for international excellence imposed on universities has led to a significant rise in the numbers of international students enrolling in doctoral programs. As supervisors and candidates often come from diverse cultural backgrounds, supervision can become more complex—especially when structural inequalities particularly, those affecting non-EU candidates, are not fully acknowledged and understood.[4] Although universities are implementing tools such as supervision agreements, training programs, and supervisory committees, there is little data on their effectiveness or even how they are being monitored. In any case, the ability of supervisors to motivate and inspire is crucial for the academic and professional futures of supervisees, making it essential for us to focus on the supervisors' role. We believe that the development of new policies for doctoral programs should adopt a process-oriented approach to supervision that embraces the complexity of the academic journey and sees it as something that goes beyond the mere transmission and exchange of knowledge. This process implies recognising the interplay between power, knowledge, emotions and personal growth, and should foster the co-creation of a shared present-future among all the participants involved (Franke & Arvidsson 2011). However, we acknowledge the paradoxical situation in combining academic rigor, humanistic sensitivity, and productivity in neoliberal universities.

Although transforming neoliberal universities is a significant challenge due to their ties to the state's political and economic agenda, the PhD supervisor-supervisee relationship, as a crucial site for knowledge production and reproduction in academia, can also serve as a space for rebellion and change. In some cases, individual experiences within PhD supervision relationships can make a great difference. Therefore, we have chosen to focus on the generative aspect of supervision and incorporate the element of personal experience, which we consider crucial for understanding the dynamics of supervision relationships. These experiences vary from person to person, shaped by our different life stages and expectations. In academic terms, our situated knowledge and lived experience must be acknowledged within the PhD supervisor-supervisee-academia dynamic. PhD supervision relationships are informed by our past, shaped by our present, and remain open-ended as we move into the future.

Experiences

In this section each of us, Amalia and Aleida, reflect on our own supervision experience with Johanna. These experiences cannot be the same for each of us, so it is necessary to study them on their own, and each of us is free to use the narratives we find more comfortable with

[4] Recently, issues of racism and bullying within Finnish society have garnered significant media attention. The extent of these problems within Finnish universities, however, remains under-researched. Given this context and the increasing number of international students, we believe that greater focus should be placed on the dynamics of intercultural supervision to avoid potential situations of racism and bullying (see Kidman, Manathunga & Cornforth 2017).

to tell our stories. Towards the end, however, we reflect on how our experiences intra-act (Barad 2017) and give room for co-creation.

Amalia: Arriving in HelNarnia. The journey to become a Superher@

How did I get here?

It was April, and there was snow.

Frozen sea, springtime vibes, but I am in the North.

Never thought of such a cold, let alone lecture halls.

As spacetime track: Bio sex, gender law. Biology's truth, culture's show.

Postmodern hits like a late-night glow.

Knowledge flows, and the building knows.

Lectures halls, dissertation blues.

Johanna raps. Amalia blurs. Aleida does.

On this journey of 'becoming an academic' (Niemi 2020) there are only two undeniable facts: 1) There is no PhD without a supervisor, and 2) Every supervisor has once navigated the PhD journey themselves. Therefore, one decision that turns out to be crucial is the choice of PhD supervisor. A wise choice will lead you to find the Runes of Defend and the key to Uncharted lands.

Embarking on a PhD journey is daunting especially when coming from the outside frontiers of academia. I had never imagined myself doing a PhD, let alone deciphering the Sacred Annals, Manuscripts of Power and Code of Forgotten Wisdom to cast spells of citation, footnotes and sometimes to summon the elusive funding. Yet, here I am, pursuing an academic adventure that I had never imagined!

My journey starts, HelNarnia awaits, a magical land of a thousand lakes and forests where ancient sorcerers and witches dance beneath the Northern lights. In HelNarnia stands a postmodern structure where liberal knowledge grows but also riddles, trolls and dragons of self-doubt and despair.

As I embark on this journey, I encounter the first great truth: no one can travel this path alone. To become an *eduscholar*[5] superher@, one needs to choose a Master Sorcerer, a Wizard, or perhaps a Supreme Witch.[6] Be warned, choose wisely because depending on who we choose, we become.

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5 An 'eduscholar' is a term inspired by the lens of 'naturecultures' by Donna Haraway (2003). The aim is to refer to the role of the scholars in educational practice and research with an awareness of the co-constitutive relationships between human knowledge systems and the ecological, material, and social worlds.

6 Feminist perspectives have revealed the linguistic bias that reinforces systems of discrimination. The terms wizard, sorcerer and witch exemplify the significant biases in language and how the hierarchy of power acts through language, culture and customs. 'Sorcerer' and 'Wizard' are male and relate to an ambivalent or positive use of magic, nature, healing and occupying more privileged social spaces. However, the female 'witch' historically had negative connotations, linked to women's danger and deviance, and women's wisdom has been demonised (see Ehrenreich & English 2010). It is not in a negative connotation that I refer to the 'Supreme Witch', on the contrary, I want to acknowledge the great power of witches and underline how becoming a Supreme Witch is a challenging road. Choosing a

I might join the sanctuaries of the International Master Sorcerers, European Wizards, Corporate Illusionists, Public Alchemists and Historical Thaumaturges.[7] In their sacred Academy, Ancient libraries and Enclaves, they craft black letter spells, law and theory elixirs, while conjuring tricks of procedural formalities and doctrinal arguments. They whisper that the journey to success lies in the mastering of dogmatic and jurisprudential incantations while reading law's traditional magic.

Suddenly, among the noise of *juris conjuros*, I find out there is a quiet Supreme Witch who possesses the Feminist Grimoire of the Elders, full of forgotten feminist spells. She knows the intersectional ingredients which strengthen the spells giving us the power to see beyond black letter codes. The Supreme Witch is more than a mere guide. She embodies the transformative power of the Feminist Flare.

The Feminist Flare power acts as a magical lens to see the world anew, not through rigid structures of traditional spells and ancient wisdom, but through the critical and transformative lens of feminism and gender studies. The Feminist Flare is the grounding root, the genealogy, the genesis of it (Braidotti 2019), even if 'it' remains unrecognised. Like data without its collector, we do not exist. We only become with and through others. It is a wisdom passed down by ancient legendary witches, revealing the truth of becoming with others, as Simone de Beauvoir's sacred book tells us: 'One is not born a Witch, but becomes one' (de Beauvoir 2015 [1949]). This superpower, which many try to own and steal, is only wielded by a few. It provides the intersectional diffractive wisdom to master the feminist spells but also those from the traditional books of Wizards, Sorceress, Alchemist and Thaumaturges. This powerful wisdom permits us to transform trolls and dragons into beautiful creatures rather than merely defeating them.

Only those brave enough to fight against the trolls will wield the power of the Feminist Flare and earn the right to join the Supreme Witch. Yet, I chose to follow the Supreme Witch, embracing the feminist and gender path within the sacred halls of the law faculty. She welcomes those in the quest of knowledge wearing the hat of wisdom and wielding the sword of knowledge.

But be careful! Those who walk with the Supreme Witch should be aware that they risk facing despair, frustration and the spectre of becoming outcasts. Yet, us followers are not without protection, but bestowed with the Cloak of invisibility, a powerful shield that allows us to navigate the labyrinth of legal academia without suspicion, slipping past the trolls and guardians who fiercely defend their ancient powers. Although, be aware! Being invisible also entails, as history shows, finding ourselves in moments of deletion, our contributions overlooked, our voices muted in spaces that claim to champion knowledge but fail to honour all who contribute to it.[8]

In our journey, we skilfully learn the shapeshifter spell, a rare incantation found only in the Supreme Witch's Feminist Grimoires of the Elders. This spell grants us the ability to masquerade as a pure law scholar, absorbing the wisdom of the legal sanctum's ancient powers while wielding the Feminist Shine. This spell allows us to walk the path of both

Supreme Witch as supervisor might or not be a better option even if we need to admit that the road will be harder than those who choose a Sorcerer or Wizard.

7 Thaumaturges is another name for Wizards. They are the kind of wizard defined as the workers of wonders and performers of miracles.

8 An example of it might be the mainstream use of posthumanism and new materialism to the theorisation of the digital that 'forget' the feminist roots of these theoretical approaches (as noted by Braidotti 2022, although not specifically in the digital).

traditions, law and feminism, transforming the very legal sanctum from within, without being detected. They watch, but they cannot see. The master sorcerers, wizards, alchemists, thaumaturgus and all keepers of the law's arcane rituals will never uncover the strength of the Feminist Shine power, nor grasp the full extent of the magic we wield. Their spells lie in maintaining the order, while ours lies in transforming it to become more just and inclusive, in our quest for intersectional diffractive wisdom.

Sex, gender, feminism, law, academia—they all revealed themselves—embodied and entangled not just with reason, but with body and soul. Soon, I will be engulfed through power narratives, hidden silences, and origami thoughts. Becoming the apprentice of the Witch shows me that power flows through the very essence of our bodies when embodying the Feminist Shining. Corporealis revelare! and we become aware of the invisible threads in law that control bodies. Corporealis revelare! Individuals, devoid of their material existence and reduced to mere abstractions—much like data and AI prompts are re-embodying the disembodied. The lived, physical experience of individuals becomes transformed into quantifiable data information. The digital reconstituting them in ways that erase the complexities of their embodied selves. We were things; now they too are things. Women as data, as digital entities were objects. They are all an abstraction, devoid of context and agency until THEM—the Posthuman Master Sorcerer brought them/us/you to life, to be, to act, to become.

In this journey, I learned that there are many maps leading to the treasures of knowledge and wisdom. Each map has its own tricks, spells and incantations. Modern, postmodern, and posthuman superheroes light up the paths for us to choose. A traditional modern sorcerer, common in law, will rely on the unidirectional mere transmission of knowledge—spells, tricks and narratives travel from master to student. They are the young apprentice superhero-to-be become, a perfect 'toolsubject',[9] obedient to hierarchy.

The postmodern world fragments this linear path. Both master sorcerer and apprentice superhero-to-be navigating the unknown together. They do not know all, nor does anyone hold the singular truth; everybody and each has knowledge. Therefore, the hierarchy becomes less rigid. We are not the same, we are different but we are equals. Together, we learn that we do not want to kill dragons, but transform them. Together we fight the dragons and trolls who seem to rule Helnarnia.

Long-forgotten wars between the kingdoms of Power, Domination, and Resistance are coming once more. All Gods are raising whispering on old richesses waking up to the sound of old songs. The princess of Intersectional Lands, Kimberlé Crenshaw, attempts to mediate to prevent another destructive conflict. Yet, the fierce Audre Lorde declares that no mediation can succeed: 'The Master's house cannot be fought with the Master's tools'. To challenge the oppressive forces that have held sway for so long, Patricia Hill Collins, Judith Butler, Donna Haraway, and Karen Barad unite their powers, bringing forth enchantments never seen before. Drawing from the sacred resources of intersectionality, and the Oldest Magic words of the Sacred Witch Simone de Beauvoir, they craft new spells of resistance, ensuring that the realms of power and domination are no longer able to reign.

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[9] I created this term 'toolsubjects' aligning with Haraways' (2003) approach to complex, intertwined relationships where entities are active participants in shaping their environments. Thus, toolsubject wish to express the intertwined inseparability function of supervisors as tools and subjects in the recreation and survival of the neoliberal framework. The individuals as toolsubjects unconsciously or consciously maintain and reinforce the neoliberal structures which rely on market-driven policies, individualism and competition. They embody neoliberalism while navigating their identities as researchers and teachers.

The balance between the legal ancient power spells and the transformative incantation of the Feminist Grimoire of the Elders permits us to envisage the relationships: human and non-human. Nothing is fixed. We all engage in a dynamic process of transformation. Knowledge flows through emotions, affects, time, space, and intersectional elements. We are part of a web that links us all. The Supreme Witch knows this well.

As I continue the journey, the Feminist Flare brightens with diffractive transformative power, showing that becoming an eduscholar superher@ requires more than intellect and knowledge. It demands emotional resilience, flexibility, love, frustration, and the ability to see beyond the boundaries which confine us. I embrace it and become a feminist new materialist posthuman cyborg witch. We question the boundaries of the lecture hall, living in Möbius time, oscillating between liberal rooms and free-spirited moves.

This is the experience of becoming a scholar yielding the Feminist Flare that enlightens us to feel and see our non-existence at the margins of the subtle workings of power. Yet, it also provides us with the magic to light the unseen, to give voice to the silenced, transform the world with hope and joy. But beware! Because the Feminist Flare like all magic has the shadows that twist is light. Not all the Witches will follow the good magic, some will join the shadows and twist the magic to serve their own agendas. Lady privilege, using the same power meant to empower, has created her own enchantment circle casting dividing spells and erasing those who do not follow their principles. The Anti-Woke conjurors, re use all conjurors to silence the margins in the name of tradition disguising themselves in the guise of liberation and believing their magic is the truth full one.

In this journey, the most important moment lies in discovering the Supreme Witch, who possesses not only the knowledge to educate, but also the key to inspire and empower her students to survive in the legal sanctum without becoming ‘toolsubjects’.

And yes, I did!

Aleida: Relational subjectivity

> The lived time is not the mere external consciousness of it, but a phenomenon of the carnal dimensionality in which everything is contemporaneous. The constant temporalisation and movement of the incarnated consciousness. The body learns by acting and sedimenting what it has learned, and it is this constant complementarity between activity and passivity that makes the body the refuge of memory and the guardian of time. The present, on the other hand, is not an image of reality, but an eventful perception; it obeys a decision of the subject, but also the affections and receptions of the past and its determination for the future.

The feminist practice of honouring our genealogies and building informed cartographies ensures we remember and acknowledge those who contributed to us being here today. Consequently, writing about Johanna, my PhD supervisor, obliges me to reflect on how my previous experiences of supervision informed and ultimately shaped my relationship with her.

It is mostly accepted that a supervisor should be an expert in the field one is trying to investigate. I once followed this idea, so when I selected my undergraduate thesis supervisor in philosophy, I asked supervision from a ‘rock star’ (‘Master Sorcerer’) professor in the area of phenomenology, since my research would be about Maurice Merleau-Ponty’s concept of ‘Body’ including the perspectives of feminist philosophers. That male rock star supervisor accepted my request. A couple of weeks after submitting the first chapter of my thesis, the

professor expressed, in a short email, his disappointment with my performance and, without giving further explanations, he withdrew from being my supervisor. An early, negative experience like this one, not getting proper feedback or explanations, is demoralising and can make students lose confidence and quit any academic project they might have. I soon learned that rock stars do not necessarily act ethically. They may be able to collect and process large amounts of information, but they are still not necessarily the wisest.

My first academic midwife was Carmen Trueba, a feminist philosopher, expert on ancient philosophy and ethics, who rescued me and offered to supervise me. Although she was not an expert on Merleau-Ponty, she focused her supervision on the argumentation, the text's consistency, and suggesting further literature. Perhaps due to her familiarity with ancient philosophy, I remember our supervision sessions as sort-of small banquets. Most of the time, we would meet for lunch and discuss my work, often venturing into other discussions. In the Mexican academic context, which might also be true in other locations, one needs to be very attentive to the use of 'third places' for supervision, since the class and economic differences between supervisor and supervisees can be abysmal. Aware of this, Carmen always insisted on inviting me when she proposed meetings in spaces outside the academic institution. Despite this generosity and understanding that the use of these 'third places' can help to reduce the formality and power hierarchies in supervision, I reflect from a distance that the use of this format should be treated with great care. For example, a supervisee may feel uncomfortable if they cannot afford to buy a drink or lunch in a cafeteria. Such class disparities can create discomfort and inequity, potentially affecting the quality of supervision and the overall experience.

From these first supervision experiences I learned that rock stars are not necessarily good supervisors. Being a good supervisor is not solely about expertise in the subject but involves recognising the formal and symbolic power one holds, and act accordingly. As a supervisee, I learned to look for quality rather than fame. Supervisors as well as supervisees have ethical and moral responsibilities. In comparison to my first rock star supervisor, Carmen never stopped encouraging and acknowledging my academic and life achievements. In some cases, supervisory relations evolve into friendships, this was the case with Carmen.

Peta Hinton, my MA supervisor, was assigned by the program's board. Although Peta, a feminist sociologist, was not familiar with the subject of my research, she was nevertheless an expert on my theoretical choices (new materialism and Rosi Braidotti). Peta and I had our first meeting at a coffee place in Utrecht. Her Australian accent was a bit intimidating, especially since it was my first time using English for academic purposes. We bonded over feminism, theory, and our love for Berlin, a city where we both longed to return one day. We discussed our expectations and together we proposed a supervision plan. I requested deadlines for thesis progress and her help with language editing, as it was my first time writing academically in English. Upon my request, we also agreed on distance supervision via Skype and maintained constant communication between deadlines.

We were part of a highly critical feminist program, so we were both aware of many aspects of ethical and political academic supervision. I believe that if we had opted for in-person supervision, we would have chosen more informal 'third places' like coffee shops; these settings would challenge the formality and hierarchies typically associated with supervision (Hemer 2012). Even when Peta was not an expert on the subject of feminicide, her engagement with my ideas and curiosity to know about the subject were important for me. After this experience, Peta continues to support me in many ways and we have remained close.

From this experience, I learned that many times it is going to be impossible to get an expert specifically in your research topic who is also an expert in the theories and methodologies you are using, so one has to learn to look elsewhere for such expertise. Yet, I also confirmed that a good supervisor-supervisee relationship is based on agreement, communication, and understanding of each other's conditions. Peta and I both experienced migration, though we understood our situations were different. We recognised the importance of meeting deadlines and visa requirements; this empathy is key also in terms of understanding the potential lack of networks of emotional support. Equally important are language issues. Peta understood my English language limitations and offered to help without hesitation, recognising that not everyone has access to academic English language early in their careers. It is true that one is above all a supervisor or a supervisee, but one should not also forget that both are humans with a life and their own challenges.

In my PhD thesis acknowledgements, I thanked Johanna 'for giving me a hand when I was about to give up'. I had a long-standing idea for a research project, which I developed into a PhD proposal. After several months of applications, I kept receiving rejections with generic feedback, such as, 'We received many great applications and do not have time to provide personalised feedback'. After receiving 'non-expert' feedback from Peta and my editor, I sought an expert opinion on my research before abandoning the project. That's how I embarked on a google search for profiles. I was looking for people with expertise on violence against women, or feminicide, and knowledgeable about European legislation. How I found Johanna's profile or UTULaw is now a somewhat blurry memory, but I contacted her, seeking her opinion and exploring options to find a supervisor. A couple of days after contacting Johanna, she confirmed her interest in my project and agreed to be my supervisor. This is how I was rescued for a second time, this time by Johanna. And this is how I did not give up my project on feminicide in Germany.

When I arrived in Turku, carrying my bag of previous experiences, I learned that Johanna is a rock star in the Nordic countries, only then I heard I was 'lucky to have her as a supervisor', 'she is one of the best', a Supreme Witch! The Supreme Witch was not an expert on my research topic nor in my methodological choices, but she knew the topic and the European context, so she was able to make suggestions of various kinds. After my previous experiences, I was not worried about my project not exactly matching my supervisor's expertise. I knew that there was not anyone doing exactly what I was doing, so if I wanted to get other experts' opinions, I should gather those like puzzle pieces. My research was aiming to disrupt common epistemological approaches and was not properly legal, yet Johanna gave me the invaluable gifts of trust and freedom to do so, even when she did not always agree. In my opinion, supervisors should avoid doing the work of their supervisees or imposing their own interests and methods. Instead, they should focus on guiding and motivating supervisees, providing necessary resources and support, while allowing them to manage their own tasks independently. Although some supervisees prefer more involvement and precise advice, we must consider why this is the case. By understanding this, supervisors can better help supervisees develop their own research tools, enabling them to become more confident and independent. In line with critical pedagogy, I believe that the role of supervisors is not to create technicians, labour for their own projects, or followers, but to support and guide supervisees, and in some cases future scientists, in developing their own critical research skills.

The context of this supervision was interesting in many ways. I was venturing into a new disciplinary field: law, and I carried many prejudices (some justified) about legal studies.

Johanna's personality was particularly challenging for me to grasp; I couldn't shake the feeling that I was dealing with a Supreme Witch. Supervisors often play a crucial role in connecting their supervisees with helpful networks; this was a key aspect of Johanna's supervision. Before meeting Johanna in person, she introduced me digitally to Amalia. Amalia was the first person I met on my arrival to Finland. I quickly learned she would be my intercultural and disciplinary interpreter, while I would offer philosophical discussions and engaged readings of her work in return. In my naïve world where interdisciplinarity is a common starting point, countless times Amalia had to remind me, to appease my frustration, 'but in law', 'but for lawyers', 'but legal education', etc. A couple of years later, Amalia left the world of apprentices and became a 'junior Witch' (postdoc).

During this time, Johanna became the Dean of the Faculty of Law in Helsinki. For 'administrative reasons', I was told, during the last year before my graduation, I was requested to have a second supervisor based in UTU. I felt more comfortable with my friend Amalia getting the academic 'merits' of being my administrative supervisor rather than giving such merits to someone I did not really know. As a consequence, I learned that a supervisor is not only an academic mentor, a rock star or a Super Witch, but also an administrative title, someone who responds to the demands of quantity and merit accumulation for the advancement of their own academic career; this should not be overlooked when talking about the role of supervisors.

I have been lucky that my academic journey has been accompanied by feminist, intelligent, and sensible women, each of them with their diversities, their own genealogies, their own dreams, struggles and desires. I am not sure who I have been to supervisors and it is not for me to say, but what is certain is that this process has not been unidirectional, it has been a becoming-together, in which I also had played an active role.

Johaleiama: Co-becoming Feminist Midwitches in PhDLand

Three once-upon-a-times, children of the cold war baby boom, the Franco period, and the North American Free Trade Agreement, became one once-upon-a-time, weaving the threads of their coexistence across time and space in the Aura River. We, Amalia and Aleida, came from different spacetime entanglements, but we ended up intertwined on our academic paths: Amaleida. We ventured on a journey driven by our curiosity and imagination, looking for something not always rationally clear, but motivated by a *corazonada*.[10] The journey has been full of transformative experiences marked by self-discoveries and by the influence of other companions. A challenging PhD journey not always wonderful or illuminating, marked by moments of sadness and depression, as well as joy and happiness. We never walked alone. Our shared experiences here are, however, partial. Johanna's voice has not been invited to the table of this buffet of words, her voice is missing. In other words, this is no Johaleiama.

[10] This Spanish word can be translated as 'feeling-thinking' or 'sensingthinking' (Luján Pinelo 2023:19).

The battles we fight: A rapping journey

I brought you a gift
You say it looks like a bribe!
Spanish/Mexican supervisees I don't abide
They look like grifts, can't let them slide!

We bring you the words of new materialism
I'm a discourse analysis believer, no schism
Together we'll flourish, whatever may come

Amaleida's the feminist name, we are here to stay
Hacking the system, we fuel the heat
With every critique, we are flipping the script
Revealing the stories that have gone untold
In the discourse there is no way to hide
Navigating the chaos, we want to live
Feel the body, the pain of the brain
Emotions collide, conquering fears

What are we concluding?
I don't know, but this is fun
Johanna: We have lost so many minds
Amaleida: In the lecture halls Johanna raps
Let's raise a toast for the battles we fight!

References

Bibliography

Barad, K. (2007) *Meeting the Universe Halfway: Quantum Physics and the Entanglement of Matter and Meaning*. Durham and London: Duke University Press.

Brabazon, T. (2016) 'Winter is coming: doctoral supervision in the neoliberal university'. *International Journal of Social Sciences & Educational Studies*, 3(1), 14–34. Available at: https://www.proquest.com/scholarly-journals/winter-is-coming-doctoral-supervision-neoliberal/docview/2394981615/se-2?accountid=14774 [Accessed: 22 October 2024].

Braidotti, R. (2019) *Posthuman Knowledge*. Cambridge: Polity Press.

de Beauvoir, S. (2015 [1949]) *The Second Sex*. London: Vintage Classics.

Diehl, P.F. (2021) 'Adapting to the changing academic job market'. *Political Science Today*, 1(4), 13–15.

Ehrenreich, B. and English, D. (2010) *Witches, Midwives & Nurses: A History of Women Healers*. 2nd ed. New York: Feminist Press at the City University of New York.

Elliot, M. (2023) *Life for the student at a neoliberal university: a case study investigating the influence of neoliberalism on the experiences of higher education students*. Doctoral dissertation. University of Wolverhampton. Available at: http://hdl.handle.net/2436/625522 [Accessed: 22 October 2024].

Eurydice (2024) 'National reforms in higher education'. Available at: https://eurydice.eacea.ec.europa.eu/national-education-systems/finland/national-reforms-higher-education [Accessed: 22 October 2024].

Fannin, M. and Perrier, M. (2017) '"Birth work" accompaniment and PhD supervision: an alternative feminist pedagogy for the neoliberal university'. *Gender and Education*, 31(1), 136–152.

Franke, A. and Arvidsson, B. (2011) 'Research supervisors' different ways of experiencing supervision of doctoral students'. *Studies in Higher Education*, 36(1), 7–19. doi: 10.1080/03075070903402151.

Haraway, D.J. (2003) *The Companion Species Manifesto: Dogs, People, and Significant Otherness*. Chicago: Prickly Paradigm Press.

Hemer, S.R. (2012) 'Informality, power and relationships in postgraduate supervision: supervising PhD candidates over coffee'. *Higher Education Research and Development*, 31(6), 827–839. doi: 10.1080/07294360.2012.674011.

Kidman, J., Manathunga, C. and Cornforth, S. (2017) 'Intercultural PhD supervision: exploring the hidden curriculum in a social science faculty doctoral programme'. *Higher Education Research & Development*, 36(6), 1208–1221. doi: 10.1080/07294360.2017.1303457.

Luján Pinelo, A. (2023) *Extreme Forms of Violence against Women in Europe: Femi(ni)cide in Germany*. Doctoral dissertation. University of Turku.

Madan, C.R. (2021) 'A brief primer on the PhD supervision relationship'. *The European Journal of Neuroscience*, 54(4), 5229–5234.

Ministry of Education and Culture (no date) ‘Steering, financing and agreements of higher education institutions, science agencies and research institutes.’ Available at: https://okm.fi/en/steering-financing-and-agreements [Accessed: 22 October 2024].

Niemi, J. (2020) Becoming academic. In: Strid, S., Balkmar, D., Hearn, J. and Morley, L. (eds) *Does Knowledge Have a Gender? A Festschrift for Liisa Husu on Gender, Science and Academia*. Örebro: Örebro University, 200–209. Available at: http://urn.kb.se/resolve?urn=urn%3Anbn%3Ase%3Aoru%3Adiva-88134 [Accessed: 28 October 2024].

Research Council of Finland (no date) ‘Finnish Flagship Programme’. Available at: https://www.aka.fi/en/research-funding/programmes-and-other-funding-schemes/flagship-programme/ [Accessed: 22 October 2024].

Tjeldvoll, A. (2008) ‘Finnish higher education reforms: responding to globalization’. *European Education*, 40(4), 93–107. doi: 10.2753/EUE1056-4934400405.

University of Turku (30 August 2024) ‘A record number of doctoral researcher positions open this autumn’. Available at: https://www.utu.fi/en/news/news/a-record-number-of-doctoral-researcher-positions-open-this-autumn [Accessed: 22 October 2024].

University of Turku (no date) ‘Doctoral education pilot projects at the University of Turku’. Available at: https://sites.utu.fi/tohtorikoulutuspilotti/en/ [Accessed: 22 October 2024].