RETFÆRD at 50! Taking stock, moving forward

November 2-3 Gothenburg

Book of Conference Abstracts

DAY 1 - Tuesday, 3 november

11:30-13:00 Parallel Paper Sessions I

Track A · Book launch

Samhället och rätten - Vad folk gör med rätten och vad rätten gör med folk

Track B

Arbetsmiljölagen, 50 år: Från kommunikation till repression

Lotti Ryberg-Welander — Senior Lecturer, Linnaeus University

Framtidstro, optimism och en strävan efter gemensamma mål och visioner i samhället. Arbetsmiljölagen var en av flera så kallade ramlagar, med en relativt tydlig målinriktad (även om tillfredsställande arbetsmiljö inte är särskilt högt ställda ambitioner) med en tydlig inriktning mot samverkan, kunskapsinhämtande, arbetsgivarens aktion efter gemensam kommunikation, i AMIL:s sjätte kapitel. I Arbetsmiljöverkets styrelse satt representanter för såväl arbetstagare som arbetsgivare, som gemensamt skulle kunna utforma den förvaltningsrättsliga sidan och till exempel utförda föreskrifter som i förekommande fall skulle kunna förtydliga de i och för sig pedagogiska aspekterna i andra kapitlet, men som ändå kunde behövas förtydligas i takt med den tekniska och sociala utvecklingen i samhället i mer specificerade, och bindande, föreskrifter.
Vad hände sen?
Det som presenteras är en kort exposé över utvecklingen under fem decennier. Det är i mång och mycket en återgång till traditionella juridiska tankegångar; som liga till straff och androm till varnagel, om än i modernare tappning.

Mellan lag och liv – vem är rättens subject? Om rättens antaganden, livets villkor och rätten som process

Wanna Svedberg Andersson — Senior Lecturer, Gothenburg university

Att förstå vad rätten gör kräver ibland att blicken riktas bortom lagtext, myndighetstillämpning och domstolsbeslut, mot de vardagsliv där regler förstås, används och får verkningar

I denna artikel vidareutvecklas den genusrättsvetenskapliga förståelsen av rätten som process genom att mötet mellan subjektet i lagen och subjektet i livet görs analytiskt centralt. Reseavdraget används som exempel på hur en formellt könsneutral reglering kan få olika materiella verkningar när den möter subjekt som lever under olika och redan normativt ordnade vardagsvillkor.
Subjektet i lagen betecknar den abstrakta subjektfigur och den handlingsförmåga som den formella rätten förutsätter. Subjektet i livet betecknar samma subjekt situerat i sitt vardagsliv och analyseras genom två sammanhängande dimensioner: levande rätt och levd autonomi. Med levande rätt avses de normativa ordningar som verkar i vardagslivet och som subjektet orienterar sig efter. Levd autonomi synliggör subjektets relationella, tids- och kontextbundna autonomi och handlingsförmåga i en konkret situation. Subjektstillämpning betecknar om och hur subjektet, i egenskap av regeladressat, förhåller sig till och använder den formella rättens regler.
Situerad rätt betecknar den konkreta betydelse och de verkningar som framträder när den formella rätten möter subjektet i livet i ett normativt ordnat vardagsliv; den utgör inte en tredje normativ ordning. Genom att skilja den handlingsförmåga som rätten förutsätter från subjektets levda autonomi och från de konkreta möjligheter att handla som står till buds blir det möjligt att analysera hur formellt könsneutrala regler kan få könsasymmetriska och maktskapande verkningar

Law, Protection and Unintended Harm: The Social Life of Anti-FGM Interventions *(also in Parallel Paper Sessions IV)*

Lotta Wendel— Senior Lecturer, Malmö University

Efforts to eradicate female genital mutilation (FGM) are firmly embedded in international human rights frameworks, national legislation, and public health policies. Yet the implementation of these protective measures may produce consequences that are not readily visible in legal or policy frameworks. This paper examines how anti-FGM interventions are translated into institutional practices, and how practices intended to protect children may simultaneously generate forms of inequality, exclusion, and harm. Drawing on three recent studies from Sweden and the broader global context, the paper explores the gap between legal intentions and their effects in practice.
The first study analyses genital examinations conducted in Sweden between 1982 and 2022 in cases of suspected FGM. The examinations take place within a legal and institutional framework designed to protect children from violence. The study nevertheless identifies patterns of disproportionate targeting of migrant communities and cases in which girls have undergone invasive examinations without clear medical necessity. Rather than treating such practices simply as failures to comply with legal norms, the analysis examines how legal mandates, institutional routines, professional judgments, and prevailing understandings of FGM interact to produce particular forms of intervention. The findings illustrate how formally lawful practices may contribute to structural inequality and raise questions about proportionality, bodily integrity, and non-discrimination.
The second study examines special representatives for children in FGM-related criminal proceedings, with particular attention to the child's right to be heard.

The institution is intended to safeguard children's interests and strengthen their position within criminal proceedings. The study nevertheless identifies tensions between formal legal protections and their practical implementation. Children's participation may be mediated through professional and procedural frameworks that shape when, how, and to what extent their voices become legally relevant. The analysis thus highlights how children's rights are not simply implemented through legal rules, but are constituted through institutional practices and professional interpretations.
The third study situates the Swedish material within a broader analysis of the global anti-FGM campaign. It examines how dominant policy and intervention frameworks may contribute to stigmatizing representations of affected communities, affect relations of trust between healthcare providers and patients, and marginalize alternative understandings of prevention and care. These processes are analysed as examples of how legal and policy interventions can have unintended social consequences, including forms of epistemic injustice.
Taken together, the three studies demonstrate that the social effects of law cannot be understood solely by examining legal rules or their formal objectives. Protective interventions are mediated through institutions, professional practices, classifications, and assumptions about risk and vulnerability. The paper therefore approaches anti-FGM interventions as a site where law, medicine, childhood, migration, and power intersect. The paper argues for a more reflexive understanding of legal implementation, attentive not only to whether protective norms are formally upheld, but also to how they are interpreted and enacted in institutional settings and with what consequences for those they are intended to protect. By bringing together empirical studies of legal and professional practices with a broader analysis of anti-FGM policy, the paper contributes to socio-legal scholarship on the unintended consequences of protective legislation and on how law may simultaneously protect, regulate, and produce vulnerability.

14:00-15:30 Parallel Paper Sessions II

Track A

Housing Before the European Court of Human Rights: A Critique of Ideology

Serde Atalay — Researcher, Faculty of Law, Lund University

This paper offers an ideology critique of the European Court of Human Rights' jurisprudence on housing. It argues that the Court does not only operate within but actively sustains a capitalist understanding of housing. The paper thus exposes the role of European human rights law in configuring the relation of politics to the economy in the housing sphere. This is crucial given the fundamental role that housing plays in capitalism as the largest and most significant asset class today. Bringing together insights from ideology critique with the literature on the political economy of housing under capitalism, the article dissects the judicial tools commonly adopted by the Court in its case law. These are (1) the determination of the definitional scope of protection, (2) the margin of appreciation, and (3) proportionality.

By tracing the application of these tools across the Court's case law on access to housing, evictions, and rent control under Article 8 (right to respect for one's home, private life and family life), read in tandem with the case law under Article 1 of Protocol No. 1 (right to property) to the European Convention on Human Rights, the article demonstrates that the Court's judgements undertake an ideological function. In doing so, it shows that the Court's treatment of housing is structured by a capitalist logic whereby the Court (1) legitimates the use of housing as a means of profit while it simultaneously refuses to recognise a right of access to housing, (2) abstracts away the social relations of rent to the detriment of tenants, and (3) naturalises the protection of private property as common sense.

From Rights to Removal: Undocumented Migrants and the Changing Role of the Welfare State

Karin Åberg – Researcher; Doctor of Laws in International Law, University of Gothenburg

During the 2010s, the undocumented migrant occupied a prominent place in both human rights scholarship and legal and political debate. Drawing on Hannah Arendt's notion of the right to have rights, scholars explored the paradoxical position of individuals whose access to rights depended on a legally recognized status. This period coincided with a development where social human rights expanded as undocumented migrants in several European welfare states gained access to rights and services that had previously been uncertain or dependent on professional discretion. In Sweden, a central example was the 2013 reform granting undocumented migrants a statutory right to certain forms of healthcare. This article revisits the 2013 reform as a process of juridification. Before the reform, undocumented migrants could receive healthcare, but access depended to a considerable extent on professional ethics, local policies, and the practices of individual healthcare providers. The reform formalized this access, making it more predictable and less dependent on such discretion. However, by becoming formal rights-holders within the healthcare system, undocumented migrants were also more systematically incorporated into the administrative and digital infrastructures of the welfare state. Healthcare encounters were registered, medical records created, and undocumented patients became increasingly identifiable and measurable.

Drawing on James C. Scott's concept of legibility, the article argues that this development reveals a ambivalence within the infrastructure of welfare rights. Becoming legible to the state may be a prerequisite for accessing social rights, but this very same legibility also creates possibilities for control. This tension has acquired renewed significance in a political context in which border control is increasingly internalized within the everyday institutions of the welfare state and information sharing between public authorities is presented as an important instrument for enforcing deportation decisions. Bringing scholarship on everyday bordering, crimmigration, and state legibility into conversation, the article uses the historical development of undocumented migrants' access to healthcare as a case through which to trace this transformation. It argues that welfare professionals' forced role in bordering is shifting from primarily gatekeeping welfare to actively partaking in the infrastructure of deportations.

In this development, the rights reforms of the 2010s may have helped create some of the administrative conditions for the deportation regime of the 2020s. As such, the article ties to the greater question of the role liberal policies may play in times of authoritarian politics.

Limits of Life - Incorrect Ways of Living in the Welfare State

Clara Bergstrand – Doctoral Student, Department of Law, University of Gothenburg

Repayment claims have become a central part of the Swedish social security system, as incorrect payments have risen to become a significant political issue over the last decades. In this paper, I will discuss the notion of incorrectness and explore what actions made by the individual have been deemed incorrect in repayment claims of sickness benefit (sjukpenning) and child maintenance support (underhållsstöd). By examining repayment cases from the administrative courts, this paper more specifically explores the legal concepts of work capacity in relation to sickness benefit and cohabitation in relation to child maintenance support. The court cases regarding sickness benefit demonstrate how many activities outside of the labour market are considered as being part of the individuals' work capacity. The cases regarding child maintenance support demonstrate how the concept of cohabitation has moved beyond actual accommodation. This paper will examine the clash between the blurred lines of the legal concepts and the strictness of the concept of incorrectness, and how this clash impacts the lives of individuals receiving social security benefits. The repayment claim leads to the individual being indebted to the state, with significant interest rates being applied to the debt. Hence, legally incorrect ways of living can have serious consequences for the individual. Conclusively, this paper will argue that repayment claims highlight an increasingly punitive and harmful aspect of contemporary welfare governance that runs contrary to the professed ideals and reputation of the Swedish welfare state.

15:45-17:00 Parallel Paper Sessions III

Track A

Access to Justice for Vulnerable Groups

Kaijus Ervasti – Professor, Law School, University of Eastern Finland

Our research group at the University of Eastern Finland examines access to justice and the realization of rights among vulnerable groups. Our work is empirical socio-legal research. The groups we study include e.g. older adults, people living with dementia, people with epilepsy, Roma communities, immigrants, gender and sexual minorities, and individuals experiencing mental health challenges. Our theoretical framework is the socio-legal access to justice research tradition.

In jurisprudence the concept 'access to justice' has often been understood in a narrow sense, as a synonym for 'access to court' or 'access to legal remedies'. In addition, access to justice is also a theoretical concept and approach.

In socio-legal theory the concept of 'access to justice' has been understood in a broader sense that covers many kinds of problems and needs as well as remedies that function 'in the shadow of the law'. It can cover also access to different kinds of services like social and health care services and alternative dispute resolution. The basic premise of the theoretical access to justice approach is that citizens' rights must be effective and accessible. The multiple barriers to access to justice can be economic, organizational, procedural, social, cultural, technological and communicative. Thus, it is not enough that citizens have formal rights; they should have access to their rights also in practice. Furthermore, under this approach, legal research should not be purely formal and dogmatic discipline, but should be complemented with sociological, economic and political science analyses.

Vulnerable groups face a wide range of legal problems as well as barriers to accessing justice. Many experience stigma and discrimination, and they often struggle with bureaucratic procedures and digitalization.

There is relatively little access to justice research in the Nordic countries, and more research in this area is needed. Research on this topic remains limited worldwide as well.

Justice as Play, or: Can Law Be Humane?

Anna G. Waldenström – PhD, Senior Lecturer, University of Gothenburg

This paper inquires into the relation between evidence and justice and explores the latter as an expression of play. The just judgment is understood as the correct application of the law to the correctly established concrete case with the object to achieve predictability under the rule of law and to avoid the tyranny of the haphazard. The determination of the concrete case is, however, an extra-legal judgment. J.F. Lyotard describes how reality consists of innumerable genres of discourse – all in a constant war over the determination of the sense of facts (phrases). All judgments are therefore the result of one genre of discourse imposing itself on all other. Building on the theory of knowledge of Lyotard, previous research shows that legal judgments as the end result of a judicial procedure follow several previous judgments, examples of which would be the interpretation of the evidence and the determination of the facts. Objectively correct and therefore just legal judgments are consequently impossible. May this mean that the law can only be tyrannical?
In his Aesthetic Letters, Friedrich Schiller discusses the tension between the two restrictions to human freedom: the human form drive of the ideal and the sense drive of concrete life. Reason requires that ideas be applied to the concrete – since only the union between life and form "fulfils the conception of humanity". Understanding play as the drive which dissolves the tension and makes possible "the union of two opposite principles," Schiller holds that it is only in play, that we are completely human. This opens for the question whether the rule of law can ever be humane? Understanding justice as the drive that makes possible the meeting between the law and the case in the dissolution of the ideal and the concrete in the aim to access justice, this project investigates whether Schiller's concept of play may contribute to an understanding of the relation between evidence and justice.

Law as Resource or Obstacle? Legal Consciousness among Immigrant Rights Advocates in Sweden

Livia Johannesson – Associate Senior Lecturer and Associate Professor, School of Public Administration, University of Gothenburg; researcher at SCORE, Stockholm University; and Linda Pfister – SCORE, Stockholm University

In many countries, minority groups are currently situated in a paradoxical landscape. On the one hand, human rights protections have been increasingly codified in domestic and international law, and access to courts has been broadened and democratized. On the other hand, there is a concurrent trend in which the substantive rights of groups such as LGBT+ persons, ethnic minorities, and migrants are being restricted, reinterpreted, or rolled back in legislation and policy practice. This tension between expanded formal access to courts and the retrenchment of substantive protections raises fundamental questions about the extent to which minority groups are able to mobilize and effectively leverage existing legal opportunity structures to contest rights infringements. Do they understand law as a strategic resource through which they can mobilize support for rights, or do they perceive law as irrelevant, or even as an obstacle to their cause?

To answer these questions, we conduct a qualitative study of how immigrant rights advocates in Sweden perceive and engage with law. Theoretically, the study employs the concept of legal consciousness, referring to the ways in which individuals perceive, interpret, and engage with law in everyday life. Through this concept, the project links institutional changes to lived experience and its discursive articulation. Based on a systematic analysis of 89 archival interviews documented in Asylarkivet,1 a Formas-funded research archive established in 2022. The archive documents experiences of the restrictive turn in Swedish migration policy (2015–2017) and includes interviews with 30 individuals who have sought asylum in Sweden, 27 civil society members, and 32 welfare professionals working in frontline positions. The interviews contain narratives about the asylum process, everyday living conditions, solidarity work, encounters with legal institutions, and reflections on how policy changes have shaped participants' perceptions of law, rights, and political engagement. The material captures orientations toward law at an early stage of restrictive reform implementation and thus provides the empirical foundation for mapping legal consciousness during the initial phase of policy retrenchment.

The study contributes to the judicialization literature, as much of this literature implicitly presumes that formal access to courts is sufficient to generate rights claims and legal action. By this analysis of legal consciousness among immigrant rights advocates, we offer an account of how judicialization results in rights mobilization, disengagement, or withdrawal from law.

Track B

Panel: Legal Materialism: Bringing Law's Material Outside Back In Legal Materialism: Bringing Law's Material Outside Back In

Patrik Emblad – Associate Professor of Tax Law, University of Gothenburg

This paper introduces legal materialism as a critical legal research perspective aimed at analysing law in relation to its extra-legal material conditions. Rather than asking primarily what lawis, legal materialism asks what law does, how legal governance becomes effective in practice, and under what material conditions legal claims to legitimacy can be sustained. The point of departure is an observation that contemporary legal scholarship increasingly engages with phenomena that fall outside traditional legal analysis yet remain crucial for understanding law's practical operation. Examples can be found across diverse fields: studies of administrative agencies' "actual activities" beyond formal decision-making; analyses of prison conditions as relevant to the proportionality of punishment; feminist tax scholarship examining the distributive effects of formally gender-neutral tax systems; and research on social rights that highlights the importance of institutional capacity, labour conditions, and resource allocation for the realization of legally guaranteed entitlements. Although these approaches emerge from different legal fields, they share a common concern with the material conditions through which legal governance is enacted.

The paper proposes legal materialism as a conceptual framework for bringing together such strands of research. Legal materialism does not seek to replace legal positivism, legal realism, or socio-legal approaches, nor does it claim to offer a more accurate definition of law. Instead, it identifies a distinct analytical object: the relationship between legal norms and the material conditions that enable, constrain, and reproduce their operation. These conditions include economic structures, institutional capacities, infrastructures, bodily realities, and resource distributions that shape legal outcomes without themselves being fully captured by legal doctrine or traditional sources of law.

The central claim is that legal scholarship risks reproducing law's own blind spots when it restricts analysis to legal sources and doctrinal reasoning. Legal materialism therefore directs attention towards the material dependencies that legal systems often presuppose while simultaneously rendering invisible. In doing so, it reframes questions of legal legitimacy. The issue is not whether law is formally valid or normatively justified in the abstract, but how claims to legitimate governance are affected by the extra-legal conditions upon which legal governance depends.

By conceptualising law as one component within broader governance processes, legal materialism seeks to contribute to contemporary critical legal scholarship and to ongoing debates about law, power, democracy, and social transformation. In this sense, the paper offers both a reflection on existing critical traditions and a proposal for future directions in Nordic legal research.

Skälig levnadsnivå i materialiserad form: Om riksnormen och välfärdens materiella villkor

David Garcia Jivegård – Lecturer and Doctoral Student, University of Gothenburg

Det ekonomiska biståndet utgör det yttersta skyddsnätet i den svenska välfärden. När en individ eller familj inte kan tillgodose sina ekonomiska behov på annat sätt har kommunen ett ansvar att lämna ekonomiskt bistånd som tillförsäkrar en skälig levnadsnivå. En central del av biståndet är försörjningsstödet. För vissa återkommande vardagsutgifter – bland annat livsmedel, kläder, hygien och fritid – bestäms stödet genom en nationell riksnorm, medan exempelvis boendekostnader bedöms särskilt.

Från 2027 förändras denna konstruktion på flera sätt. Riksnormens kostnadsposter sätts samman på ett nytt sätt och beräknas med utgångspunkt i referensvärden för olika hushållstypers baskonsumtion. Omläggningenförändrar samtidigt fördelningen mellan olika hushållstyper: sannolikt gynnas hushåll utan barn relativt barnfamiljer, och skillnaderna ökar med antalet barn. Därutöver reduceras försörjningsstödet särskilt för hushåll med fler än tre barn. Också riksnormens rättsliga funktion förändras. Hittills har normen i huvudsak fungerat som en lägsta nivå för de kostnader den omfattar, samtidigt som individuella behov kunnat motivera ett högre bistånd. Genom reformen begränsas detta utrymme, vilket innebär att riksnormen i större utsträckning också får en begränsande funktion uppåt.

Studien undersöker vad dessa förändringar innebär för relationen mellan den rättsligt bestämda och den materiellt realiserade levnadsnivån. En första fråga är hur materiella behov görs beräkningsbara. Vilken konsumtion ligger bakom normens poster, vilka hushåll får representera skäliga behov och hur förändras denna representation när kostnadsposterna sätts samman på nya sätt? Till detta kommer frågan om hur normens värde förändras över tid. Referensvärdena skrivs upp med hjälp av KPI exklusive boende, trots att KPI är ett plutokratiskt index där hushåll med större konsumtionsutgifter får större genomslag. Prisutvecklingen för den konsumtion som är central för hushåll med mycket små ekonomiska marginaler behöver därför inte sammanfalla med den prisutveckling som bestämmer riksnormens uppräkning.

Studien följer därefter vad som händer när dessa beräkningar möter faktiska hushåll. Genom typfallsberäkningar relateras normens förändrade sammansättning och begränsningen för större barnfamiljer till de materiella levnadsvillkor som beloppen ska bära. Analysen stannar dock inte vid hushållets konsumtionsutrymme. Behov som inte ryms i försörjningsstödets beräkning försvinner inte. De kan återkomma i socialtjänstlagens egen systematik och aktualisera frågor om möjligheten att förverkliga lagens mål, förhållandet mellan schabloniserat bistånd och individuella behov samt innebörden av kommunens yttersta ansvar. De kan också få betydelse för andra delar av välfärdssystemet, exempelvis för förutsättningarna att fullgöra skolans kompensatoriska uppdrag.

Studien tar sin utgångspunkt i frågan hur relationen mellan riksnormens rättsliga konstruktion och de materiella levnadsvillkor som försörjningsstödet är avsett att möta kan förstås, och hur denna relation kan aktualisera frågor om socialtjänstlagens systematik och den svenska socialrätten i övrigt.

Justice by Exclusion

Erik Björling – Senior Lecturer and Assistant Head of Department, University of Gothenburg

This article examines civil procedure as a study in excluded materiality, the processes through which the material complexity of a conflict is progressively reduced, displaced, or rendered legally irrelevant as the conflict is transformed into a justiciable dispute.
The analysis builds on well known interrelated processes of exclusion involved in civil procedure. A conflict must first be framed as a legal issue and attributed to an identifiable counter party. It must be translated into a claim that is available within the legal order and subjected to rules of evidence and burdens of proof that ultimately leads to an adjudicative outcome in which only one party prevails. The adversarial model further presupposes a particular form of rational discourse, while temporal and procedural constraints require the complexity of the underlying conflict to be reduced. Civil procedure also tends towards the adjudication of concrete situations between identifiable parties, creating difficulties where interests are fragmented, dispersed, or collective. These exclusions become particularly visible when conflicts exceed the territorial and institutional boundaries of the state. Online and transnational disputes destabilize assumptions of territorial jurisdiction, while choice-of-law rules may enable regulatory competition and a potential race to the bottom.
By conceptualising these procedural operations as forms of material exclusion, the article shifts attention from what civil procedure includes and adjudicates to what must be left outside in order for adjudication to become possible. Excluded materiality thus provides a lens through which to examine the constitutive limits of civil justice: the persons, interests, relations, circumstances, and dimensions of conflict that are lost, transformed, or rendered invisible when complex social conflicts are converted into legally actionable disputes.

Straffrätt, fängelserätt och fängelset som studieobjekt: Kritiska ingångar i en fängelseexpansion

Sigrid Nikka – Doctoral Student, Faculty of Law, Lund University

På tio år har antalet utdömda fängelsemånader fördubblats. Det har också antalet intagna på anstalt, som idag uppgår till över 9 000 personer. Den genomsnittliga strafftiden har ökat från strax under 9 till 15 månader, och antalet intagna per invånare är idag högre än det var vid 1800-talets slut. Det är ändå inte i närheten av vad som snart kan väntas. Det reformarbete som pågår skulle kunna innebära att den svenska fängelsepopulationen uppgår till 40 000 personer om mindre än två decennier.
Denna utveckling har beskrivits av justitieminister Strömmer som ”den avsedda effekten” av det kriminalpolitiska reformarbetet. Att fler människor ska sitta i fängelse anses ”viktigt, önskvärt och nödvändigt”. Det rör sig så om en expansion av fängelset i både materiell som diskursiv bemärkelse. Genom en stor uppsättning reformer konstrueras nu i Sverige ett annat fängelse, ett annat fängelsestraff, och en annan fängelserätt.
De senaste årens straffskärpningar, inte minst sedda utifrån beslutet om att införa villkorligt fängelse, innebär att fängelset i allt högre grad kommit att bli formen och platsen där straffrätten och straffet görs.

De kriminalpolitiska ambitioner och straffrättsteoretiska anspråk som nu förs fram ska realiseras av och i den konkreta verkställigheten av allt fler människors allt längre fängelsestraff. Sättet dessa ambitioner kan eller ska realiseras och sättet den levda erfarenheten därav kan komma att bli, villkoras därmed av konstruktionen av fängelset som plats. Detta fängelse tar form i ett rättsligt gränsland mellan straffverkställighet och förvaltningsrätt där Kriminalvårdens uppdrag möter de rättsliga ramar som reglerar anstalterna och deras verksamhet, i kontexten av en över- och dubbelbeläggning och fängelseexpansion som innebär ny- och ombyggen, plats- och personalbrist, och försämrade möjligheter till behandling och sysselsättning.

I detta paper försöker jag skissa fram ett angreppssätt för att begripliggöra denna utveckling, med sikte på att analysera fängelset som diskurs, regelsystem och praktik. Härigenom kan straffverkställigheten, som tenderat att behandlas perifert till lagstiftnings- och domsnivån, aktualiseras som en särskilt produktiv yta för (straffrättslig) makt. Att konstruera och studera fängelserätt blir så ett sätt att följa den rättsliga, politiska och reella förskjutningen mot fängelset för att på nytt aktualisera och konkretisera straffrättsliga grundfrågor – om straffets effekter, värden, avvägningar och premisser. Det gör det möjligt att synliggöra hur fängelserätten formar straffet, och hur straffet och kriminalpolitikens möjligheter och begränsningar tar form och formas av fängelse(rättens) gränser.

Fishing outside the law? Natura 2000 and the excluded materiality of marine environmental protection

Niels Krabbe – Senior Lecturer, Department of Law, Gothenburg Univeristy

Natura 2000 is built around a seemingly straightforward legal logic. Activities that are likely to have a significant effect on a protected site must be assessed in light of the site's conservation objectives, and may only proceed where the applicable legal requirements are satisfied. Yet in the Baltic Sea, fishing activities capable of affecting protected habitats and species have often escaped the ordinary mechanisms through which this environmental control is exercised.

This text uses the regulation of fishing in marine Natura 2000 sites to examine the relationship between socially fixed law and excluded materiality. The starting point is the legal construction through which fisheries and nature conservation have developed as partly separate regulatory fields. While EU nature conservation law establishes substantive requirements for the protection of Natura 2000 sites, the regulation of fishing is embedded in the separate institutional and decision-making structures of the EU Common Fisheries Policy. Without being formally excluded from Natura 2000 obligations, this legal and functional separation of fisheries and environment has effectively excluded the environmental impact of fisheries from being considered in Natura 2000 areas. This makes it relevant to investigate, firstly, how the socially fixed law draws the boundary between those impacts on Natura 2000 sites that become subject to environmental assessment and those that remain outside ordinary environmental control. This connects to the need to examine the institutional and material conditions that have contributed to the emergence and stabilisation of this boundary, including the division of regulatory competence, sectoral governance structures and the role of scientific knowledge in fisheries management.

It is also relevant to consider what this configuration of law and excluded materiality actually produces in terms of environmental protection.
The case thereby connects to a broader problem in environmental law. Ecological processes do not necessarily correspond to the jurisdictional, sectoral and institutional distinctions through which law organises environmental governance. From a legal-materialist perspective, these distinctions are not merely external obstacles to the implementation of environmental law. They form part of the conditions through which environmental law acquires its concrete effects. The article uses the Natura 2000 fisheries problem to explore what becomes visible when legal analysis moves from asking only what environmental law requires to asking how its boundaries are produced, what they exclude, and how the interaction between law and its excluded materiality can explain practical dysfunctionalities.

Day 2 - Tuesday, 3 november

09.15-10:45 Keynote 2: Change and Continuity in EU Legal Scholarship: Reflections on an Ongoing Critical Project

Alezini Loxa – Associate Senior Lecturer, Faculty of Law, Lund University

Critique is slowly being mainstreamed in EU law. The discipline has historically been characterised by its proximity to power and EU law scholars have traditionally produced scholarly work with the ambition of effecting change through legal means. Unlike other epistemic communities, until very recently the only transnational EU law conference, FIDE, did not look like an academic conference at all. It was a gathering of lawyers, academics, EU staff members and judges meant to give participants a sense of where EU law is heading but to also to shape the direction of EU law. In short, there was no critical distance between EU legal scholars and their object of study. After more than a decade of crises, a sense of disenchantment is slowly prevailing among scholars working with EU law. Even those who still believe in the emancipatory potential of EU law, don't necessarily think that such potential will come about through judicial fiat. New scholarly spaces and journals have been set up to create room for these critical tendencies and even old established venues are increasingly publishing scholarship that a few years ago would be ostracised from the field for its outright critique of the fundamentals of EU law. Does this mean that the discipline has changed? In this keynote, I will be mapping these recent evolutions trying to understand what the critical project looks like in EU law. I will also ask if there is a specifically 'nordic' approach to doing EU law and how such is channeled in critical legal research. Eventually, will suggest that even though theoretically ambitious and critically reflective legal scholarship is slowly coming to occupy a central position in the field, many scholars are still driven by the ambition to save the EU political project rather than to save EU law scholarship.

Track A

Who Is the 'Public' of Public Interest Litigation? Sámi Legal Mobilisation in the Nordic Countries

Daniela Alaattinoglu – Associate Professor, Faculty of Law, University of Turku

Public interest litigation is often regarded as a relatively new phenomenon in the Nordic countries, particularly in the context of rights protection. This article challenges that assumption by tracing a counter-history of Sámi legal mobilisation from the 1970s onward. It asks who constitutes the 'public' in public interest litigation and examines how notions of the 'public interest' have been shaped by majoritarian understandings within Nordic legal and political systems. The article argues that Sámi legal mobilisation has sought not only to advance Indigenous rights claims but also to reshape the boundaries of what counts as a matter of public concern. The continued contestation of Sámi rights, however, reveals that the meaning of the public interest remains unsettled in the Nordic context.

Sliding Towards Illiberalism? Or How to Understand the Transformation of the Swedish Juridical Order

Leila Bränsström, Professor, Gothenburg University

'Illiberalism' is a relatively late addition to the catalogue of horror concepts (populism, authoritarianism, neofascism, etc.) that are used to characterise the agents and/or effects of the rightward reconfiguration of legal orders that we are witnessing around the world. There is considerable variation in how the notion is used in scholarship, which has prompted a number of efforts to define it in a more precise way. Arguably, the most elaborate conceptualisation is offered by Marlene Laruelle who theorises 'illiberalism' as a distinct contemporary ideology, that has emerged is reaction to the experience and the perceived 'excesses' of liberalism.
In this paper I will consider the notion of illiberalism in Laurelle's sense in the context of the ongoing transformation of the Swedish legal order. A transformation which is characterised by the unfolding of two parallel strands of legal reform simultaneously – those explicitly designed to preserve the ideal of a 'democratic state governed by the rule of law' into the future, and those which have raised concerns among NGOs, scholars, and parts of the population at large about the present deterioration of that ideal in Sweden. The aims of the paper are twofold. First, to explore and interrogate the notion of 'illiberalism' by asking whether, and in what ways, the notion can help explain the seemingly contradictory tendencies unfolding at present in Sweden. Second, to contribute to our understanding of why, and in what ways, the legal order in Sweden is being reconfigured.

Recognised in Principle, Marginalised in Practice - Sámi Law at UiT and the Nordic Pattern of Institutional Non-Implementation

Ánde Somby – Associate Professor, University of Oslo; and
Øyvind Ravna – Professor, Faculty of Law, UiT The Arctic University of Norway

Our contribution examines the development of Sámi law as an academic discipline at UiT – The Arctic University of Norway, from its emergence in the wake of the Alta conflict in the late 1970s to the present day. Drawing on Jørn Øyrehagen Sunde's legal culture model, which distinguishes between surface-level legal norms, intermediate principles, and deep institutional ground assumptions, the article asks whether the extensive formal commitments to Sámi legal studies at UiT have been anchored in the institution's underlying organisational practice, or whether they have remained confined to the surface without penetrating to the levels that actually govern institutional priorities. The analysis is structured around four phases – constitution, consolidation, escalation, and reorientation – each defined by its principal driving forces. The contribution identifies what it calls the institutional paradox of Sámi law: a field that is among the most firmly anchored at the surface level of the faculty's normative commitments, yet among the most structurally vulnerable when those commitments encounter competing institutional priorities. The case illustrates a pattern well known from Norwegian indigenous rights development more broadly: that formal legal recognition does not automatically translate into institutional practice.

Track B

Philosophy of Law in the Nordic Countries 2026 Seen from the Point of View of Denmark

Jacob Dahl Rendtorff – Professor, Department of Social Sciences and Business, Roskilde University

This presentation will try to discuss the situation of philosophy of law in the Nordic Countries seen from the point of view of since the establishment of Retfærd in 1976. At that time in the 1970s, it was the heyday of Marxism in legal theory, not least in Denmark, where authors like Henrik Zahle challenged the Legal Positivism and Realism of Alf Ross. At that time the Discourse theory of legal argumentation by Preben Stuer Lauridsen replaced the legal positivism and opened for philosophy of law of human rights. Peter Høilund talked about Ethics and Law and the Forbidden Sense of Justice. Later Henrik Zahle defended Legal Polycentrism and the vision of Practical Philosophy of Law, based on the idea of the Triangle of Legal application between normativity, application and the case. From there Hanne Petersen proposed a philosophy of law based on Legal Pluralism, Gender and the Law and Legal Polycentricity. More recent approaches has been inspired by Post-colonial Theory, Internationalization and Politization of Law and the influence of EU-law on National Legislation. From there we will ask the question about the future of philosophy of law in Denmark and the Nordic countries.

Law Without State?

Hans Petter Graver – Professor, Faculty of Law, University of Oslo

In legal theory, law is identified with the state. This is particularly the case within legal positivism, but it still holds in the more Dworkinian approach and in international law. Also critical legal thinking based on Marxism identifies law with the state, with the law withering away as the state withers away.
The law-state relationship is challenged by more polycentric and pluralist approaches to law and by the revival of natural law thinking. But a more radical approach, claiming that we could strive for a stateless society, is represented only by anarchism.
Different anarchist approaches also identify law with the state, and see law as a form of repression and domination. But also stateless societies need ways of ordering social and individual relationships. Can we think of law without domination and without a state? I will pursue these questions in my presentation.

Resurrecting Hans I. Kleven's Critique of Law - On the Legal Form and Political Content of Capitalism and Communism

Carl Wilén – Postdoctoral Fellow and Affiliated Researcher, Human Rights Studies, Lund University; affiliated with CESPRA, EHESS, Paris

During the long 1968, the Nordic countries became the site of an extensive and fascinating debate on Marxism and law. Engaging with theorists like Evgeny Pashukanis, Louis Althusser, Nicos Poulantzas, Oskar Negt, Norbert Reich, Umberto Cerroni, and Vladimir A. Tumanov, legal scholars, intellectuals, and political activists across Denmark, Finland, Norway, and Sweden advanced a broad variety of Marxist perspectives on the nature and relations of capitalism, law, politics and social change. Yet despite the growing historiography of the Nordic 1968 conjuncture, its politico-legal history of ideas has attracted remarkably little attention outside a relatively small circle of legal scholars. A peculiarity that has remained invisible in this history is the fate of the Norwegian politician, jurist, and intellectual Hans I. Kleven. Whereas all Nordic theorists of Marxism and law have been neglected by later historiography, at least they were embedded in a shared field of intellectual exchange visible in the journals,
conferences, and publications at the time. In contrast, Kleven's work was all but absent from this setting too. Indeed, there is little evidence that it was seriously read beyond a very small circle, if at all. Nonetheless, his ranks among the most original and ambitious to emerge from the pan-Nordic milieu of Marxism and law. Educated at the 'Parteihochschule Karl Marx' in the Ostzone in the late 1940s, he belonged to a small group of Nordic intellectuals capable of engaging directly with the intense debates on the general theory of law in the early Soviet Union in Russian, while also drawing extensively on German, Italian, and French Marxist scholarship. After being expelled from the Communist Party of Norway in 1950 and reinstated in 1954, Kleven became deputy leader of the Socialist Left Party in 1967. At this juncture, he also published a massive three-volume book on the power, state and law of capital.

The aim of this article is to demonstrate that Kleven's critique of law should have been at the centre of debate in the wake of 1968, and that it in any case deserves to be resurrected today. It will do so by reconstructing his account of the relation between legal form and political content under capitalism and communism and by using it to assess both the limits and the possibilities of the contemporary field of Marxism and law. While Kleven did not always find the most effective answers about the relation between law and capitalism, he asked all the necessary questions.

BinaryTech - A New Materialist Method for Analysis of Intra-active Law

Juho Aalto – University Teacher, Faculty of Law, University of Turku

To date, numerous scholarly contributions in feminist, queer and posthumanist studies, and recently also in biology, have theoretically and empirically challenged binary categories related to sex, gender and sexuality. However, these new knowledges have not been able to impact legislation and the legal order, which still rely on binary thinking in terms of sex and gender. Binary dichotomies such as nature/culture, sex/gender and man/woman have already become unstable in many fields, and their meaning has been shifting. BinaryTech as a method of analysis, this dissertation continues to unsettle binary dichotomies present in jurisprudence, the legal orders and legal practices that reproduce them. The method is anchored in Nordic Feminist Legal Studies and Karen Barad's agential realist framework. Agential realism offers a useful ontoepistemological, methodological framework for a nuanced and systematic examination of how binaries (such as male/female and sex/gender) operate material-discursively within the legal order, through structures that also impact legal subject formation. BinaryTech challenges Nordic linguistic turn postmodern feminist theorisations that still contribute to maintaining basic binary dichotomies such as nature/culture, sex/gender, matter/discourse and suggest a return to Marxist critiques of law as neo-liberalism has been benefiting from postmodernist throught.

The method provides understanding on how binary dichotomies within jurisprudence and the legal order and practices could be read as enactments of differences that are productive, and that create connections when the application of law is understood as an ontoepistemological process.

FINAL PLENARY

The Critical Tradition in the Nordics: The New Orientations

The crisis of the welfare state has given way to a crisis of the rule of law, and legal critique struggles to find its footing. Reconnecting to Retfaerd's Marxist roots, this panel draws on contemporary Marxist critique of law, especially in relation to the recent special issue – The Need for Marxist Legal Theory / Behovet for et sådant tidskrift. This issue brings together contributions from North and South America, Asia, and Europe, and proceeds from that same internationalist assumption that this panel will advance: that the Nordic critical tradition must base itself in a robust understanding of those transnational social relations, which might invite emancipatory politics. When Retfaerd was established, the crisis of the welfare state was already unravelling but had yet to make itself fully known. Fifty years later, the world and the Nordics are steeped in catastrophe, but the structural conditions to emancipatory politics remain unchanged. As this panel will argue, it is only through acknowledging the constraints that the global economy places on such politics that critique of law might proceed strategically. Importantly, this means taking the Nordic states' commitment to transnational relations of domination and exploitation seriously."

PARTICIPANTS WITHOUT PAPERS

Andreas Anderberg, Universitetslektor, Göteborgs universitet
Julia Johansson, University of Gothenburg
Martin Albinsson, Doktorand, LU
Kristina Hultegård, Lektor i allmän rättslära, Juridiska institutionen GU
Gilbert Ajebe Akame [Participating], PhD Fellow, UiT The Arctic University of Norway

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