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The Role of Legal Theory in Legal Education: A Reflection on Professional and Scholarly Ideals in Nordic Legal Education

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The article addresses the role of legal theory in legal education. Today, a multitude of perspectives is present within legal theory and, as a subject, it is not as distinct as it is sometimes claimed to be. It is evident when considering syllabuses in the Nordic countries that nearly all LLM programmes have ambitions to teach legal theory as embracing a multitude of theoretical and methodological perspectives. This multitude of perspectives promises adaptable content for the subject of legal theory in various legal contexts, and could facilitate a reflection on how knowledge is acquired and why.

The challenge addressed in the article is the presence of explicit or implicit ideas from the subject of legal theory as comprising a coherent "legal method" and a specific list of accepted theories. The persistence of such ideas is scrutinised in this article with help of the concepts of "professional knowledge" and "scholarly knowledge". In order to navigate the complex field of legal theories, students need meta-reflective skills, which means the ability to reflect upon the underlying complexity and multitude of the subject. This is shown by a case study from the Department of Law at the University of

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Gothenburg, together with examples from curricula and textbooks from legal theory courses across the Nordic countries.
Key words: legal theory, legal education, professional and scholarly knowledge, integrating legal theories

INTRODUCTION

The role of the subject of legal theory[3] in legal education is the focus for this article. The course content of legal theory is often formulated as being about the nature of law and methods for understanding and studying the law and its relationship to society. However, this formulation gives no indication as to *why* the subject is taught or *how* it is taught. Posing the *why* and *how* questions leads to further questions about what kind of theories and methodologies should be included. It leads to questions such as: Is legal theory in legal education about finding suitable models and methods that students can use as legal practitioners *in spe*? Is it a chance to make the LLM programme more of an academic education and not just a professional education for future practicing lawyers? Is legal theory in legal education focused on scholarly or on professional knowledge ideals? Regardless of whether it is professional and/or scholarly knowledge that is sought, what kinds of theories and methodologies are worth exploring within the subject of legal theory? These questions about legal theory as a component of legal education are marred with tensions and not easy to answer.

How law is taught changes over time. Today, case-based teaching and problem-based learning have been added to or even replaced traditional law teaching based on lectures and strict boundaries between the different sub-disciplines of law (Pihlajamäki and Lindblom-Ylänne 2003). Nevertheless, what is considered relevant and useful for legal professions seems relatively unchanged. For example, the learning objectives included in the Swedish Higher Education Ordinance (Högskoleförordningen 1993:100) focusing on knowledge, skills, and attitudes that the student should acquire have not changed for a long time. This is also accurate for the law programmes in other Nordic countries. A quick glance at most of the law programmes show that the distinction between private law and public law and other basic distinctions are persistent in law programmes,

[3] We will use "legal theory" as an umbrella term for all mandatory courses that aim to teach theory, philosophy, and jurisprudence in Nordic LLM programmes.

even though they have been dissolved or at least blurred for practising lawyers.[4]

Given the fact that a legal education leading to the degree of Master of Laws is a professional education, which provides access to practising law (The Higher Education Ordinance 1993:100, Annex 2), it is not surprising that the main focus is on how to apply the law (Niemi-Kiesiläinen and Lindblom-Ylänne 2003). In many courses, the students are trained to present arguments in specific discourses that imitate their future profession. In this endeavour, rules and principles are systematised and connected to cases, real or constructed; and decisions are suggested where a balancing of conflicting legal norms is performed within a certain legal context (Pihlajamäki and Lindblom-Ylänne 2003). For this training purpose, the method used is called the *legal method*, the *legal dogmatic method*, or sometimes the *doctrine of legal sources*. This method is similar to what in common law jurisdictions is called the *black letter approach*. Both refer to printed sources, but the dogmatic approach does not imply that the legal norms are undisputed, as the black letter approach does. In much of legal education, the focus of the acquired knowledge and skills remains presenting arguments within "the method". It is this knowledge and these skills that are considered relevant for the profession or, more specifically, for judges (Träskman 2003, 46-58).

The notion of a unified and coherent legal method persists within legal education and is no doubt instrumental to legal professionals. At the same time, many scholars claim that neither legal academics nor legal professionals are unified in matters of theory and method.[5] Parallel to the discourse of "a single method", there is a lively discussion on the multitude of methods used within law disciplines. This multitude concerns both legal professionals and academics.[6] Different fields of law use different methods, and even within the same field there can be different approaches to interpretation. Furthermore, different levels of the legal system – national, regional, and international – each come with their distinct methodological principles and approaches to interpretation. Within legal scholarship, we can add an even wider span of methodologies not situated within "doctrinal

[4] This seems to be the case all across the Nordic countries. See Kakaee, Annex, in this issue.
[5] See, for example, Lindblom 1988, 437, regarding this matter.
[6] Concerning this, see for example Svensson 2007 and 2014.

studies", such as methodologies and theories inspired by the social sciences, humanities, or philosophy. In recent decades, there has been an increasing focus on teaching about the interaction between law and society.[7] Many courses in the LLM programmes include perspectives such as sustainability, gender, and various socio-legal perspectives or influences from different variants of the "law and [...]" movements, such as law and economics, law and sociology, law and rhetoric, law and literature. In other words, within legal professions, as well as within legal scholarship, there are many perspectives on the law and methodologies for understanding the law. What does this mean for the subject of legal theory in legal education?

The aim of this article is to discuss the role of the subject of legal theory in legal education in relation to the multitude of perspectives within the field, and in relation to the potential tension between professional and scholarly knowledge. We are not of the opinion that such tension necessarily has to be present within legal theory, but even so, using the terms "professional" and "scholarly" will help us pinpoint important aspects of what it means to teach legal theory in Nordic legal education. We draw from the situated experience of working with the subject at the Department of Law at the University of Gothenburg. The documentation of the situated experiences from the LLM programme in Gothenburg is in itself a research contribution. It is evident from studying syllabuses and literature lists that the content of legal theory is difficult to assess without more in-depth knowledge of specific learning environments in legal theory. This article offers such documentation regarding legal theory as it is taught at the University of Gothenburg. The analysis is further informed by a review of the course content and textbooks used across the LLM programmes in the Nordic countries.

In order to achieve the aims we will, *first,* unpack what we mean by professional and scholarly knowledge and what we mean by there being a tension between these two knowledge regimes in legal education. *Second*, by documenting the legal theory course at the University of Gothenburg, we will illustrate how this particular legal theory course encounters and deals with boundaries and possible tensions between professional and scholarly knowledge. We will also see how this has changed over time. *Third*, our

[7] During a couple of years (2015-2018) Umeå University offered two master programmes with this focus, the Law and Society programme and the Law, Gender and Society programme, both 120 credits.

discussion will be informed by examples from a 2018 overview of legal theory courses across the Nordic countries (Kakaee, Annex, in this special issue).

Unpacking the tension between the professional and the scholarly

The expression "the tension between the professional and the scholarly", aims to convey the conflicting demands directed towards legal education as either oriented towards practical and concrete skills necessary within legal professions or as oriented towards an academic degree with the teaching focused on academic critical thinking and reflection. The tension exists between what has been captured as an "attitude of usefulness", and an "attitude of critique and reflection" (Burman, Svensson and Ågren 2003), and as a distinction between "practical legal knowledge" and "academic legal knowledge" (Svensson 2007). Given the fact that a legal education is an academic education, there are demands on the education that could be called critical and reflective, in accordance with a general expectation of academic education and knowledge (Högskoleförordningen 1993:100). The professional and scholarly (synonymous with the distinction practical – academic used by Svensson 2007) demands are not always consistent. As we have already mentioned, they may pull in different directions.

Discussion about the tension between the professional and the scholarly dates back to at least since the 1950s (Svensson 2007, 21). This article focuses on the tension between the professional and the scholarly within courses in legal theory at LLM programmes in the Nordic countries, but there are connections with legal scholarship as a whole. Therefore, the many "turns" and schisms within legal scholarship in recent decades is a good place to start to trace the tension existing in the syllabuses of today. Layer upon layer of different ideas and views on legal scholarship, relevant practical knowledge, and changes in legal institutions and systems add complexity to the field of legal scholarship, which in turn trickles down to courses in legal theory. In the article, *Boundary-Work in Legal Scholarship* (Svensson 2007), a model is presented where practical legal knowledge is on one side and

academic legal scholarship is on the other side.[8] Within academic legal scholarship, a distinction is made between "established knowledge" and "revolutionary knowledge". These distinctions are presented in order to show how academic legal knowledge is constantly put to the test by viewpoints that challenge the established positions. Similar to this distinction between established and revolutionary positions in legal scholarship, a distinction could also be made between established and revolutionary knowledge within practical legal discourses. Changes in society and legislation at national, regional, and international levels, including theoretical and methodological influences from EU law and an increased focus on individual rights through The European Convention on Human Rights (ECHR), give rise to renewed reflections on methodology within practical legal knowledge. This makes the tension between the professional and the scholarly more complex, since both practical legal knowledge and academic legal knowledge in themselves are not cohesive.

The tension is most evident when focussing on theories of structural power relations, gender, and sustainability that traditionally have not functioned as direct tools for understanding legal norms for legal professionals. Sandgren (2004/5, 299) describes theories of this kind as extra-judicial theories (*utomrättsliga teorier*). If the main purpose of legal theory in legal education is perceived as identifying and interpreting legitimate "sources of the law" for "applying the law", or other words to conceptualise knowledge directly relevant for legal practice, theories that do not primarily aim to provide this guidance will be considered outside the scope of the subject. In other words, with a narrow perspective on what is relevant for a legal practitioner, theories of e.g. power, gender, and sustainability will become relevant only, if and when, they become part of a legal source.[9] From another view, however, one could also put forth the argument that the practising lawyer needs a relevant analysis of the role legal systems play in society in order to become a functional and adaptable

[8] The terminology used by Svensson (2007) differs from what is used in this article, even though there is no intended difference in meaning. Practical legal knowledge is the kind of knowledge that serves the profession, and academic legal knowledge is what serves scholarship.

[9] See, for example, Tuori 2002, 283: "The position of legal science as one of the specialised legal practices of modern law varies according to the legal culture in question. Generalising, we can express the task of legal science as follows: legal science, together with adjudication, bears the responsibility for the interpretation and systematisation of the legal order, safeguards the internal rationality of the law in terms of its consistency and coherence, and contributes to the self-limitation of the law."

lawyer, even more so if one considers that everyday work for a lawyer consists of more than merely applying norms on case-like situations. The distinction between professional and scholarly knowledge is thereby blurred, as knowledge about, for example, gender structures, at least indirectly becomes relevant in the everyday work of practising lawyers. This is a point supported within Critical Legal Studies. It is also present in the introductory text book (Blume 2016, 17) discussed below. Nevertheless, this kind of argumentation correlates with the notion that scholarly knowledge is something that assists practical legal knowledge, thereby earning its place in the curriculum.[10] It would of course be possible to claim the other position, namely that scholarly knowledge earns its position within legal theory given its intrinsic value. With this potential tension in mind, we will now look into the experiences of legal theory as a subject in legal education at the University of Gothenburg.

The Gothenburg Experience

The LLM programme offered at the Department of Law at the University of Gothenburg is a young legal education programme. It was preceded by a programme leading to a Master of Science in Business and Public Law, starting in 1977. In 1990, it was transformed into an LLM programme in line with the programmes that existed at established law faculties (Lund, Stockholm, and Uppsala). The subject legal theory (*rättsvetenskap*), introduced in 1994, is taught during the third semester of the LLM programme. Legal theory is also included in other courses, especially in the elective courses towards the end of the programme. We will focus on the third semester, as it is compulsory for all students in the programme. We, the authors of this article, have taught the subject for several years; Svensson mainly in the early years and Björling since 2011.

The introduction of the course Legal theory

The name *rättsvetenskap* can be associated with the general subject of law, as well as with the specific subject of legal theory (or scholarly studies of law). Historically it has had a somewhat derogative connotation. *Rättsvetenskap* was the term used for the subject of law when taught at faculties other than the law faculties at Uppsala, Lund, and Stockholm

[10] For the position that scholarly knowledge should serve the legal professions, see Lambertz 2002.

universities, or when law was studied within an economics or a social sciences programme. The term *rättsvetenskap* was in these programmes used for introductory courses in traditional disciplines of law, such as contract law and company law. Departments that taught law without being law faculties were named *Rättsvetenskapliga institutioner* (*Departments of "rättsvetenskap"*). At Gothenburg University, such a department was established when the School of Business was established in 1923.

The department changed its name to the Department of Law (*Juridiska institutionen*) in 1998. The School of Business had first offered a Law programme with a focus on business or administrative law for years (1977-1990); and subsequently an LLM programme comparable with the programme offered at law faculties (1991 onwards). However, the name of the subject and the course introduced in 1994 remained *Rättsvetenskap*, meaning legal theory and philosophy of the law, and more generally scholarly studies of law. It was a deliberate choice not to use the name common at law faculties, *allmän rätt* (referring to the German name *Allgemeine Rechstlehre*), due to the intended focus on scholarly studies (in Swedish *vetenskap*, similar to the German *wissenschaft*). The intention was not only to teach various legal theories, but also to teach how to think as a scholar, and to give the students tools for self-reflection and critical thinking. The choice of the term *rättsvetenskap* has sometimes been problematic due to its connotations to various meanings and contexts in Swedish (cf. Svensson 2016).

In 2014, the department of law was reorganised into seven education-driven subjects present in the LLM programme and in research at the department (Univeristy of Gothenburg 2012). Legal theory *(Rättsvetenskap)* was one of them, the others were criminal law, international law, private law, procedural law, public law, and tax law.

The scope and objectives of the subject

At the law department, the subject legal theory includes the theoretical and methodological study of the law and legal systems, as well as the interaction between the law, politics, ethics, economics, societies, and cultures. In contrast to the other six subjects, it is not limited to a certain part of the legal system. The objectives of the subject in the LLM programme are described as addressing questions about legal thinking and its terms, the nature of the law, and its relationship to other normative systems and to the

boundaries of law. Examples of questions that are asked are: What is law? How is it used and how is it created? What does law? How do we acquire knowledge about the law? From what does the law gain its legitimacy? Questions also include: What constitutes a source of law and how can these sources be interpreted and applied? Further areas of study include legal argumentation, legal methods, legal history, and the relationship between legal systems and differing legal cultures (Department of Law 2021).

The subject has been extended in terms of which theories are taught. It has also been broadened to perspectives emphasising the law understood as interpreted, used, and developed by different agents in specific circumstances. Therefore, the central questions are what these circumstances look like and what drives the processes of change within them. These questions include analyses of power from the perspective of structures and practices pertaining to gender, ethnicity, etc. These studies fall within fields such as law and politics, law and sociology, law and economics, and law and culture.

As follows from the inclusive description of legal theory in the Gothenburg LLM programme (University of Gothenburg 2020a), there is an academic openness and an interest in pushing the boundaries of how both the law and legal theory can be understood and enacted. What came to characterise both the education and the research at the department from the start was an interest in other academic disciplines and traditions. The open attitude and willingness to study law in a broader context have led to multi- and interdisciplinary collaboration in research projects and said collaboration has also influenced the teaching. The aim of the department of law today is explicitly to develop strong international and interdisciplinary research environments. It is expressed in the following way:

> The Department of Law has great potential to further develop and strengthen its already considerably strong participation in multidisciplinary and interdisciplinary research projects of great societal relevance.
>
> Societal challenges such as globalisation, climate change, economics, demography, the altered conditions for democracy, the altered role of science and knowledge, the return of religion, as well as new

> controversies, in terms of cultural identities and political ideologies, are major issues in the University's and Faculty's research strategies, as well as in the EU's Horizon 2020 research programme.
>
> Accordingly, a number of legal research projects at our department focus on questions related to these challenges. Furthermore, in order to meet societal challenges, we believe that research should have an integrative approach based on a wide variety of knowledge areas (University of Gothenburg 2020b).

The didactic ambition

The important question in relation to this article is how, and to what extent, the ambitious aspirations of the course described in the section above are implemented in the didactic reality of legal theory in the Gothenburg LLM programme?

When the course was introduced in 1994, the subject was not explicitly defined, but its aim was stated as being to give the student the ability to understand the role of the law and the legal system in society and an awareness of the interplay between the development of society and the formation of the legal system. The idea was to place the legal system within a broader context and study its interrelations with political, economic, social, and cultural factors. This enabled the possibility to understand how legal thinking, legislation, and the application of the law has been and is influenced by social conditions and various social and political trends. The teachers found it essential to have a basic knowledge of the history of ideas and contemporary theories of knowledge.[11] In short, in the introduction to a student essay anthology, it was expressed in the following way: the aim is to deepen the students' interest in the question of *why* instead of the question of *how*, which characterises legal education in general (Töllborg and Stendahl 1995).

The course was based on an evaluation of how the subject of *allmän rättslära* (a translation of the German *allgemeine rechtslehre*) in the mid-1990s at other law programmes in Sweden was taught. Courses in *allmän rättslära* used to be offered at the end of the law programme, and also as a separate subject and not integrated into courses in legal fields, such as private and public law. Considering at what point in the law programme the

[11] University of Gothenburg 1994.

students were most likely to be receptive to theoretical reflections on law and able to apply legal theories on various fields of law, the third semester was chosen as the most suitable. At that stage, the belief of the teachers was that the students had been acquainted with the law, but not shaped by the dominant way of teaching law, which focused on how to apply it. The ability to be reflective about the taken-for-granted (tacit) knowledge that underlies legal argumentation was presumed to be most apparent at this stage.

The purpose expressed in the syllabus gives a good idea of the subject and it is consistent with the definition that we still use. The course formed the main part of the third semester, 14 credits out of 20 in total (20 credits formed one semester at that time). It replaced four minor courses: Legal history, Sociology and law, Legal technique (*Rättsteknik*) and Law and society. Besides the knowledge content, it also explicitly aimed to train the students in practical skills such as writing an academic essay (one shorter and one longer), oral presentations, and seminar training for both defence and review.[12] The combined aim of giving students theoretical knowledge and training in practical skills built on a tradition introduced already in 1977 when the first law programme was established at the University of Gothenburg.

The ambition with the course legal theory in the Gothenburg law programme was from the start to move beyond what we in this article have named as tension between professional and scholarly knowledge. Theoretical and practical knowledge was seen as intertwined and "the law in context" was a functional way to meet various demands from the academic community, the legal community, and society. In order to become responsible decision-makers that are aware of the consequences of their actions, both theoretical and practical knowledge and skills were deemed necessary for the students to develop. We believe that these ambitions fit well with a strong emphasis on contemporary critical theories that reject the distinction between theory and practice, such as feminist legal studies and other contextual and social-constructivist theories.

The course has kept its basic focus and the same ideas since 1994, but has also undergone changes. Important changes occurred in 2004.[13] At that time, the legal theory course was extended and merged with a selection of

[12] University of Gothenburg 1994.
[13] University of Gothenburg 2003.

legal fields, in line with the overall approach that theory and practice are interrelated. Four perspectives formed the structure of the course, studied both as integrated with the others, as well as separately. These were legal theory and philosophy, the family and the individual, social security, and environmental perspectives. The perspectives aimed to contribute to the fulfilment of the overall objective: to clarify and make visible the various social functions of the legal system. The first perspective paid special attention to the interaction between the development of society and the legal system; the second to legal constructions with the task of managing and solving conflicts within the family and in relation to the surrounding society; the third to the relationship between the public and the individual regarding social security; and the fourth to the suitability of legal protections for human health, the environment, and future generations in terms of national and international environmental goals.

As studied separately, the perspectives included first the history of ideas, legal philosophy, contemporary legal theory, sociology and law, and law and economics; second family law including principles and values such as the best interests of children, care, equality, gender equality, and social security. Additionally, in the second perspective (the family and the individual), other legal subjects such as education law and legislation on treatment in special residential homes for young people were also included. The third perspective (social security) includes social insurance and subsidies together with legislation on compulsory care as well as health care. In addition, finally, in the fourth perspective (environmental) rules concerning impacts on the physical environment were addressed.

Required reading

Over the years, the course literature has comprised a combination of books, extracts from books, and articles collected in a compendium. Textbooks in legal theory typically present various perspectives or traditions separately and with a 'view from nowhere', they are not situated in a certain context. As an example, the book *Understanding Jurisprudence: Introduction to Legal Theory*, by Raymond Wacks (2017, used in 2018) contains presentations of natural law, classical legal positivism, modern legal positivism, law as interpretation, law and morality, legal realism, law and social theory, justice, rights, feminist and critical race theory, and critical legal theory. There are today, quite a number of books of this kind, but when the course

started, the situation was quite different in at least two respects: the literature was more limited and the literature had to be in Swedish.

The main textbook at that time (1994) was *Rätt, rättskällor och rättstillämpning* by Stig Strömholm (1994). In addition, *Den juridiska metodlärans utveckling under 1800-talet* by Walter Wilhelm (1991) was used. *Rätten i samhället* by Thomas Mathiesen (1985) has been used throughout the years, and so has *Att skriva juridik* by Ulf Jensen and Staffan Rylander (1995), and later also by Per-Henrik Lindholm (2006). Besides these legal textbooks, some history of ideas textbooks have also been used, such as *Från Platon till kommunismens fall* by Sven-Eric Liedman (1993) and Stellan Welin *Från nytta till rättigheter* (2003). In more recent years, books like *Juridisk metodlära* by Fredric Korling and Mauro Zamboni (2013), and Maria Nääv and Mauro Zamboni (2018), respectively, and *Genusrättsvetenskap* by Åsa Gunnarsson and Eva-Maria Svensson (2009), and Åsa Gunnarsson, Eva-Maria Svensson, Jannice Käll and Wanna Svedberg (2018), respectively, have been published and added to the literature list.

The articles and extracts from books have been voluminous and countless, and give the impression of a highly ambitious course with a great portion of general knowledge and cultural literacy. Even though the more traditional legal theories (visible in the book by Wacks) are present, the focus has been on contemporary and critical theories.

Assessment

The assessment is done through a portfolio examination with several assignments. The first couple of years the course was given, eleven assignments were evaluated. Besides essays (one minor PM and one more comprehensive), both oral and written presentations were part of the investigation and included seminars, including a special form of seminar called a bridge seminar combining theory and specific legislation, as well as ordinary written examinations. The last part of the integrated course required the students to write an essay where theoretical research questions were applied to an optional subject. It was explicitly stated that the essays could not be only positivist (i.e. about substantive law), and also not only about the sociology of law (in the narrow sense).[14] The students

[14] ”Uppsatsen får inte vara positivrättslig och inte heller rättssociologisk (i begreppets snävare mening)” (Töllborg and Stendahl 1995).

were encouraged to choose freely out of interest and to choose subjects that were not only legally relevant but also morally, politically, or culturally relevant. In addition, students were encouraged to use their experiences and other scholarly knowledge if possible. This also meant that the ideal of disinterest and pursued objectivity was rejected or at least challenged in this assessment task. A selection of the topics chosen during the period 1994 - 2001 shows a rich variety.[15]

- Analyses of legal theory traditions like the Historical School and the tradition connected to the thoughts of Machiavelli focusing on the relationship between power, politics and law, theoretical perspectives and theories on criminality used within criminal law, Scandinavian realism, Dworkin's interpretivist approach to law and morality, and Hegel's idealism. Most of them, if not all, were studied in a context that made them relevant in the present day.
- Analyses of legal methods, such as Ekelöf's teleological method.
- Analyses of legal education as a process of socialisation and ideals for judges.
- Analyses of equality before the law, e.g. the Sami population.
- Analyses of oppression sanctioned by the law, such as forced sterilisation.
- Analyses using feminist legal theories on topics like sex crimes, reproduction techniques, men's violence against women, prostitution, sexual harassment, the heterosexual norm, affirmative action.
- Analyses of ideals such as objectivity and the scientific-ness of the law and legal scholarship, and justice.
- Analyses using a variety of theories on topics like civil disobedience, the Truth and Reconciliation Commission of South Africa, children as perpetrators, taxes on criminal activities, animal rights, free choice in education, the duty to save other human beings, euthanasia, civil service, freedom of opinion and racism, the right to adoption for homosexual couples, selective abortion rights, professional secrecy for priests, and pharmaceutical patents.

[15] The topics listed here are the topics of the essays evaluated as the best each year from 1994 - 2001. The best essays were published in a yearly compendium at the Department during these years.

The essays were mostly written individually and they were generally ambitious and of high quality. Some of the essays were also published in the legal journal *Retfaerd – Nordisk Juridisk Tidskrift*.[16]

The assessment task, as described above, required a lot of time for the teachers. Therefore, after some years the demands on the students were lowered. Instead of individually written essays the students were expected to work together in pairs or threes on this task.

Reflections

The course spanning the entire third semester was, according to us, quite ambitious. The configuration of the course, however, required a lot of effort from the teachers. It also required extensive collaboration among the teachers (and between different subject groups). The teachers were organised as a team, giving lectures and seminars together, using their various skills to add value. The time for preparation was quite extensive, but at least some of the teachers appreciated the collaboration. In addition, it was time-consuming, in particular for the coordinator of the course, to organise the course and the teamwork. The system at the university, with its resource and time allocation, does not favour this way of teaching. On the other hand, the collaboration potentially led to the development of the teachers' skills.

The interconnection between legal theory on the one hand, and family, social, and environmental law on the other during the course, has changed over time. The syllabus was changed in 2007.[17] The four perspectives have been kept almost intact. However, it is apparent that the goal has been lowered. The ambition to break down the boundaries in a joint course both within legal theory as such and between different areas of substantive law has proven to demand more resources than available. Since the revision in 2007, the previous exam on legal theory in the early part of the course has been replaced by two, more limited essays (two PM, written at home, each over one day). The topics chosen by the teachers typically captured topical

[16] The published essays were Annika Sivertsson, Staten, samerna och demokratin, Nr 74, 1996, Magnus Rapp, Axel Hägerströms moral- och rättsfilosofi, Nr 79, 1997, Torbjörn Odlöw, Våldtäkt och grov misshandel – jämförelser mellan brottstyper, Nr 82, 1998, Jennie Söderberg, Barn som gärningsmän. Ett samtal om ansvar, Nr 86, 1999, Anna Holmgren, Positiv särbehandling – och demokrati, rättvisa och jämställdhet, Nr 92, 2001, Ingrid Brännare and Tomas Faxheden, Partnerskapslagen – ett steg framåt eller två tillbaka? Nr 96, 2002.
[17] University of Gothenburg 2007, third semester.

and controversial contemporary debates and the students were asked to apply various theories in their essays.

The syllabus has since been revised on 12 September 2008 and again on 21 June 2017. In the current syllabus, a new perspective has been added to the four previous ones, a sustainability perspective. This is included as a one-day event focusing on responsibility and sustainable development. As before, all perspectives are integrated with each other. Within the legal theory and philosophy perspective, according to the syllabus, the law, legal method, and the relationship between social development and the legal order are studied with starting points in legal history, legal philosophy, current legal theories, the sociology of law, and feminist or gender theory. These starting points are enriched with international and comparative outlooks in order to contextualise the Swedish legal tradition.

In sum, the main part of the course looks similar to the ambitions expressed in the syllabus from 1994, mentioned above. Nevertheless, there are some differences. The history of ideas focus has been narrowed down to legal history. Law and economics are not specifically mentioned, but feminist or gender theory is. What is explicitly added are the international and comparative outlooks. The goal of the course based on the present syllabus is to give the students a theoretical understanding of the law as an instrument for achieving certain goals, and of the legal constructs that have the task of managing and resolving conflicts that emerge within and between spheres of interests. Various interests are guided by collective and individual goals and include individuals, families, corporations, society, and future generations. Practical law and legal theories are related to questions of the rule of law, justice, and rights. The course is characterised by theoretical reflections on the law's role in society and its scholarly or academic presumptions, some of which can be addressed as assumed knowledge. Hence, the objective of moving beyond the tension between professional and scholarly knowledge is still an important feature within the course. Even though some minor changes have occurred, after 25 years, the ideals and ambitions are the same.

Overview and examples from across the Nordic Countries

In this section, we will give examples from different legal theory courses and from textbooks used at LLM programmes in the Nordic countries. The overview of different courses in legal theory is based on a survey done by

Miran Kakaee in 2018. It contains, among other things, frequently stated aims and content descriptions of the courses in legal theory. The material consists primarily of documentation from the mandatory courses in legal theory in the LLM programmes.[18] Whether legal theory is taught in one single course or several courses varies across the programmes. The semester in the programme in which these courses are offered also varies. Furthermore, the name of the courses and the sub-discipline as such varies.[19] The common denominator for the courses included in our study is that they are not courses in substantive legal sub-disciplines (such as, civil law, criminal law, or public law), and the explicit aim of the courses is to cover theoretical and methodological perspectives on what the law is and how it functions in society. Since the courses in legal theory vary when it comes to content, length and in which semester of the programme they are taught, there are challenges when comparing them. Syllabuses, schedules, and required reading do not themselves say very much about the learning processes and outcomes for the law students across the Nordic countries. One should add that an ambitious curriculum does not automatically equal ambitious students, competent teachers or guarantee real learning. Furthermore, in order to get the whole picture, the elective courses and the theoretical perspectives, which may be a part of other more substantive law-oriented courses, should also be included in the study, alongside the specific mandatory courses in legal theory. What this overview offers are a few examples of how the potential tension between professional and scholarly knowledge is represented in syllabuses and textbooks.

Syllabuses

Material collected in the survey concerning legal theory courses[20] shows that courses in this subject in the law programmes in the Nordic countries

[18] We have collected material from LLM programs at universities in the following cities. Sweden: Gothenburg, Lund, Karlstad, Stockholm, Uppsala, Umeå and Örebro; Finland: Helsingfors, Rovaniemi, Åbo. Norway: Bergen, Olso, Tromsö; Denmark: Copenhagen, Odense, Århus; Iceland: Reykjavik.

[19] Examples in Sweden: Lund: Allmän rättslära, Uppsala: Rättsvetenskap, Umeå: Rättens historia, teori och metod. Examples in Norway: Tromsö: Juridisk metode och etikk, Metode och perpektivfaget. Olso: Examen facultatum rettsvetenskaplig variant (Rettsflosofi, Rettsteori och Språk). Examples in Denmark: Copenhagen: Retssystemet og juridisk metode. Odense: Juridisk metode, Metode, argumentation og videnskapsteorie, Retshistorie, retsfilosofi og retssociologi. Examples in Finland: Helsingsfors: Oikeusteorian (Legal theory). Rovaniemi: Legal theory. Turku: Yleinen oikeustiede (allmän rättslära). And finally, Iceland, Reykavik: Methodology I, Methodology II.

[20] Presented in Annex 1 in this special issue. Quotations are translated into English by the authors, except for the Icelandic syllabuses, since they are originally written in English.

comprise course content that promises to provide the students with practical knowledge that will prepare them for legal practice, especially within the court system, *and* with scholarly knowledge concerning the legal system and its role in society.

At Lund University, the students are expected to learn "methods for interpretation and application" *and* "theories about the relationship between law and gender, and the relationship between law and sustainable development".[21] At Stockholm University, the students are expected to have a "good ability to apply various legal methods in their analysis of legal problems" *and* also expected to be able to "explain in depth how globalisation affects national laws and have a very good ability to apply their knowledge of this in legal theory and legal philosophy analyses, and be able to analyse in depth and independently account for the relationship between law and politics, economics, and society".[22] At Uppsala University, the students are expected to "use and apply previously acquired legal knowledge in a historically comparative and legal theory context."[23] The course content of the main course in legal theory at the Department of Law at Umeå University is formulated in a more academic way focusing on "in-depth knowledge of various theories about what characterises the Swedish and European legal tradition" and an "in-depth ability to problematise law and the legal role from various legal history and legal philosophy perspectives". Furthermore, instead of learning how to apply different methods to concrete legal problems as in the Lund and Stockholm (and also Gothenburg) courses, the objective for students in the Umeå University course is to have an in-depth ability to orally and in writing be able to "argue for different theoretical approaches to the functioning of law and the rule of law in society".[24] Nevertheless, all these examples illustrate that there is a wide range of perspectives included in these courses in Legal Theory.

At the University of Helsinki, the course in legal theory includes an overview of the structure, sources, concepts, principles, and rationality of modern law, as well as critical thinking and the production of scholarly knowledge.[25] At the University of Copenhagen, the course in legal theory in

[21] Lund University 2018.
[22] Stockholm University 2018.
[23] Uppsala University 2018.
[24] Umeå University 2018.
[25] University of Helsinki, 2018.

the first semester is summarised as follows: "The topic focuses on how the legal system is structured, what roles and functions are exercised by lawyers, whether there is a link between law and justice, how lawyers find out what is applicable law, what sources of law (including legal provisions and decisions), as in this context, are given importance, and how the lawyer, through interpretation, finds out the legal meaning of the sources of law".[26] In the fifth semester, the students are given a course that "aims to provide students with knowledge of philosophical and sociological theories and thus an insight into how jurisprudence interacts with politics and morality".[27] In this way, the LLM programme as a whole includes both professional and scholarly knowledge, albeit offered in different courses.

The Norwegian LLM programmes include the mandatory courses "Examen facultatum" and "Examen philosoficum". [28] The "Examen philosoficum" is a general course in philosophy and the history of scholarly knowledge that could be said to be interdisciplinary in character (shared between the faculties of humanities, social sciences, and didactics). The Examen facultatum is specific for different disciplines and, in this course, legal knowledge that is more professionally oriented is taught.[29]

At Reykjavik University, the division between academic relevance and relevance for legal professions in the course content is similar to that in the University of Copenhagen courses. The first mandatory course in legal theory, "Methodology I" focuses on the "principal characteristics of the Icelandic legal system", how to "understand the various types of legal sources, and their importance and interrelation in solving practical problems". Furthermore, the students are expected to "know the materials used for legal interpretation", "know the methods of legal interpretation [...] and perspectives followed in the interpretation [...] of law."[30] In the second course "Methodology II", the students are supposed to gain a "basic

[26] University of Copenhagen 2018a.
[27] University of Copenhagen 2018b.
[28] In Oslo the main parts of Examen facultatum concern "practical reason", "theory of legitimacy", and "ethical elements expressed in of truth and doctrine of truth". The "Examen philosophicum" "unites the themes of philosophy and science history by highlighting historical contributions that are particularly suited to illuminating the philosophical background of scientific thought." Oslo University 2018a, Oslo university 2018b.
[29] University of Tromso 2018.
[30] Reykjavik University 2018a.

knowledge of main legal theories and be able to apply them and get training in reading and discussing legal philosophy".[31]

Social problems/issues are included within the courses in legal theory across the Nordic LLM programmes. Most frequently represented are societal problems/challenges concerning 1) a legitimate legal order, 2) philosophical questions on justice/ethics/morals, 3) questions of power imbalances (discrimination), including questions of, for example, gender, class, nationality, and 4) questions of sustainability (environmental and social). However, the marked presence of "feminist studies" or a specific focus on "gender", or "sustainability" seem only to be found in syllabuses from Sweden.

Required Reading

In this section, we focus on a few examples from the required reading used in legal education in Sweden, *Juridisk metodlära* by Fredric Korling and Mauro Zamboni (2013), and Maria Nääv and Mauro Zamboni (2018) respectively, in Norway, *Rettsfilosofi* by Svein Eng (2007) and in Denmark *Retssystemet og juridisk metode* by Peter Blume (2016). *Juridisk metodlära* has become widely used in Swedish courses in legal theory. It is included in legal theory courses at Umeå, Gothenburg, Stockholm, Karlstad, and Lund universities. Other than *Juridisk metodlära,* we have not found any textbooks that are used in several Nordic LLM programmes.[32]

The textbook *Juridisk metodlära* has the clear objective of focusing on professional knowledge, although it is equally true that professional lawyers do use a multitude of methods in their everyday work. The editors of the book (Maria Nääv and Mauro Zamboni) set the tone by pondering on what answers a practising lawyer might have to questions of legal method (Nääv and Zamboni 2018, 17). The introduction is written in dialogue with the idea that it is not enough to just talk about the legal method (*den juridiska metoden*), since there are now a range of methods, for example critical-race theory is mentioned as a methodology that all students should know about and understand how to apply. Even though the book's overarching purpose is directed toward legal practice in a professional setting, each chapter can

[31] Reykjavik University 2018b.

[32] There are a few titles that are used in two or three universities such as Raymond Wack's *Understanding jurisprudence* and Pauline Westerman's *Rätten som gåta* in Sweden and Karlo Tuori's *Kriittinen oikeuspositivismi* in Finland.

be said to include scholarly knowledge as well, to varying extents. For example, the chapter on institutional theory and method, written by Antonina Bakardjieva Engelbrekt, highlights that institutionalism is a multidisciplinary field where research on the law, economics, and political science blend into one another (Bakardjieva 2018, 241). The discourse is here clearly more inclined towards legal scholarship and less towards the practical tasks of practicing lawyers.

Furthermore, the chapter on legal sociology, written by Håkan Hydén, states that legal sociology is about the relationship between the law (on the one hand) and society (on the other hand). It is an empirical science, Hydén says, and not normative, such as the legal dogmatic method used by practising lawyers (Hydén 2018, 209). In this regard, the chapter maintains the distinction between legal dogmatics as the standard "internal" method for legal practitioners and the socio-legal method studied as something external. To some extent, this contradicts the purpose of the book that states, as just mentioned, that all methods represented are "internal" to professional lawyers.

The chapter on feminist theory and method, written by one of the authors of this article, openly addresses the difference between using the perspective of feminist studies of law (*genusrättsvetenskap*) as a method for legal scholarship and/or as a tool for professional lawyers (Svensson, 2018, 276). Svensson (2018, 282) argues that a distinction between the methods is relevant to make. The knowledge is used for different purposes and various arenas, the space for argumentation differs and the target group for the knowledge is not the same. As a perspective for the profession, feminist studies of law can be used to raise awareness of the fact that despite explicit obligations in national and international legislation, as well as in soft law instruments and policies to eliminate discriminatory patterns and practices, such practices may persist on a systemic level. Such a perspective can also be used to counteract rules that are discriminatory or have a discriminatory effect through more principle-based, and to a certain extent, human rights-based argumentation. Furthermore, the role is different for a lawyer with a specific professional task and a researcher seeking answers to a research question (Svensson 2018, 285). However, this does not mean that the knowledge elaborated in legal scholarship is not relevant in a professional context. On the contrary, the practising lawyer is situated in a context of

power structures that directly and indirectly find their way into the legal system. Making the power structures present within the legal professions visible becomes a concrete tool in the everyday work of practising lawyers as well (Svensson 2018, 286).

The Norwegian textbook *Rettsfilosofi* (Philosophy of law), which is part of the required reading for "Examen facultatum" in Oslo, is written by Svein Eng and starts by (Eng 2007, 1) highlighting the three most important questions addressed by the book: 1) What are the fundamental elements of law? 2) What possibilities are there to assess the correctness and the legitimacy of law? And 3), what constitutes law as a field of knowledge? Eng (2007, 2) continues to discuss the threefold merits of legal philosophy. First, legal philosophy is about providing tools to analyse and systematise the law. The second function concerns the fact that practising lawyers in many situations have to make general assessments with a significant level of discretion left to the lawyer. This entails a demand for the lawyer to be able to understand the underlying logic, norms, and principles of the legal system. In such situations, legal philosophy can provide guidance (Eng 2007, 3). The third function is to understand the distinctive nature of the law as a specific field and as an academic field (*jusens egenart som fag og viteskap*) (Eng 2007, 3). The tension between the professional and scholarly is visible here in the sense that the two first functions are clearly formulated with regard to their practical/professional relevance, but the third function is formulated as providing knowledge for legal scholarship.

Peter Blume's book *Retssystemet og juridisk metode*, used in the first course in legal theory at the University of Copenhagen, just like *Juridisk metodlära* is directed towards knowledge that is useful for the legal professions. The aim of the book is to "provide knowledge and understanding of how the judicial system is organised, what functions and roles lawyers have and perform, what procedures and methods the lawyer uses to answer legal questions, and what general considerations the lawyer must take into account when answering these questions" (Blume 2016, 15). In contrast to *Juridisk metodlära*, this is not a multitude of methods. Blume notes that the book does not contain any references to other scholars in the field of legal theory. However, this is not because the content is original, but mainly because the book merely explains the common (intersubjective) fundamental elements of the law and the court system (Blume 2016, 16).

Blume also claims that "[t]he objective of the methodology is thus to enable the lawyer to give a correct answer to legal questions by clarifying what normative factors can be taken into account when such an answer is to be given. The purpose is not to produce the guiding rules in a particular area of law, since this task is carried out by legal dogmatics, in disciplines such as contract law and criminal law" (Blume 2016, 17). So far, the argument could be made that Blume is all on the professional utility side of teaching legal theory stating that even legal dogmatics are too academic for professionals, they only need to know about the legal method (*juridisk metode*). However, Blume (2016, 17) also points out that the lawyer needs much more than *juridisk metode* in order to perform the social function of a lawyer, but *juridisk metode* is the primary building block in this endeavour. In this way, Blume opens the way for other relevant fields of knowledge and, as mentioned above, such fields of knowledge are presented in another course in the LLM programme at the University of Copenhagen.

Juridisk metodlära and *Retssystemet og juridisk metod* deal with the concept of how to understand legal methodology (*metodlära*) whereas *Rettsfilosofi* is more focused on the question of "what is law?" Nevertheless, the lion's share of *Rettsfilosofi* deals with how to understand and define legal sources. All three textbooks therefore could be said to have the aim of providing knowledge that is relevant from the perspective of legal professions. However, their takes on legal methodology for the subject of legal theory are quite different. The Swedish book offers a multitude of methods for understanding and applying the law in professional settings. In order to present many of these methods, there is necessarily also an obvious scholarly dimension to the text. The Norwegian book has a more homogeneous approach but is still academic in character. The Danish book is hands-on and direct in describing the legal method (*juridisk metode*) and the least problematising regarding what knowledge is necessary for legal professions. On the other hand, the Danish book also admits that a practicing lawyer needs additional skills beyond what the book offers.

Discussion

The analysis of legal theory courses in this article shows that their content is diverse. The courses focus on theories on the nature of law, methods for interpreting and applying legal norms, and socio-legal and critical

perspectives.[33] The content of the courses can be studied and understood from the perspective of the legal profession and from academic perspectives. However, the syllabuses do not necessarily indicate why different parts of legal theory are an important subject and therefore, they do not assist in easing the potential tension between practical and scholarly knowledge. This also varies over time. In the past, and still to some extent, gender perspectives on law, for example, have been regarded as something different to legal theory.[34] Today, gender perspectives on law are common within legal scholarship, but still what could be called a revolutionary position rather than established within practical legal knowledge. Nevertheless, looking at the present courses in legal theory across the Nordic countries, we also find that theories and methods for understanding law through gender studies are established in all the Nordic countries.[35] In Sweden, the government has declared anew that LLM programmes must include teaching students about the structural problems arising from men's violence against women.[36] Yet, the fact that these learning objectives for LLM programmes were present in 1999-2007, then taken away and later reinstated in 2017, indicates that these questions still lack a broad parliamentary consensus.[37]

Regardless, even if gender studies and other critical theories are now part of the legal theory syllabus, the question *Why are they part of legal theory?* remains. The remaining tension concerns what comes first: relevance for legal professions or development of scholarly knowledge. That is, there is a difference between considering that power, gender, and sustainability are legitimate subjects within legal theory because they provide tools for

[33] For example, as mentioned above for the University of Gothenburg and Lund University, the course "Ret, Moral og Politik" [Law, morality and politics] at the University of Copenhagen or "Rethistorie, retsfilosofie og retssociologi" [Legal history, philosophy of law and legal sociology] at the University of Southern Denmark in Odense and "Retssociologi" [Legal sociology] at Aarhus University. In Norway, see for example the courses of "Rettssociologi" [Legal sociology] and "Rettsfilosofie" [Philosophy of law], choosing one of them is mandatory, at the University of Tromsø and the University of Oslo.

[34] Sandgren (2004/5) writes under the heading extra-legal theories (*utom-rättsliga teorier*): "A closely allied approach is to apply a theory that is used as the basis for the study of law, such as critical theory, feminist theory, theories of ethnicity and discrimination, structuralism, and post-structuralism, etc." [our translation]. Concerning this issue, see Gustafsson (2006).

[35] This is made clear by the Swedish textbook *Juridisk metodlära* where both gender studies and critical race studies are regarded as part of legal methodology.

[36] Annex 2 to the Higher Education Ordinance (1993:100). For a background, see Regeringens skrivelse 2016/17, 148.

[37] The learning objectives was introduced during a Social Democrats regime, taken away by a right-wing majority coalition and reintroduced during a minority coalition between the Social Democrats and the Green Party.

lawyers than considering that they are legitimate because they emanate from new scholarly knowledge (or new social problems). Here, we return to the question posed earlier: should scholarly knowledge be seen as something that assists practical legal knowledge, or vice versa? One could argue that even small tendencies towards one or the other side of the professional-scholarly spectrum are reinforced and strengthened by what in didactic theory is called constructive alignment: course content, learning objectives, and assessment tasks should align in order to create intended learning outcomes for the students. Hence, teaching and reading outside of this triangle of constructive alignment entails a greater risk of falling outside the bounds of student interest and motivation. This means that a course whose syllabus has content of both a professional and scholarly character still will favour one side or the other and be regarded as only academic or only relevant for legal professions, if for example the examination of the course is focused on one side or the other.

It is easy to present arguments for both professional and academic ideals for legal theory. An obvious starting point is that LLM programmes are in fact professional qualifications and the focus on usefulness for future practice is therefore evident. On the other hand, it is equally evident that the LLM programme is taught in an academic setting by teachers active within legal scholarship. Legal theory may have connections to the student's future career as a lawyer, but the subject is primarily something that is required to get a degree from a university and is therefore not directly linked to the needs of future employers. Since scholarly knowledge often is critical in nature, one could even say that an academic focus in legal theory as a subject in legal education is subversive for students' future legal professions. Hence, teaching and examination in legal theory could sometimes be directly useful for future employers, and sometimes the opposite.

Furthermore, since society and legal professions are constantly changing, a too narrow functional approach always has the risk of becoming obsolete. In that regard, a scholarly approach could be said to reclaim its functional position, since it offers knowledge not bound by legal professions as they are situated at present. But then again, this last argument, once again, makes professional use the guiding principle for the content of legal theory as a subject in legal education.

In our opinion, the possible conflicts arising from this kind of reasoning are at the same time easy and difficult to solve. They are easy in the sense that an obvious solution to the problem is to move beyond "either or" reasoning and simply accept that legal theory can be *both* oriented towards professional knowledge and scholarly knowledge, and that legal theory could *both* legitimise the legal order as well as criticise it, and so forth.

But nevertheless, and this is where solutions become difficult, in order to navigate the complex field of legal theory, students need to be able to reflect on the underlying complexity and multitude of layers within the field. This is where the subject becomes challenging, as a polycentric starting point for legal theory is hard to put into didactic realities.

It is challenging enough for law students to grasp basic principles within different fields of law. To also ask them to be able to assess what might be "taken-for-granted" (tacit) knowledge that underlies their legal argumentation (constructive as well as subversive) is to require a lot. However, we think it is necessary to prepare them for different future legal professions, all requiring knowledge about the relationship between law and society (this includes learning about theories that criticise the use of categorisations where "law" is held apart from "society"). To put it bluntly, in order to move beyond the tension between the professional and the scholarly and beyond coherent starting points for the subject, it is necessary to elaborate meta-reflective skills from the students. These skills will need time and effort and should be an essential part of teaching legal theory. It is also shown from the University of Gothenburg case study that such meta-reflective and overarching ambitions are burdensome for the teachers involved.

The materials provided to the students do not always assist in this endeavour since there are many statements in both syllabuses and textbooks (even within the subject of legal theory) that aim to offer unified common ground. In this regard, we argue that voices that try to gather the subject under a common denominator are counterproductive, since positions that try to gather the subject under a coherent definition risk, in a sense, giving false hope of an easy way out of an inherently complex situation. Such statements may, according to our view, create obstacles for the students rather than assistance.

The example from the University of Gothenburg (as well as outlooks to other LLM programmes) shows that it is indeed possible to teach legal theory as a polycentric field, but it involves an added, challenging layer since there will be no unified presumptions or assumed knowledge that can be taken as a common starting point for the studies.

Furthermore, it is evident when looking at syllabuses that all LLM programmes nowadays intend to teach legal theory in this complex and polycentric fashion. The multitude of theoretical and methodological perspectives promises adaptable content for the subject of legal theory, which in our view is good and nourishing.

This article has presented in-depth experiences from teaching legal theory at the University of Gothenburg, as well as a brief overview of other LLM programmes. We welcome similar contributions from other law departments in order to share best practices for teaching legal theory in Nordic LLM programmes.

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