

The potential for new materialist justice via Nordic feminist perspectives of law

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The Nordic feminist perspectives in law have traditionally been relatively successful in advocating, and effectuating, a feminist perspective of justice both within law and the society. However, Nordic feminist perspectives of law have, at least to some degree, at this stage been limited to questions of equality between men and women and to the production of justice within the boundaries of the nation-state. In this article, I take the challenge upon myself of elaborating the notion of justice advanced by new materialist theory as a means to infuse the Nordic feminist perspective in, and on, law. This is pursued by reading new materialist theory and Nordic feminist perspectives of law against each other. In sum, the reading suggests that a focus on new materialist justice could be used to infuse Nordic feminist legal perspectives on justice by both shifting the understanding of law, and justice, as well as its contextual focus.

Keywords: feminist legal theory, legal materiality, new materialism, new materialist feminism, Nordic feminist theory.

Introduction

The new materialist turn² has engaged researchers in cultural and feminist theory for over a decade by now (Dolphijn and van der Tuin 2011; Coole and Frost 2010). As of today, new materialist theory already spans a wide array of disciplines including technology, ecology, and art. Furthermore, the field embraces subjects such as philosophy, political theory, pedagogy, natural sciences as well, as we will see here - legal scholarship. From the Nordic

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² The idea of a turn in theory is here used to connote the possibility of an intensification of a specific question. I do not subsequently argue that a turn has in fact taken place both in a conceptual and material sense where we have moved away from previous perspectives or societal formations based on other theoretical turns.



perspective, new materialist feminist research is also pursued by the Posthumanities hub, headed by professor Cecilia Åsberg at Linköping University, Linköping and The Royal Institute of Technology, Stockholm and new materialist researchers in musicology in Turku and Helsinki, Finland (Åsberg et al. 2013; Tianen et al. 2020; also see the IV Annual Conference on the New Materialisms arranged in Turku 2013). In Sweden, there are furthermore notable pursuits towards feminist new materialisms via the appointment of professor Karen Barad from the Feminist Studies Department at the University of California Santa Cruz as an honorary doctor at HDK-Valand - Academy of Art and Design, University of Gothenburg, Sweden in 2016.

A general aim of new materialist perspectives is to infuse critical thinking in general, and feminist thinking in specific, with a renewed focus on materiality post the social or linguistic turns in theory. This focus can be understood to engage a different form of ethics that reaches beyond the human-centred understanding of ethics. This ethics could also be understood as a new type of justice. A starting point for justice in the emerging new materialist stream, implies a questioning of those things that are perceived of as a justice coming from the superiority of the human as a thinking being. Instead, justice in the new materialist sense of the term, is invoked as a continuous process of materialization about what bodies that may be produced and take place in a certain space at a certain time. Furthermore, this involves an idea of justice that is connected to empirics to a larger degree than in perspectives of justice that emphasize specific principles of morality (Barad 2007, 236-243; Deleuze 1988). The French readings of Spinoza that several new materialists subscribe to (Braidotti 2013; Dolphijn and van der Tuin 2012; Grosz 2017) have especially pointed out how rationality in the Spinozan sense needs to be disconnected from metaphysical assumptions that the justice concept generally harbours (also Negri 2016, 274). An outspoken aim in e.g. Rosi Braidotti's work is furthermore to move towards radically sustainable ways of being together. This includes e.g. intra-species and intra-generational ideas of justice (Braidotti 2013,192-3).

As such, this could be interpreted as an invitation for further theoretical development of what *justice* - as a type of ethico-political condition - could imply in relation to feminist thinking today. One example of how such type

of justice is called for in relation to new materialist theories is to increasingly consider the urgencies caused by advanced capitalism, such as global warming and ideas about disembodied technological transcendence (e.g. via artificial intelligence). An important point made by Braidotti, when attending to questions of global warming and technological hyperbole, is furthermore to raise the continuous need to outline how the catastrophes of our time hits bodies in unequal ways. Therefore, as she points out - e.g. technological developments may render humans posthuman, but this move does not occur in an equal manner (Braidotti 2013, 1). To be able to account for such differences one necessarily need to move towards another form of justice than the current conditions of (in)justice. The need to do so has also become blatantly clear during the Covid-19 pandemic as I will get back to.

In law, new materialist research has furthermore been pursued in different ways (Philippopoulos-Mihalopoulos 2014; Davies 2017a; Kang 2018; Kang and Kendall 2019), also with explicit feminist focus (Conaghan 2013; Arvidsson 2018; Jones 2019). The Nordic feminist perspectives on law which is of specific focus here is furthermore a rich field in terms of theoretical diversification. However, as Svensson argues, the *Nordic* feminist legal theoretical privilege has been declining as the discipline of feminist legal studies increasingly has become an international discipline. She therefore identifies a general need for Nordic feminist perspectives of law to reassess which its disciplinary conditions are now as compared to when the field was formed as targeting “women’s law” as a discipline in the Scandinavian countries (Svensson 2012, 15). In relation to Nordic feminist legal studies, I have myself contributed to this field by adding new materialist research in a textbook on feminist legal studies (Gunnarsson et al. 2018, 86-93) as well as drawn upon feminist scholars work in relation to new materialism in my doctoral dissertation from 2017 (Käll 2017).

In this article, I propose that one way to open up Nordic feminist perspectives of law - and justice - further could be via an engagement with the new materialist turn. In particular, I will do this with a focus to show how some anthropocentric assumptions in Nordic feminist theories of law and its implicit ideas of justice may be challenged. Here, these different endeavours are read together to ask the question of how the focus on justice in new materialist theory can bring something new to Nordic feminist legal studies and also on the other side around - if Nordic feminist legal studies

may bring something new in terms of law to new materialist perspectives on justice. As such, this twofold question seeks to answer critique brought forward both to Nordic feminist legal studies as a field of research regarding its assumption of who is the subject and what is the space for feminist legal interventions (see e.g. Hellum 2012; Schömer 2012; Pylkkänen 2012), as well as to new materialist theory in relation to being accused of lacking a direction in terms of what is to be done - or in another sense - what kind of new perspective of justice it brings forward (Ahmed 2008; Washick et al. 2015).

The article is structured around first introducing some main points in relation to new materialist theory, in particular regarding its normative claims. After this follows an introduction to the field coined as Nordic feminist legal studies in relation to some of the dominant normative claims that can be identified in this field. The focus here is in particular to outline its understanding of what law is and how it can be used (or not) to support feminist understandings of justice. Thirdly, the article conflates new materialist theory with Nordic feminist legal theory around three new materialist concepts: body, space, atmosphere. Similar concepts have been developed by Philippopoulos-Mihaloupoulos as means to theorize spatial justice in a new materialist vein (Philippopoulos-Mihaloupoulos 2014).³ As I will show, these tools can fruitfully be put into use to show opportunities for Nordic feminist legal theory to advance a call for justice in a more new materialist sense, by utilizing points already made in Nordic feminist legal theory in regards to bodies and space. The article further concludes with a section where I advance the need for an alternative understanding of law's ontology that may be utilized to fulfil the new materialist aim to reach through as well as beyond the linguistic turn - both to answer a new materialist call for an alternative form of justice - as well as in support for feminist legal studies in general. As I further discuss here, such steps are already widely accessible in critical legal scholarship and may function as fruitful departures for new materialist theory to advance a call for justice through law.

³ Philippopoulos-Mihaloupoulos utilizes the tools body, lawscape, atmosphere to theorize spatial justice. In my conceptualization here, I use space instead of lawscape to bridge new materialist feminist theory with already established discussions in Nordic feminist legal studies.

To summarize, I here bring forward how both Nordic feminist theory and new materialist feminist theory may reach further in a call for feminist justice by approaching their productive differences. This theoretical bridge in turn also opens up for an engagement with new materialist theory in law, by investing it with an explicit feminist normativity. As such it is also a contribution to the interdisciplinary ambitions of new materialist research which has an outspoken ambition to challenge academic and theoretical boundaries. This can be understood as being of vital importance, particular in relation to sharpening conceptual tools that could be used to the specific ethico-political urgencies and new scientific and technological contexts identified in new materialist theory (c.f. Coole and Frost 2010, 5-6).

The new materialist turn in critical philosophy

New materialist theory is often described as an answer to a lack of focus on matter in linguistically oriented forms of critical theory. However, this shift in focus is often also described as building upon, rather than breaking entirely, with theoretical efforts in the social as well as spatial turns in theory (e.g. Alaimo and Hekman 2008, 7). The spatial turn in particular also explores materiality in relation to why and how spaces become produced in particular ways and which exclusions to space such spatial production implies. Furthermore, new materialist theories may also be connected to what has been framed as the affective turn, where e.g. Sara Ahmed is one significant feminist scholar (Ahmed 2004). The framing of the affective turn can generally be understood to target how materialities come into being but here the focus is more on the production of feelings, sensing and power as affective regimes such as how whiteness is being produced (Ahmed 2004; Massumi 2015). All of these turns have significantly infused feminist legal theoretical thinking and contributed to its increasingly diverse and rich conceptual apparatus.

One common denominator between the general new materialist perspectives in theory and feminist legal perspectives is that they engage in a broad critique of the human or *Anthropos*. This focus largely aligns with how feminist theorists for several decades have criticized the gendered aspects of dividing between nature and culture, subject and object, body and soul where women (as well as e.g. non-European people) often are referred on the side of the “embodied”, “natural”, and as “objects” (De

Beauvoir 2012 [1949]; Butler 2011; Braidotti 2013; Haraway 1991; Barad 2007). Some streams of feminist legal theory have responded to such practices of subordination via a call for a re-evaluation of those subordinated under all dominating powers. One example of such theorization is the attempts to forward the embodied reality as opposed to the focus on thinking (e.g. Cavarero 1995). Other feminist theorists have also criticized the entire binary order in which gendering is produced. In this way, feminist theorists have attempted to situate all humans as deeply interlinked to each other as well as the world (Braidotti 2013). In new materialist theory, this perspective is however stronger in terms of how it aims at decentring not “only” gender or abolish sexism, but to increase the possibility for liveable lives also for, and beyond bodies currently perceived of as nonhuman. Following such aim, the overarching theme for justice in the new materialist stream is to move towards post anthropocentrism implying a move beyond the centrality of *the human* as embedded in the Western worldview (Braidotti 2013, 21-25; Haraway 2016).

Legal theory and new materialisms

New materialist theory has comparatively recently come to be elaborated as a new branch of legal theory. This stream has been significantly developed by Andreas Philippopoulos-Mihalopoulos as first a new materialist theory of spatial justice and later, elemental justice (Philippopoulos-Mihalopoulos 2015; Philippopoulos-Mihalopoulos 2016). Another example of such theoretical development is the one pursued by Margaret Davies in her recent work *Law Unlimited - Materialism, Pluralism and Legal Theory* from 2017 (Davies 2017a). In my dissertation from 2017, I have furthermore developed three new materialist tools- body, entanglement and ethics- to reach beyond conceptual dichotomies previously criticized in feminist research (Käll 2017). In both Davies and my own new materialist conceptualizations of law, the understanding of law is integrated into a rupture of dominant understandings of subjects, objects and their separations. All these three legal new materialist endeavours share the theoretical aim of understanding law through and beyond what is currently understood to constitute the legal order. In particular this implies reconsidering law in relation to its inside and outside as law versus politics and law as text versus law as matter. This move beyond the mentioned

binaries affords a folding of law into the normativity implied in new materialist theory and the contemporary questions of justice they raise.

Furthermore, attending to law in this framework implies a further engagement in understanding how law functions as an ordering as well as an affirmative type of force (Braidotti 2013, 26; Käll 2017, 82-3; and see e.g. Deleuze 1988, 97-104). My own theorisation of feminist new materialisms in law further builds upon Philippopoulos-Mihalopoulos in addressing how a renewed movement towards materiality implies the development of a new ethics. This concept of justice and ethics are approached significantly via the Deleuzian-Spinozan understanding of the body. Law is here understood as integrated in matter, or to put it in the Deleuzian-Spinozan language - as bodies, as well as being produced by such bodies - in a way that connects or disconnects bodies (Philippopoulos-Mihalopoulos 2015; Käll 2017, 98-103). Subsequently, the dominant perspective of law, which generally considers law as an order vested in legislations, acts, contracts ultimately being upheld by national or international courts, is ruptured in this type of new materialist legal theoretical perspective.

Having started in January 2018, there is also a research network based at Kent Law School at the University of Kent in the UK, that works with questions on legal materiality. The network is headed by Hyo Yoon Kang and Sarah Kendall.⁴ Kang has furthermore addressed the perspective of legal materiality and new materialisms in at least one recent anthology chapter (Kang 2018 and also see eds. Kang and Kendall 2019). In this chapter however, Kang takes a slightly different starting point on new materialism than in the feminist new materialist stream followed here, by combining new materialism with other thinkers building more closely on Bruno Latour's work and thinkers generally framed under the perspective of object-oriented ontologies (OOO). It furthermore appears as if Kang addresses law's materialities primarily as the type of materiality and practice embodied in current legal tradition, implying law as a form of governance through text (Kang 2018).

These differences subsequently make for a possible variance in relation to the new materialist perception of law produced via e.g. Davies, Philippopoulos-Mihalopoulos and myself, where law is understood as integrated in and expressed through bodies. Law is here understood as a

⁴ <https://legalmateriality.wordpress.com>

continuum between concept and matter, not as a fixed split (e.g. Philippopoulos-Mihalopoulos 2015, 25) whereas the latter perspective on legal materialism aims at re-emphasizing materiality of law's objects and subjects while to a larger degree treating law in a more traditional sense as something that governs over both subjects and objects (e.g. Kang 2018). In the new materialist understanding advocated for here, law can rather be understood to draw its effective governance - both in text and matter - from its possibilities to effectuate itself, not through its ex ante materiality or lack thereof. This understanding is close to a traditional sociology of law perspective that studies why and how a law becomes effective or not. That kind of study can imply an evaluation of the (lack of) efficiency of a textually inscribed rule such as a convention on equal rights between men and women and propose that there appears to be other norms than legislations that govern societies. In a more new materialist perspective however, the inside and outside distinction often upheld in both the legal discipline as well as traditional sociology of law studies becomes more dissolved. Subsequently, when we study law's materialities we study all kinds of materialities that have a governing effect - law as text does not have precedence (not law as court cases or court buildings either, since we do not necessarily believe that the law is created there mainly or only). Instead, what is of more interest here is to study which forces that actualizes a certain space or body as law. Thus, the new materialist perspective advocated by Philippopoulos-Mihalopoulos and following him, also Davies and myself, is invested in understanding and making visible how, and why, bodies order and are being ordered, regardless of the materiality for such ordering (Davies 2016; Käll 2017). There is also a focus on a processual ethics where it emphasized that bodies are in conflict with each other of coming into being. Such understanding resonates in particular with critical understandings of the distribution of power via law.

The Nordic feminist perspectives on law

The Nordic feminist perspective on law and justice is often credited as an immensely successful one. Via continuous struggles by legal scholars as well as via general political processes in these countries, a large number of legislative efforts have been pursued with an explicit aim to produce equality (Svensson 2012, 16). This Nordic perspective of feminist legal theory

has had a prominent influence in feminist legal theory in general due to its success in utilizing legislation to transform the Nordic societies (Svensson 2012, 15). Such transformation has traditionally been focused on the possibility to create distributive justice via the idea of the welfare-state. This includes the fact that reforms have been carried out in all Nordic countries to create - and later equalize - state paid parental leave, to install heavily subsidized child care as well as other systems in terms of free education. These advancements in welfare in general favours those disadvantaged in the current form of society, such as women (Gunnarsson and Svensson 2012; Davies, Gunnarsson and Svensson 2007, 3).

Gunnarsson and Svensson have however argued that one can also speak in a more nuanced way about Nordic feminist perspectives of law as consisting of three different paradigms. They refer to these three paradigms as women's law (*kvinnorätt*), female perspectives on law (*kvinnoperspektiv på rätten*) and gender and law (*genus och rätt*) (Gunnarsson and Svensson 2009, 20-30). All of these three perspectives advocate their own understandings of law as well as what is to be done in terms of producing justice (Svensson 2012, 16). These three paradigms have in general been focused, at least to some degree, on the creation of gender equality as a condition where men and women have equal power to take part in the development of the society and in their own lives. The gender and law perspective has however also developed more profound tools to criticize law and legal practices via e.g. the advancement of critical discourse theory as a method to study legal sources. The field is furthermore strongly inspired by social constructivist theory as it perceives of both law and gender constructions made by humans and therefore in the hands of humans to change. An example of this is when Svensson frames this perspective as one where "(d)ifferent living conditions are seen as important for the construction of society (...) and are supposed to have influence on the future legislation (...)" (Svensson 2012, 16).

The gender and law perspective within Nordic feminist legal theory can be understood as the perspective that comes closest to the notion of justice promoted in new materialist feminist theories as law is treated as a tool for engaging with law to produce justice. Subsequently, this perspective has an explicit productive and normative aim. Svensson furthermore builds upon social constructivist understandings of law and justice in her dissertation

from 1997 advocating a relational perspective in law. In her dissertation, she also explicitly criticizes how the dominating stream in Nordic legal research tends to start from the view of the human as a free and equal individual. In this manner, law's capacity to sustain certain forms of power and difference is ignored. Svensson intervenes against this view by showing how gender as an analytical starting point for how relations are produced and configured within law explains why sex-neutral legislation in the Nordic countries does not function as equalizing between the genders (Svensson 1997, 17). In addition, she argues that the gender relation may be utilized to show how such making invisible of power takes place in law (Svensson 1997, 19).

As outlined above however, the conception of what law as well as justice *is*, is even more different in a new materialist perspective compared to the most common understanding of law in Western societies today. This is also true in relation to most Nordic feminist perspectives of law. Even when relationality is foregrounded and law is critiqued as well as utilized to create change towards feminist goals, the currently dominating understanding of law as legislative ordering prevails instead of e.g. considering gendering as a form of legal technique in itself. From this perspective it is not far to argue that justice in the Nordic feminist perspectives of law still is understood as something at least partly outside of law, belonging to the domain of politics (Svensson 2013; and see Douzinas and Gearey 2005). Efforts to rupture such ideas of law have been produced in Nordic feminist legal theory (Davies, Gunnarsson and Svensson 2007). However, the positivist legal theoretical inheritance of considering law as legislation controlled by the state (or intra-state organizations) is still the dominant perspective. Such perspective subsequently to at least some degree takes a human-centered understanding of law and legislation for granted. For this reason, a furthered questioning of *anthropos* or the human in law, may function as a fruitful tool to connect new materialist theory, new materialist legal theory and in particular to put forward a renewed engagement with law and justice through Nordic feminist legal perspectives. As will be outlined next, there is also already many Nordic feminist scholars that have taken such steps. I will highlight and work further with some of these advancements under the conceptual framework of body-space-atmosphere with the intent to bring them even closer to a new materialist perspective of justice.

Body

The renewed emphasis on matter in new materialist theory folds into an alternative idea of subjectivity, starting from a nonhuman perspective of the body. As hinted above, what is significant for this concept of the body is that it implies that both human and nonhuman agents as well as concepts can be described as bodies. This makes for an ontological starting point where everything both “living” and “dead” and “matter” and “mind” is connected to each other. The rationale behind such move in new materialist perspectives is to enable a less, or even post, anthropocentric understanding of how different bodies come to connect or withdraw from each other based on the powers they create or are created by (e.g. Käll 2017, 98-103).

A specific trait of this perspective of materialism can furthermore be described as a movement of thought that pushes traditional dualisms to an extreme, as a difference pushed to the limit, or as a way to show how difference is shown differing (Dolphijn and van der Tuin 2011, 386 and see also Coole and Frost 2010, 7-15). As Dolphijn and van der Tuin furthermore argue, this endeavour implies that one cannot take the traditional dualisms of Western thinking, such as mind versus body “as predetermined relations” (Dolphijn and van der Tuin 2012, 383).

Subjectivity in the form of who has the capacity to affect and be affected in society is in a similar manner a common topic within feminist legal theory. From the acquisition of what is today generally understood as basic citizen rights, such as having a right to vote to the analysis of how processes of gendering shapes who is considered a legal subject, the question of subjectivity has been key to feminist legal studies. In new materialist theory, the critique of which forms of power establishes subjectivity can be understood as extended from such feminist interventions onto the production of difference between human and nonhuman *bodies*. The body concept is in this manner deployed to further flatten the conceptual difference between humans and nonhumans, including which abilities they have to act and be acted upon. The notion of the body is here of a deeply relational kind which may be exemplified by Donna Haraway’s by now famous questioning of how bodies generally can be thought of as ending at the skin (Haraway 1991, 178). The aim with placing humans and nonhumans in a conceptual *ex ante* similarity of being of the same matter is however not

intended to erase the material differences between bodies – neither from an empirical perspective or from a normative one (c.f. Philippopoulos-Mihalopoulos 2014, 11; Haraway 1991, 191-200). The aim is rather to make visible that the cuts between bodies turning them into either subjects or objects, human or nonhuman, are being produced via a number of materialities, conceptual apparatuses and affects.

Similar relational perspectives of subjectivity have in turn been advocated in feminist theory as well as in Nordic feminist theory (MacKenzie and Stoljar 2000; Nedelsky 2011; Svensson 1997). The welfare state as such can of course be understood as a decentring of the idea that the individual is a free subject who should manage herself without interventions or help from anyone else. In pursuing feminist goals of relationality, it is however not controversial to state that most of the focus has been placed on targeting improvement of women's conditions in opposition to patriarchal oppression. Even if not always successful, there are many legislative efforts coming out of Nordic feminist legal research that have focused on regulating care responsibilities vis-à-vis children, women's sexual health, and the obligation to pay income taxes based on the individual rather than the household (Svensson et al. 2011). However, the organizational unit of the welfare state tends to rest upon an idea that the heterosexual relation, including kids born within and into it, is the relation and hence the bodily connection on which society as a larger body is built. This has been criticized in Nordic feminist legal studies both from the perspective of the normative sexuality it implies as well as the idea that there are two parents fulfilling care responsibilities vis-à-vis children (Pylkkänen 2012). Critique has also been raised that Nordic feminist legal studies fail to take into account several intersecting forms of power that affect women's lives (Hellum 2012, 23; Schömer 2012). In this manner, the redeveloped ideas of subjectivity as something relational carried out in the Nordic feminist legal tradition also tend to remain within certain relational assumptions. A notable exception besides those mentioned is the work carried out by Hanne Petersen (Petersen 2011; Petersen 2012) where she turns towards a more ecological understanding of both subjectivity and gender which has a profound focus on those otherwise considered as nonhuman subjects.

Space

The production of connections between bodies can in the new materialist vein be understood as a production also of space. Space in turn can, in echoing the words of Philippopoulos-Mihalopoulos, be understood as something that bodies fight to reside in (Philippopoulos-Mihalopoulos 2014, 11). This fight is furthermore to be understood to take place not only between human bodies, but also other kinds of matter such as buildings, affective messages (for example in the form of sexist marketing), and the corporate digital design that shape our digitized lives. A consequence of this view for the legal discipline is that space cannot be understood as an innocent place onto which one can construct and enact a jurisdiction (see also Massey 2005).

A practical tool to envision space differently in new materialist research has been to construct alternative cartographies compared to those outlined by dominating power regimes. Braidotti explains the idea of cartographies in the manner that:

A cartography is a theoretically based and politically informed reading of the present. Cartographies aim at epistemic and ethical accountability by unveiling the power locations which structure our subject-position. As such, they account for one's location in terms of both space (geo-political or ecological dimension) and time (historical and genealogical dimension) (Braidotti 2013, 164).

From the perspective of law, this implies that a critical perspective of law and law's boundaries need to be re-enacted. An example of this is the questioning of the existence of terra nullius, a land which no one has claimed, and consequently could be claimed by colonizing powers (Davies 2017b, 319-322). Such work has furthermore been carried out in spatiolegal theory from an explicit feminist angle (e.g. Keenan 2015).

The theme for this special issue to open up for a *Nordic* feminist perspective on justice to some degree hints that there is a potential to recreate both the space and the spatial boundaries within which Nordic feminist legal theory operates. The emphasis on "the Nordic" in Nordic feminist legal studies is however regrettably (and likely unintentionally) to some degree sometimes tightened when scholars concern themselves with drawing up a divide between East Nordic and West Nordic forms of feminist

legal studies (Svensson 2012, 14-5). Such demarcations, while aiming at creating nuances between different traditions in the Nordic countries can have an opposite effect in the way that they risk stabilising the research interest into a Nordic discipline.

From a new materialist feminist perspective, such stabilisation needs to be avoided not the least since new materialist theory engages significantly with post- and decolonial perspectives. If Nordic feminist legal theory focuses on the Nordic space as a space which it exists within, and interests itself in, what takes place within the boundaries of Nordic nation-states, there is not the least an obvious opening for a new materialist feminist intervention. Partly this is so because new materialist theory unsettles the boundaries of a certain space and asks question of why we think a space, just like a body, ends at a certain materialization, and partly because its normative ambitions possibly are slightly different. A move towards a new materialist understanding of justice that accounts for space in Nordic feminist legal theory could therefore focus increasingly on those not generally accounted for within its established nation-state borders as well as those currently being killed at our closed borders (whether we attribute them to the European Union or not). This includes in particular those who cannot derive benefits from the Nordic welfare states, as they do not fulfil current criteria for either citizenship or even rights to seek and get asylum. Another example is to continue to pay attention to the conditions of the human and nonhuman beings of Sápmi in a manner already initiated by Nordic feminist legal researchers (see e.g. Svensson 2017). This continued questioning of the spatial borders, and the rights derived based on them, becomes increasingly important in the times we now find ourselves in. When I wrote the draft to this paper in 2018, a political party with deeply racist roots had just received almost 20 % of the votes in the Swedish parliamentary elections. Furthermore, several other parties have followed a new trajectory in attempts to diminish immigration in historically new ways in the Nordic countries. When we talk about perspectives of justice in Nordic feminist legal theory from a new materialist perspective, it is impossible to think about a justice which does not aim at hindering this development.

Along these lines, it should be noted that the hegemonic conceptualization of the Nordic in feminist theory has been criticized in

Swedish feminist theory by e.g. Ulrika Dahl (Dahl 2015, 201). As Dahl so simply yet forcefully puts it, Nordic feminism needs to consider its spatiality by asking “Which bodies, questions, perspectives and strategies are ‘Nordic’?” (Dahl 2015, 202).⁵ The creation of Nordic welfare states, including the laws that sustain them, are and have always been, as Dahl puts it, conditioned by less wealth in other countries. A peaceful state which prides itself (with much justification) for its politics of equality needs at least to be continuously humble in relation to which injustices it leaves out (Dahl 2015). This includes e.g. the killing of “Non-Nordic” bodies by refusing them entry at our increasingly enforced nation-state borders. Another example along this vein is how Sápmi has been refused independent governance in a way that hides the aspects of colonialization pursued by Nordic states. Finalizing this paper two years after the Swedish elections, during a global pandemic, a new materialist perspective on who gets to move and how in the “Nordic space” seems more vital than ever (c.f. Williams 2020). Over the last few months, nation-states have come to close their borders with Sweden now famously coined as one of the few exceptions. Yet also the Swedish border is closed to non-EU citizens. A crucial question subsequently becomes: what does it mean for a society to call itself feminist when privileging the health of those it calls its citizens while leaving those stuck outside the border without any remedy? (see also Kuovo 2019).

A new materialist perspective in this way necessitates an ontological shift compared to previous Nordic feminist legal perspectives as it negates the assumption that the body, as a collective of bodies, ends at the boundaries of the nation-state. By asking the question of the Nordic, as a question of the boundary of our bodies, we open up for an increased questioning of the production of the body as an always collectively dependent unit, and ultimately that the connections they can make is a question, and performance, of law. In quoting Virginia Woolf, Dahl repeats her message that as women, we do not have a country, and as women we do not need a country. A cartography based on new materialist feminist theory cannot be dependent on the borders of the nation-state to reshape either law or justice. If new materialist relationality is to emerge, we as Nordic feminist legal theorists need to increasingly ask ourselves what it means to

⁵ My translation from “Vilka kroppar, frågor, perspektiv och strategier är ”nordiska”?”

reproduce, represent or operate within the nation or the region (c.f. Dahl 2015, 202).

There has to some degree been a development in Nordic feminist legal theory where aspects in relation to a woman's status as non-citizen while residing in a welfare state has been considered as a topic that deserves extra attention as it may lead to new/more severe forms of oppression. This has implied a critique e.g. of the requirement of being in a relationship with a Swedish citizen (and residing in Sweden) for a specific amount of time before one can be granted Swedish citizenship on one's own. One solution suggested to ameliorate this rule has been to demand of the partner (man) bringing a spouse from a country who lacks residency rights in the Nordic countries that he would have a more long-term responsibility to care for his spouse even if the marriage or relationship becomes dissolved (Pylkkänen 2012, 244). A new materialist feminist engagement with such points could in the same manner attend to the differences in how women's lives materialise via connections between e.g. gender and ethnicity. However, it also needs to go further than this, since neither the heterosexual relationship nor the nation-state can be the foundations for rights or justice. To move towards such dissolution of both the nation-state as well as the heterosexual relationship in order to create efficient rights for women is nothing less than a revolutionary project in the sense that it calls for a redistribution of resources on a global scale to create welfare for all women. An important step in this direction from a more practical perspective is to make more property into communal property such as state-owned rental apartments where rent is controlled or subsidised by the state, as it would facilitate for women to reside in places that are not controlled by their spouse.

Space as a new materialist tool furthermore opens up to rethink traditional feminist questions and divides between private and public space in relation to technological advances. As new materialist researchers have pointed out, the addition of digital layers to things that previously did not have such layers both affords new means of control and new types of production and logistics (Braidotti 2013; Haraway 1991; Käll 2018; Käll 2020). As I furthermore have discussed in a report for the Equality Ombudsman (DO) in relation to the prevalence of sexist marketing, it is also becoming obvious that where feminists could once call for a stricter

regulation in public spaces – the public spaces as such are becoming more liquid and controlled by market actors and thereby more difficult to regulate in the traditional sense. Where sexist messages could previously appear on billboards (and still do), commercial sexist messages now (also) have escaped into personalized social media streams (Käll, Sundström and Zare 2019). As such, space as a concept can therefore be fruitfully used to rethink a number of new materialities compared to previously advanced Nordic feminist interventions. A challenge in rethinking both bodies and space, however, is to not get stuck in new understandings that fixate them. For this reason, I will now also turn to how the concept of atmosphere may be utilized to understand both the constant flux of bodies and space as well as a tool for reorientation towards new materialist justice.

Atmosphere

The final new materialist tool that I will address here is the concept of atmosphere. Atmosphere as such is an essential tool to reconsider justice in a new materialist way since it pays attention to how bodies become entangled *as* space and how bodies move *in* space via affect (Philippopoulos-Mihalopoulos 2014, e.g. 107-150). For this reason, the possibility to reshape how bodies connect to each other should be understood as an expression of immanent justice (Deleuze 1988; Philippopoulos-Mihalopoulos 2016). Such immanent type of justice roughly differs from a transcendental idea of justice in the sense that it is considered as being part of bodies and how they engage with each other. Subsequently, justice is not something belonging to the outside in terms of universal principles but something both internal to bodies as well as law (Philippopoulos-Mihalopoulos 2014). This makes for a notion of justice which needs to consistently engage in mobilizing bodies and space in ways that support the specific form of justice by altering the atmosphere that sustains or hinders their coming into being. A new materialist idea of justice subsequently requires not only an idea of how one mobilizes other matter than language (including textual forms of law) for feminist purposes, but is also a shift in how to enable justice to emerge. Considering justice via atmospherics in this way requires an understanding of how affect governs bodies and how bodies can come to produce alternative forms of affect (Philippopoulos-Mihalopoulos 2014, 151-173).

The idea of how affect matters for feminism has been, as briefly discussed above, theorized by Sara Ahmed. To tie the focus on how bodies and space become operational via an idea of affect, she writes (for example) that: “[w]e need to complicate the relation between the lines that divide space, such as the equator and the prime meridian, and the “line” of the body. [...] The body orients itself by lining itself up with the direction of the space it inhabits [...]” (Ahmed 2006, 13). This in turn makes up for a further understanding that feminist work increasingly needs to consider how bodies become directed in a certain way and how an alternative direction of bodies may be cultivated by a shift in what bodies desire and how.

The work in Nordic feminist legal theory that most profoundly mimics this understanding of law and justice are arguably those that look at different forms of cultural expressions as legal cultures and how they operate with other ideas of what produces a normative legal culture than law in the nation-state (e.g. Hellum 2012; Petersen 2011; Petersen 2012; Käll, Sundström and Zare 2019).

The atmosphere, while it can be understood as a sphere of affects that makes some bodies feel more comfortable in a space than others due to what often is understood as social norms or power, in a new materialist sense however also needs to be understood as involving material attributes beyond what can otherwise feel more like a metaphor. To put it in the words of Jussi Parikka, even the seemingly invisible air that we breathe has now become so polluted that it contains metallic particles (Parikka 2015, 96). Consequently, we live in and breathe an atmosphere that due to behaviours related to the anthropocene, capitolocene and other variations of the same kind of spatiotemporal place-making, has been rendered increasingly difficult to breathe for humans as well as other life-forms dependent on oxygen for survival. The connection between bodies, space and atmosphere in the materialisation of justice is also patently obvious as we draw close to the end of the year of 2020. The governance of how to breathe the air surrounding us, as well as breathing as governance has surrounded two defining events of this year – Covid-19 and the continuation of racism leading to protests such as notably the intensification of the Black Lives Matter movement.

As postcolonial theorists are currently pointing out, we can also draw a direct connection between the violence of closing the EU borders for

refugees and the subsequent drownings due to being forced to cross the seas to apply for asylum in Europe with the racialized effects of Covid-19 and the police murders of black persons through “illegal” holding downs by police leading to the death by suffocation of George Floyd (Mbembe 2020; Williams 2020; Sunderland 2020). Achille Mbembe in particular brings to the fore what a concept of a universal right to breathe could imply as a response to these forms of perpetuated lethal violence (Mbembe 2020). Considering such right would necessitate an activation of the critical interventions already carried out in the Nordic feminist legal stream and new materialist theory in general, such as a critique against the abstract individual of human rights. At the same time, it needs to increasingly transcend both gender and the nation-state in order to account for how breathing is conditioned by the production of subjectivities and spaces via metallic infusions of air due to e.g. technological capitalist culture or violence based on the colour of one’s skin. In other words, as I will conclude, it necessitates a notion of what Mbembe names as a *right* but which possibly simultaneously could be named law or justice as rematerialised via new materialist theory. This in turn is what, as I will conclude next, will be needed to create a continued engagement with new materialist justice in feminist legal theory in general and Nordic feminist legal theory in particular.

Justice beyond Anthropos via law as matter

The rethinking of justice in Nordic feminist legal studies through a new materialist approach implies that one treats knowledge/knowing as a material practice and matter as inherently relational, in order to make visible, as well as actively participate in, how the world is created to make certain differences possible (Colman 2020; Haraway 2017; Barad 2007). As discussed, it may quite easily be claimed that the new materialist perspective of justice differs from the justice advocated via the three paradigms of feminist legal theory in the Nordic countries outlined above (and see Gunnarsson and Svensson 2009, 20-30). On the other hand, most Nordic feminist legal approaches are grounded in some kind of relational perspective of the constitution of subjectivity. Such perspectives have traditionally been used to both critique and/or suggest new legal rules that could change how society is being constructed to sustain other relations

better aligned with feminist theory. The types of relationalities addressed have however still to large degree rested upon the idea of humans as world-makers and the law and justice, including the gender relation, as something created by humans exclusively (see Ahmed 2008; Davis 2009).

This may be made visible in the way that all three previous paradigms in the Nordic feminist legal discipline tend to operate with an understanding of law as possible to separate from those who produce as well as those being produced by law. The law is subsequently made into an order manifest in law as a textual-legislative system. To be fair, it should be noted that efforts have been made in legal theory, including Nordic feminist legal theory, to rupture the narratives of law as an order focused on legislation, as mentioned throughout this paper (and see Svensson et al. 2011, 15). In spite of this however, law is still generally considered as being divided into an external and an internal order where “norms” are best-case placed in the external order of law - or its effects - and legislation is understood as an internal order of law. This in turn reproduces a divide between the material (the world outside of law, the ones producing norms etc.) and the conceptual order of law (legislations, legally binding decisions, etc.). Law and the understanding of law as a conceptual order is in this way perceived of as opposed to a lived or practiced order. In this manner, the idea of law continuously rests upon a separation between subjects and objects (of law). From a new materialist perspective, this implies a potentially harmful recreation of an abstract human as law maker and keeper of law and order in opposition to a nonhuman which is made into passive matter without much agency of its own. Following new materialist theory, one could summarize this by saying that as long as we follow ex ante divisions of humans as being in control of the law and nonhumans as being subject to it, we follow an anthropocentric, Western order of law. The actual effectuation or discontinuation of anthropocentrism however still resides in what kind of relations are made possible as law.

An important contribution towards a less anthropocentric direction for Nordic feminist legal theory, while not explicitly framed as new materialist, has been carried out by Hanne Petersen and her work on oppressed, and repressed, legal cultures and the potential she finds in drawing inspiration from such cultures to move beyond e.g. the concept of gender as basis for ordering society (Petersen 2011). Via this perspective, Petersen cautions

against idealising “secularized societies” as being the most progressive ones in terms of feminist goals. Petersen further suggests that both gender research and legal research could contribute to a new Enlightenment by developing a new global ethics based on both other perspectives of law and gender more in tune with other legal cultures than the Western one(s) (Petersen 2011, 380).

In spite of such interventions there is however still little effort to attempt to think of law as an expression manifest in all bodies as well as directly expressed through them. Thus, law is still linked to a textual or legislative order practiced by courts or other administrative agents subordinated the nation-state. This implies that the critique of e.g. patriarchy is carried out as a critique of how patriarchal norms influence laws or legal decisions. One does in this way not explicitly submit to the idea that patriarchy is itself a *law*. In a new materialist approach to law, such ex ante difference between law and power regimes (e.g. patriarchy) becomes dissolved. As Philippopoulos-Mihalopoulos expresses this pursuit in relation to his idea of law as bodies residing in a lawscape, what needs to be understood and made visible is that law in a new materialist perception is enmeshed in the production of bodies (Philippopoulos-Mihalopoulos 2015, 11; see also Davies 2017a, e.g. 124-8).

Instead of picturing patriarchy or other forces that move bodies in certain ways, such as sexism and racism, as being outside of law, they are subsequently understood as inside of law or even as more efficient laws than others (Philippopoulos-Mihalopoulos 2015, 62). This opening up of law can in itself be useful for putting forward changes in law in a wider sense, in order to achieve feminist normative agendas. The feminist idea tradition is rich and well apt to respond to the interdisciplinarity to which this kind of perspective of law invites. Such view can, as discussed, mean e.g. theory-building based on knowledges on gendering/non-gendering to be found in cultures suppressed and oppressed by dominant Nordic cultures. This way to rebuild knowledge about alternative forms of grounding subjectivity and community however also affords other ways of understanding law as a tradition altogether for example based on storytelling. As Petersen puts it, tales found in such cultures as well as understandings of the world could be of much use when we aim at moving beyond current conceptions of law and justice in the Nordic feminist legal discipline. The reason for this is that this

elite position also places us in situations where we may “[...] access cultural encounters, which seems to produce monsters, metamorphoses, and new relations. [...] And we are fortunate to have access to normative cultures and normative heritage which might be of inspiration and which may open up for other ways of understanding a future monstrous world.” (Petersen 2012, 117). When carrying out such encounters, it is however of course highly important neither to fetishize nor take up interpretative space on behalf of the cultures we, as Nordic feminists, have been excluding. In general, we should also remember that there are other good storytellers out there of new forms of law emerging but with opposing normative consequences to feminist new materialist agendas, that manage to create new forms of law, which have by far surpassed nation-state, positivist and textually based perception of law (see e.g. Lessig 1999). As Haraway shows, for example the cyborg identity largely forced upon us can itself be used to tell other stories about human subjectivity and in the prolongation- justice (Haraway 1991).

Thinking more closely about bodies, space and atmosphere from the perspective of new materialist theory further lends itself for a more dynamic understanding of materiality both in terms of law and its objects. It advances the relational endeavour and ontologies of feminist (legal) theories at the same time as it opens up for metamorphoses which never fully defines themselves on the one side of binary pairs. In this manner, the concept of the body as an assemblatic and processual form of becoming produces a starting point for telling alternative stories of justice which crosses both the sex/gender dichotomy as well as the law/justice boundary.

To do this is furthermore a question both of, and for, law and justice. However, it is not a question of law and justice as we know these concepts of law and justice as legal versus political order, but rather as a move just towards new materialist justice, by rearranging bodies towards a form of posthuman kinship *as* law. This understanding can only come from a rupture in the atmosphere, as a cry or a gasp for fresh air from bodies. Such embodied understanding for a new Nordic feminist understanding of justice is now timelier than ever in the light of both the currently ongoing Covid - 19 pandemic and the Black Lives Matter protests of the killing of black people by those institutions and individuals who in the liberal sense of law are entrusted with the responsibility and expected to uphold justice: the nation-state, the police. As Nordic legal feminists we need to respond to this

call for justice both in itself as well as a call for another understanding of what constitutes law and who creates it. This in turn may imply that we will lose a sense of place that we have fought to inhabit – a place within law, a sense of belonging to a legal discipline. However, a Nordic feminist perspective based increasingly on new materialist theory may also come to find a renewed sense of both law and justice. With such renewed sense, and sensibility, comes the potential for telling new stories where we insist on new forms of materialisation to make other lives liveable and ultimately breathable, through law.

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