

Promoting Gender Equality

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Abstract

The article discusses the Nordic legal feminism in the light of the phases of feminist theory. Nordic gender equality policy and law have been integrated with the welfare state, promoting general equality. All Nordic countries have ascribed to strategic equality policies, however, with somewhat different vigour. In all these countries gender equality laws have been assigned an active role in promoting equality and preventing discrimination. Lately, research in law and gender has turned to theory and gender and sex are seen as socially constructed through legal discourses and practices in all fields of law. The chapter argues that different feminist approaches are still relevant for the analysis of law.

1 Introduction

The Nordic countries always score highest in gender equality rankings. The foundations for gender equality are found in the history of these countries: Finnish women received the right to vote and to be elected in national elections as early as 1906, and in the other Nordic countries during the next decades. Apart from suffrage for white women in Australia in 1903 and the right to vote (but not to be elected) in New Zealand in 1893, Finnish women were the first in the world to achieve comprehensive electoral rights.

The number of female parliamentarians has been relatively high in the Nordic countries and Nordic women have broken the glass ceiling at the highest level in politics. In Denmark, Queen Margrethe II has reigned since 1972 and both Iceland and Finland have had female heads of state in the shape of Icelandic President Vigdis Finnbogadóttir (1980-1996) and Finnish President Tarja Halonen (2000-2012).

Norway enjoys a tradition of female prime ministers with Gro Harlem Brundtland, who served several terms between 1981 and 1996, and Erna Solberg since 2013. Finland has also had two short-term female prime ministers in the shape of Anneli Jäätteenmäki and Mari Kiviniemi.

The Nordic people are both conscious and proud of their gender equality. However, some differences still exist among them in laws, policies and attitudes. Feminism has been a state policy in Sweden, especially in the 1990s; indeed, Sweden has promoted feminist values even in its foreign policy. In Norway we find a profile of promoting women's issues. In Finland, both politicians and the public take equality for granted, as something already achieved, so that feminist critique can meet fierce opposition.

In all Nordic countries, women's position has been advanced together with the development of the welfare state.¹ From the 1960s until the 1980s the welfare state project meant, among other things, a levelling of social stratification, a widening of access to higher education and rapid urbanization. All these changes favoured women, who accessed education en masse. Thus, the advancement of women has formed part of a more general policy towards welfare, well-being and social equality than a conscious gender policy. Equality has often been understood as a general policy goal, rather than a concrete right of individual women not to be discriminated against.

International commitments in the field of equality have provided important impulses to equality work and legislation. In particular, international and European legal instruments have promoted anti-discrimination laws and a shift towards a more individualistic approach to equality. The international Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)² was important for the enactment of equality laws in the 1980s. Additionally, European Union law, in which legislation against sex discrimination evolved as part of the development of the internal market alongside the prohibition of discrimination on the basis of nationality, influenced Nordic equality laws even before Finland and Sweden joined the European Union in 1995.

In European Union law, anti-discrimination became a central principle in the Charter of Fundamental Rights (2000) and the Lisbon Treaty on European Union (2009). In 2000, after the Treaty of Amsterdam, the European Union strengthened its equality policy and anti-discrimination legislation on the grounds of race, religion, belief,

¹ Pylkkänen, *Trapped in Equality: Women as Legal Persons in the Modernisation of Finnish Law*. Baillet 2016.

² 1979, UNTC I-20378.

disability, age and sexual orientation. In the Nordic countries, anti-discrimination laws have also incorporated these grounds of discrimination.³

This chapter discusses the main areas of law that are central from the point of view of gender. Besides equality law, anti-discrimination law concerning other grounds of discrimination is also important for the rights of women, because discrimination on multiple grounds often means that women are discriminated against both as women and as members of an ethnic group or because of their age, disability, or other status.

In gender studies, different phases of gender politics and research have been classified into three waves of feminism. The wave metaphor has been used in somewhat different ways as the feminist movement has assumed somewhat different forms in different countries. However, broadly speaking we can distinguish liberal feminism, standpoint feminism and postmodern feminism.⁴ In the Nordic context, the second wave was intertwined with the welfare state and often described as state feminism, as discussed in part three of the article.

These phases or waves are not, however, distinct. Even if gender studies are today predominantly preoccupied with postmodern issues of construction of sex and gender, feminist claims for gender equality and governmental equality policies are still based on liberal and welfare state views on equality more generally. However, these claims today encompass other vulnerable groups and sex and sexual minorities in particular.

Today, we use the terms “law and gender” or “gender studies in law”. By the term “gender” we mean gender as a social construction as opposed to a biological category. In a postmodern understanding, gender is not limited to the dichotomy of men and women but includes other possible gender identifications as well. In Scandinavian scholarship, the terms “women’s studies” and “women and law” were frequently used in the 1990s. This has a connection with the idea of promoting women’s rights. Feminist studies and feminist legal studies, the terms used in English-speaking countries in the 1980s and 1990s, have not gained popularity in the Nordic countries. Particularly in Finland, the word “feminist” is still often understood as pejorative, in contrast to Sweden, where everyone, including present and former prime ministers Fredrik Reinfeldt and Göran Persson, have declared themselves to be feminists.

³ ‘Multidimensional Discrimination Policies in the Nordic Countries: An Overview.’; Skjeie and Langvasbråten, ‘Intersectionality in Practice?’

⁴ My terminology has been influenced by Carol Smart. Smart, *Feminism and the Power of Law*.

Actually, the term “feminism” possesses certain merits: Feminism is a wide concept, covering many different schools of feminist thought (which exist in abundance), and including postmodern pluralist thinking. The ideas that all feminists share are that gender equality constitutes an important social goal which we have not yet reached and that this state of affairs is in some way or other related to gendered power structures in society. When this definition is used, most Nordic people are feminists – notwithstanding their gender. This definition of feminism covers a wide range of research topics and a variety of methodological choices, including in the field of law. Usually gender research is also related to political feminism in that it aims at improving women’s position and promoting equality.

Therefore, it is natural to see the present shift towards gender studies as a continuum of feminist studies. Gender studies also cover other manifestations of sex and gender, such as gay, lesbian, bisexual and transgender individuals, often covered by the term ‘queer’. Queer studies is a theoretical term that involves wide implications for traditional feminist studies as well, as I shall show later in this article. In recent masculinity research the position of men and the male sex is also highlighted. Contemporary men’s studies, or men and masculinity studies, share with feminism a critical analysis of the gender system.

2 Liberal Feminism and Gender Neutrality of Laws

Liberal feminism has striven for equal rights on the premise that persons with equal merits should enjoy similar entitlements. The liberal concept of equality is based on similarity: similarity in law and similarity in merits. If the liberal pursuit in law is understood as gender neutrality and as similar law irrespective of one’s sex and gender, then equality is to a large extent a state that in the Nordic countries has already been achieved.

Besides universal suffrage, several other legal reforms in the late 19th and early 20th centuries gave women the same rights that men already enjoyed. Unmarried women of legal age were no longer under male guardianship as they had been before. Women gradually obtained access to the labour market, where industrialization created a demand for a cheap female work force. At first, unmarried women and widows were allowed to work, later followed by married women. Gradually they even obtained the right to keep and use the money they earned, instead of having to hand it over to their husbands. Women also obtained access to the civil service, for example in Finland in 1926.

Equal rights in marriage were granted in reform of the Marriage Act, for example in Finland in 1929.⁵ The main principle in matrimonial property is that each spouse controls their own income and property during the marriage and on divorce the property is divided equally between them. Additionally, male privileges in the guardianship of children were abolished. The right for men and women to inherit on an equal footing was achieved by the late 19th century. Differences exist between the Nordic countries. For example, in most of the Nordic countries the spouse inherits, whereas in Finland the widow's half is first separated and after that the children inherit the other half.

In labour law, special measures that protected women from heavy and hazardous working conditions have largely been abolished. These regulations were criticized by feminists because they restricted women's access to the labour market. For example, protection against night shifts kept women out of well-paid jobs in factories but never excluded them from low-paid jobs in hospitals. I have a personal recollection from the 1960s, when I could read newspapers for the first time. A single mother working in a metal foundry was interviewed and asked what she thought about the work. "At first I thought I could never do such a tough job but when I heard the wages, I changed my mind."

Pension ages long differed between women and men. Although clearly discriminatory, this was experienced in different ways. Some people thought that it was a privilege for women to retire earlier than men. However, many women found that their pension benefits remained very low, especially if their working years had been interrupted by childbirth and childcare. Due to European Union law, retirement ages have been equalized as between men and women.

Today, most gender-specific laws have been abolished. Achieving this has not been a simple matter, however. As late as the early 1980s the Finnish Parliament was unable to agree on a woman's right to keep her own last name upon marriage, and the government had to withdraw a Bill to that effect. This law was finally passed in 1986, though, following ratification of the 1979 CEDAW Convention in 1986.

The Lutheran Christian Church has been the dominant religion in all Nordic countries. Today all Nordic Lutheran churches ordain women as priests. The Danish church was the first in the world to do so in 1948, followed by the Swedish church in 1958 and Norway in 1961. In Finland, the Church still works in close proximity to the state. Thus, when Finland ratified the CEDAW in 1985, the Church accepted that women can be

⁵ Melby et al., *The Nordic Model of Marriage and the Welfare State*.

ordained as priests. Still today some male priests find it difficult to work with women in Denmark as well as Finland.

Still a few sex-specific regulations remain, such as conscription in military service, which is mandatory for men in Finland and to some extent in Sweden and Norway but an option for women. Another example of a sex-specific regulation is maternity leave. However, parental leave is gender-neutral, even if used mostly by women. These exceptions may be symbolically important but by and large the liberal goal of gender-neutral laws and formally equal rights for all has been achieved.

3 State Feminism and Women's Law

Promotion of women's rights in the Nordic countries has formed an essential part of general welfare policies. General social, health and educational policies have enormously benefited women.⁶ Of specific importance for women have been childcare policies, although these may in part have reinforced traditional gender roles.

Two issues of legal relevance are of key importance: the universal and individual nature of rights.⁷ Basic social and educational rights belong universally to every individual, instead of being left to the discretion of families, employers or local communities. The educational system, starting with the introduction of compulsory basic education in the 1920s and encompassing free school meals in Finland and Sweden after the Second World War, has been the key to the social ladder for both men and women. Free university education and the expansion of the university system in the 1960s and 1970s gave women access to the highest levels of education, an opportunity that women have taken full advantage of. Today, over half of university graduates and half of new doctors are women. Equally, access to healthcare has benefited women.

Free prenatal care, which is combined with cash benefits after a baby is born, has secured the health of both mothers and babies. These reforms have formed part of the general welfare state project, instead of falling specifically under the category of women's rights. Social security contributions, both at the residual level and earned benefits, are organized as individual rights, not on a family basis. This has promoted women's roles as working mothers both in marriage and as single parents.

⁶ Kantola, 'The Paradoxical Gendered Consequences of the EU Policy on Multiple Discrimination: The Nordic Case'. Kalliomaa-Puha L (2000).

⁷ See for example Esping-Andersen, *The Three Worlds of Welfare Capitalism*.

Nordic women have actively contributed to development of the welfare state. In addition to political participation at the highest levels, women have been active in formulating welfare policies as civil servants in the healthcare and social sector. Incorporation of women's interests in the welfare state project is known as state feminism. In the Nordic countries most feminists have seen the state as an ally for women and as a forum for realizing women-friendly policies, as opposed to more critical approaches towards the state in, for example, German and American feminism.⁸ There has also been a tendency to see equality policy as an issue for social welfare, rather than one of rights. This is evident in the institutional setting of the European Union and for example in Finland equality policy has always been the responsibility of the Ministry of Social Affairs, thus underlining the connection of women's rights as a dimension of the welfare state project.

The proximity between the welfare state project and women's interests is also seen in research on women's rights in the 1970s and 1980s. In the 1980s, feminist legal scholarship started to gain ground when Professor Tove Stang Dahl in Oslo set up a research group and a research school in Women's Law with a research agenda of introducing women's perspective in legal analysis. The group mostly employed the strict legal dogmatic method in analyses of legal problems that women often encounter in their everyday lives, such as rights of a home-maker wife, and life crises, such as divorce. Stang Dahl's major works are entitled Women's Law I and II.⁹ After Stang Dahl's early death, many Norwegian scholars continued this type of work.

The early studies on women's rights in the 1970s and 1980s often focused on labour law and social law.¹⁰ Women's economic and social rights have been analysed in the triangle of three support systems: market (women's employment), state (welfare state) and family (Picture 1). For example, in Denmark Ruth Nielsen and Kirsten Ketcher were interested in these issues.

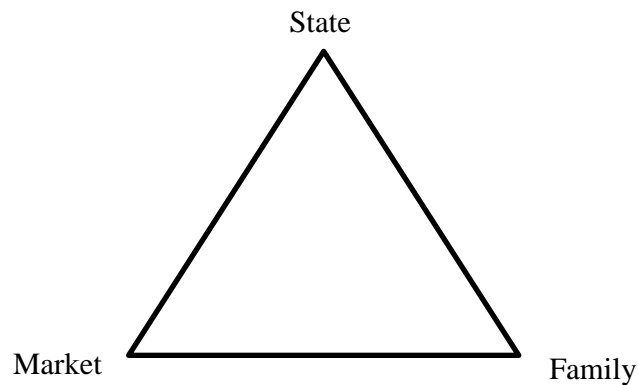
Both in equality politics and in feminist research, including feminist legal research, typical questions concerned the possibility for women to combine work and family. Women's economic self-reliance was an unquestioned goal. Economic independence was seen as a key to women's emancipation. Issues about unequal pay for equal work

⁸ Elman, *Sexual Subordination and State Intervention: Comparing Sweden and the United States*; Holli, *Discourse and Politics for Gender Equality in Late Twentieth Century Finland*.

⁹ Stang Dahl (1985A), Stang Dahl (1985B)

¹⁰ Kalliomaa-Puha, *Perspectives of Equality: Work, Women and Family in the Nordic Countries and EU*.

and social support benefits, such as retirement benefit, which depend on the level of salaries and years in paid labour, have been discussed in equality politics and research.



The combination of work and childcare has interested feminist legal scholars in the Nordic countries, very often from the point of view of social security benefits and childcare. Women's rights to benefits, the possible discriminatory effects of regulation, and access to childcare have been typical areas of research. A goal of the research has been to depict and articulate in legal form situations that are typical for women and argue for interpretations and legal reforms that take women's interests into account.

One of the most important welfare state reforms for women has been the establishment of childcare systems in the 1970s and 1980s. All the Nordic countries have established childcare and early childhood education systems that enable women to work full-time. All Nordic countries provide a network of childcare centres, which are seven-to-five Kindergartens with a professional staff, accessible for children over the age of one year. All Nordic countries also make generous parental leave available during a child's first year. There are differences, however, and the Swedish and the Finnish system are compared next.

Both feminist equality politics and concern about falling birth rates have contributed to childcare reforms in Sweden. Childcare centres, *dagis*, are either run or subsidised by municipalities, provided at low cost to families and very popular among parents of children under school age. The right to parental leave is an individual right up to thirteen months, for both parents. Up to ten months (half of it to each parent) leave is supported at a level relative to the parent's income. A parent can allocate his or her share of paid leave to the other parent.

The real innovation about Swedish parental leave is its flexibility. The parents can agree between themselves and together with their employers the most suitable use of parental leave time. It is possible to take the traditional mode in which one parent stays

at home with the baby for a certain number of months and then returns to full-time work. But it is also possible to agree on less conventional approaches to childcare. Some parents choose to work part-time, so that one of them cares for the baby in the mornings and the other in the afternoons, with both on parental leave from work for 50 per cent or one for 40 and the other for 60 percent. One of them can be on parental leave on Mondays and Tuesdays and the other for the rest of the week. It is also possible to stretch out parental leave until the child is seven years old. This is an option if the parents work part-time anyway or if they are helped by relatives.

The flexibility of the Swedish parental leave system has helped to increase the fertility rate. Employers do not complain because in many cases flexibility is helpful for them as well. It is important, however, to make agreements on how parental leave is used well in advance.

In Finland, the question of a subjective right to day care turned out to be a paramount issue in feminist legal jurisprudence. In the late 1970s and 1980s, demand for municipal childcare facilities increased. Day care became a threshold for women's participation in the labour force when middle class women started to enrol their children in municipal day care centres, which had earlier mostly served single mothers. Law reforms in the 1980s gave a subjective right to day care for parents and children, with a duty placed on municipalities to provide it. The nature of this right was contested in the courts, which confirmed that it is a subjective right entailing entitlement to monetary compensation if the municipality is unable to provide day care for a child.

Parental leave has been gradually extended up to ten months. After the initial period, which is allocated to the mother, parents can share the leave but in practice women use well over 90 per cent of parental leave. To incentivize fathers, a specific "father's month" that only a father can use has been introduced. Today a father's month amounts to fifty-four days excluding Sundays and can be used while the mother is on leave as well.

The costs of day care centres scared Finnish politicians, many of whom have strong family sentiments. To facilitate home care by the mother and to keep children out of municipal childcare, a home care allowance was introduced in the early 1990s. The home care allowance is available until a child is three years old. The state allowance is relatively low but many municipalities complement it with their own contributions.¹¹

¹¹ Salmi M (2000).

The consequence of these complementary systems is that the share of children in childcare centres and in early childhood education in Finland is much lower than in other Nordic countries.¹² Women with a university education return to work after parental leave when the child is one year old and use both municipal and private childcare centres and other private arrangements. The home care allowance is used almost exclusively by women of modest education and without a job to return to after three years at home.

Women's rights have been central in establishing a childcare system. The goal has been to ensure women the same opportunities as men in the labour market. The Swedish system has clearly promoted that goal. The share of men using parental leave days is the highest in the world at well over twenty per cent. In Finland the system has had a perverted opposite effect for women of modest education. Another effect has been that all young women, irrespective of education, work much more on fixed-term job contracts than men of the same age. Only recently has discussion started on reform of the system but the proposals have so far been based on models in which one parent stays at home for a certain number of months. A flexibility that would better correspond to the post-modern labour market has not been put on the table.

4 Equality Law

Both gender-neutral legislation and the welfare state have promoted women's rights in many ways. Nevertheless, equality has not been achieved, so that differences in the respective positions of women and men persist in many areas of social and private life, to the detriment of women.¹³ Pay gaps have diminished but women's salaries remain at 80-85 per cent of those of men, which can only partly be explained by factors other than gender. When women and men with the same education and the same type of occupation are compared, the gender pay gap is roughly ten per cent. The gender pay gap increases when well-educated women and men are compared. At higher levels of the labour hierarchy we still find few women. Women tend to rise to a certain level but not to the highest levels, the so-called glass ceiling effect. The labour market is heavily segregated along gender lines. Women tend to work in healthcare and social services and in the public sector, while men work in manufacturing and private businesses. Young women work more often than men on fixed-term contracts. Women still bear the main responsibility for childcare and household work, both during and after

¹² Eydal GB, Rostgaard T (2011), Meagher G, Szebehely M (2012).

¹³ Nousiainen K (2008).

marriage, even when both parents work full time. In political decision-making women do relatively well, but non-elected bodies tend to have more men than women.

These problems were acknowledged when ratification of CEDAW (1979) came on the political agenda. The Convention is based on a strong notion of material, real-life equality and requires active measures and policies by state governments and other actors to achieve equality. The Convention prohibits both direct and indirect discrimination, in law and in practice. It also obliges states to promulgate active measures and policies to ensure equality between the sexes and to promote women by guaranteeing them the exercise of their human rights on an equal footing with men.

The Convention contributed to the enactment of equality laws in the 1980s and to the setting up of equality bodies. These acts¹⁴ introduced both anti-discrimination measures and measures to promote equality.¹⁵ The purpose of equality laws is to promote the position of women, with the focus on working life. Private relationships, referring to family, friendship and religious worship, are excluded from the scope of equality laws.

These laws prohibit both direct and indirect discrimination. Indirect discrimination is defined along the same lines as in CEDAW and European Union anti-discrimination directives, meaning all measures and policies that de facto lead to differential treatment of the sexes. Sexual harassment is specifically mentioned as a form of unlawful discrimination.

Specific measures to promote equality are not considered discriminatory even if they include differential treatment of employees on the grounds of sex, at least for a while. This provision enables promotion of the underrepresented sex in access to employment, promotion and other situations. According to the case law of the European Court of Justice (ECJ), such positive action is possible if applicants have merits that are assessed at an almost equal level and if positive action follows a plan and is of intermediate duration.¹⁶ Sometimes the Nordic countries have wanted to take more progressive steps, such as in Sweden's programme in the 1990s to increase the share of female professors at universities, which initially stood at below twenty per cent. In *Abrahamsson et al.*

¹⁴ Denmark: *Lov om ligestilling af kvinder og mænd* 2013 no 1678, Finland: *Laki naisten ja miesten välisestä tasa-arvosta / Lag om jämställdhet mellan kvinnor och män* 609/1986, Iceland: *Lög um jafna stöðu og jafnan rétt kvenna og karla* 10/2008, Norway: *Lov om likestilling mellom kjønnene* 1978 no 45, Sweden: *Diskrimineringslag* 2008:567.

¹⁵ This development is seen as individualization of gender equality and its beneficial impact on women has been questioned. See Pylkkänen A (2008).

¹⁶ E.g. ECJ *Kalanke v. Freie Hansestadt Bremen* (1995) C-450/93.

the ECJ confirmed that the sex of the applicant could not be decisive beyond the above mentioned specific conditions. In reality, affirmative action-type measures are hardly ever used in recruitment or promotion procedures in the Nordic countries.

The equality laws include other types of positive measures to promote equality that are not connected to individual rights. Since equality is both a fundamental, constitutional right and a legal principle according to equality laws, the authorities and employers should take it into account in their activities and promote equality.

In Finland an important tool is an equality plan, which each employer with over thirty employees is obliged to set up, as are educational institutions, too. According to surveys, many employers have made equality plans since the duty was upgraded in 2005. In practice, however, the planning process is not yet well-rooted in relationships between employers and employees. A specific issue debated in the legislative reform of 2005 concerned transparency in mapping pay differentials between the sexes.¹⁷

Another important tool is quotas to promote equal representation of the sexes in public and expert bodies. At least forty per cent of the members of appointed state and municipal bodies should be of each sex. At first, this rule was met with serious reservations in the municipalities. The argument was that it is impossible to find competent women for municipal boards dealing with, for example, public works. In practice, though, the municipalities have been successful in fulfilling their quotas with qualified women and men. However, in state government we can still find committees, boards and working groups that do not have the required quota of women. In Norway, quotas are also required on the boards of publicly traded companies.

In the other Nordic countries, discussions about quotas for company boards have been discussed, at times even heatedly. In Finland the Chamber of Commerce, representing business interests, has actively promoted voluntary appointment of women to the boards, in order to avoid binding legislation. The campaign has been successful and the share of female board members is close to thirty per cent.

Equality laws, equality policies by governments and feminist movements have been successful in many respects. The problems listed at the beginning of this chapter still exist but to a lesser extent than before active engagement in equality work.¹⁸ Thus,

¹⁷ Saari, *Työllä Tasa-Arvoon – Tasa-Arvosuunnittelu Ja Samapalkkaisuuden Edistäminen Vakuutusalan Työpaikoilla*; Ikävalko, *Vaikenemisiä Ja Vastarintaa: Valtasuhteet Ja Toiminnan Mahdollisuudet Oppilaitosten Tasa-Arvosuunnittelussa*.

equality policies are still needed. However, some aspects of discrimination have been slowly recognized as equality problems. One of these is violence against women.

5 Gender Difference and Violence against Women

Both liberal and welfare state approaches to equality can be and have been criticized for setting men as the norm. The liberal take on equality argues that women have the right to equality if and when they have the same merits as men. The same criticism can be directed at equality legislation, which favours active policies to promote women's achievements at the same level with men. The goal is to achieve equality according to the standards of men, so that it is against the male standard that gender inequality is compared.

In cultural feminism of the 1980s, the sameness of the sexes was challenged and sexual difference was taken as the starting point. In legal studies, cultural feminism has not gained much popularity. Women's history, experiences and values have been visible in art, theatre and literature as well as in the historical, social and cultural sciences. However, gender difference is not easily adapted into legal standards. Rather, female lawyers and scholars have often noted that differential treatment is a double-edged sword. It may protect some women but it is easily directed against some of those whom it should have protected.

In issues of violence it is difficult to maintain the position that sameness is the norm of equality. Violence is clearly gendered: while men and women are, roughly, equally often victimized by violence, the circumstances of victimization are gendered. While the most dangerous place for men is the street and, especially in Finland, the company of other intoxicated and socially marginalized men, the most dangerous place for women is the home. The perpetrators are in both cases predominantly men. Sexual violence is directed mostly towards women, along with children of both sexes. The perpetrators are, again, predominantly (adult) males.

Feminists have long been raising issues of violence against women. However, the state apparatus has been somewhat slow to take action. The ideology of equality was one of the factors that delayed the "detection" of domestic violence and other forms of violence against women.¹⁹ Since the laws have been formally gender-neutral, reform

¹⁹ Elman, *Sexual Subordination and State Intervention: Comparing Sweden and the United States*; Nousiainen et al., *Responsible Selves: Women in the Nordic Legal Culture*. From the perspective of children Eriksson et al., *Tackling Men's Violence in Families. Nordic Issues and Dilemmas*.

proposals have often been rejected. Legal reform has proceeded at different speeds in the Nordic countries. While rape in marriage was made a crime in Swedish Penal Code reform in 1965, in Finland the same reform was only achieved in 1994. Petty assault, that is, minor violence with no physical damage, became subject to public prosecution in the early 1980s in most Nordic countries, though only in 2011 in Finland.

Serious research on prevalence and legal practices started in the Nordic countries in the 1990s. The results of prevalence studies have been sobering. A large and ambitious prevalence study was conducted at about the same time in Finland and Sweden in the late 1990s.²⁰ These studies showed that violence against women was far more prevalent than expected. Some 40 per cent of women had experienced violence in some form since they turned 15; about 20 per cent had experienced violence in an intimate partnership during their lifetime; and almost ten per cent during the previous year.

Compared with national studies in many other parts of the world and global studies by the WHO, these figures are not alarming, high as they may seem. However, a recent study by the European Union Fundamental Rights Agency (2014)²¹ reported very high levels of violence against women in the Nordic members of the EU as compared to other Member States on almost any form of violence. The results may be partly explained by the research methodology and partly by social conditions.²² It is possible that in a door-to-door survey Nordic women speak about domestic and sexual violence more freely than women in some other Member States. It is also possible that Nordic women who work and spend leisure time outside the home encounter more sexual harassment than women in countries where they are more controlled. Notwithstanding, there seems to be no reason to be deluded into believing the Nordic countries have no problem of violence against women.

In Sweden, a prevalence study in 2000²³ provoked heated discussion. Its methodology was criticized but the main response was concern. Sweden had already started a review of legislation on violence against women and the report on Women's Peace in 1995 proposed several amendments.²⁴ Two reforms appeared as the flagship of the reform package: the new crime of violating a woman's peace and a prohibition on buying sex. The first-mentioned reform means that repeated violence against a spouse or other close person leads, on conviction, to a penalty according to a higher sentencing scale than an

²⁰ Lundgren et al., *Slagen Dam. Mäns Våld Mot Kvinnor i Jämställda Sverige - En Omfångsundersökning*; Piispa and Heiskanen, *Faith, Hope and Battering*.

²¹ FRA (2014).

²² Gracia E, Merlo J (2016).

²³ Lundgren E, et al. (2001).

²⁴ Niemi-Kiesiläinen J (2010).

isolated assault.²⁵ This reform is in line with an overall European reform trend of assessing violence between family members as more serious than violence in other contexts. The prohibition on buying sex was remarkable because only buying sex is an offence but not the behaviour of the seller, that is, the woman who is abused in prostitution. This reform was introduced later in Norway and Iceland (2009) and as a prohibition on abusing a person who has been subject to trafficking or procuring in Finland (2006).²⁶

Structures that restrain effective responses to violence against women do not always involve clear and explicit legal provisions. The research project on *Violence in the Shadow of Equality* (1998-2004) undertook to analyse whether legislation and/or the reactions of the criminal justice system could be improved. The gendered features of law and legal practices could not, however, be straightforwardly seen. Therefore, the project started to analyse how violence was spoken about in legal texts. Law texts, preparatory works, court cases and police protocols were analysed as texts that construct central concepts of law and legally relevant practices, such as violence, gender, self-defence, consent, aggravated circumstances, and so on. In the eyes of the legal system, real violence involved violence between two males, whereas violence at home was often constructed as a disturbance, quarrel or dispute.²⁷ Violence could be downgraded or ignored, for example, in custody cases, in rape cases and in cases involving domestic violence. In cases where a woman had killed her partner and tried to invoke self-defence, evidence of violence by the male partner was often dismissed.²⁸ The project concluded that legal texts, documents and practices are powerful discourses in constructing the concept of violence.

6 Gender as a Social Construction

Second wave feminism, which in this account is represented by state feminism, has been criticized for taking the woman in women's perspective for granted. Criticism has come from many fronts. Women from ethnic minorities have raised their voices and asked "Ain't I a woman?", to quote the famous anti-slavery campaigner Sojourner Truth, as well as Third World women and lesbian women. The core of the criticism has been that white, middle class women have hijacked feminism and simply replaced white, middle class men with their own self-image.

²⁵ Nordborg G, Niemi-Kiesiläinen J (2001).

²⁶ Niemi J (2010).

²⁷ Niemi-Kiesiläinen J (2005).

²⁸ Ruuskanen (2001).

The theoretical issue involved has been the concept of “woman”. Liberal feminism, arguing for similar rights, emphasizes the universal similarity of human beings and thus the sameness of the sexes. The Nordic welfare state was also based on promoting similarity and the idea that equality meant the same rights for everyone. Second wave feminism acknowledged that women’s position is not the same as men’s and drew a distinction between sex, as biological and static sex, and gender, as the social organization of the roles of men and women. Welfare state proposals for change were often based on the belief that societal obstacles to equality could be removed and equality as sameness achieved.²⁹

The idea of the sameness of the sexes has been questioned in many ways.³⁰ Research on violence against women, while arguing strongly that violence involves a social context, made clear beyond doubt the gendered and sexed nature of violence and its sexualized dimensions. But sex difference was a difficult issue for feminists as it has been historically used to marginalize women and their rights.

Thus, the idea of gender as socially constructed has been welcomed by feminist researchers. When gender is understood as constructed in social practices or, to use Judith Butler’s theoretical concept,³¹ as performed by different women and men, the differences among women are not an obstacle to theoretical understandings of gender. Gender theory has also opened up new opportunities for acknowledging women’s agency in achieving change in gender roles and gendered patterns, without abandoning the understanding of gender as an existing fact and even as a societal structure.

At the same time it has become clear that the man/woman dichotomy is not sufficient to encompass gender differences in postmodern and multicultural societies. The study of gender, indeed the concept of gender itself, also has to cover gays and lesbians, bisexuals and those who have a transgender identity or who undergo sex correction. Alongside feminist studies, queer studies have questioned the binary gender structure using the concept of heteronormativity. Queer studies argue that societies are structured around the idea of two sexes and two gender roles, excluding other expressions of sexuality, gender identity and other forms of organizing private and social lives.

As feminist studies have turned into gender studies and become more theoretical,³² the close connections between feminist studies and feminism as a political movement seem

²⁹ Equality work as a requirement for women to change has been identified as an underlying structure in Nordic equality work. Edström and Brunila (2016).

³⁰ Svensson E, et al (2004).

³¹ Butler J (2006).

³² Gunnarsson and Svensson 2009.

to have thinned out. This may be an illusion. Legal studies in particular are still relevant for feminist claims to equal rights and better protection. Legal arguments of non-discrimination and equality are frequently used, for example, to argue for gay and lesbian rights. Responding to intersecting categories or multiple discrimination still requires legal categories.³³ The standard comparison between men and women has lost its central role in anti-discrimination law but the concept of differential treatment on the basis of sex and gender is still central. Now differential treatment can be induced from the circumstances of the case. For example, discrimination on the basis of pregnancy no longer requires a non-pregnant comparator. Intersecting grounds of discrimination should not lead to confusion but to the understanding that legal practices also contribute to the construction of new categories.

7 Conclusion

We have seen enormous growth and development in gender research during recent decades. From liberal conceptions of formal equality and the simple idea of equality as sameness, we have moved to welfare state goals of promoting gender equality and women's position as part of the general policy of promoting social equality. Today, gender studies occupy a broad scope on gender, including gay, lesbian, bisexual and transgender rights. Yet gender studies, including men's studies or studies in masculinity, build firmly on the basis of feminist studies of the last century.

Besides presenting Nordic law on gender, the purpose of this chapter has been to show that gender research is relevant to the study of law. Liberal notions of equality remain important for the regulation of civil, criminal and distributive rights. Gender perspectives as an empirical and analytical approach are important in implementing rights and in monitoring how rights are realized. 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.

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³³ Schiek D, Chege V (2009).

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