*Nordic Journal on Law and Society*
Vol. 07, no. 02 (2024), pp. 1-20
ISSN (online): 2002-7788
https://doi.org/10.36368/njolas.v i02.486

NJOLAS

# In search of legal barriers to Roma's right to education:

## Mitigating epistemic injustice through Buber's distinction between I-Thou and I-It

Erik Björling[1]

*Department of Law, University of Gothenburg*

The department of law at University of Gothenburg has for a number of years worked in tandem with local non-profit organizations (focusing on such things as social work, minority rights, asylum rights, and labor law.) Collaboration has, for example, been implemented within law school clinics where students receive valuable experience and non-profit organizations benefit from the legal support provided by law students. In addition, a group of researchers at the department has explored the possibilities of mutually beneficial collaborations with civil society non-profit organizations. This paper explores the possibilities of research within the triad of students, researchers, and non-profit organizations, based on the experience of working with a Roma women's organization, Trajosko Drom, in Gothenburg, Sweden. The paper argues that Martin Buber's distinction between "I-Thou" and "I-It" (Buber 1958) may be fruitful when assessing the reciprocal dimension of such a collaboration and may mitigate the risk of what Miranda Fricker describes as "epistemic injustice" (Fricker 2007). The concrete context of this paper concerns barriers to education for Roma minorities in Sweden. These barriers are visible in materials well established within legal scholarship. However, without the benefit of a minority perspective, there is a risk of not noticing them. The paper's main argument is that a collaboration with a local NGO that creates possibilities for the genuine and ontologically constitutive I-Thou relationships reduces the risk of marginalizing and silencing of voices within legal scholarship. However, in order to create possibilities for I-Thou, there is a need, first, of a mutual beneficial I-It relationship. Research collaborations with local NGO's set up in this manner reduce the risk of epistemic injustice.
**Keywords:** Roma right to education, Epistemic injustice, Martin Buber.

## Introduction

The aim of this paper is to provide a theoretical and methodological understanding of how close research collaborations between academic legal researchers and local non-governmental organizations (NGO's) can elaborate

[1] Email: erik.bjorling@law.gu.se

new possibilities for formulation of pressing legal problems. It is suggested that a collaboration that consists of both, what Martin Buber calls, relations of I-It and I-Thou, creates such opportunities. Problems that arise due to "epistemic injustice" can be mitigated by assessing academic and civil society collaborations through the concepts of I-It and I-Thou. That is, this assessment method engages with majority society's risk of overlooking crucial issues and perspectives visible only to the minority, as well as accessing situated knowledge accessible only to the minority. In this paper I give two short examples of this in relation to barriers to education within the Swedish education legislation and asymmetries within the Roma inclusion strategy in EU and Sweden. I will return to these issues shortly. However, in order to make the general point concerning research collaborations, I first focus on a specific joint project on access to education carried out by a law department together with a local Roma NGO. This paper thus discusses research collaborations *and* the issue of Roma's right to education, although the latter is primarily used to make the point about the dynamics of collaboration. So, the paper will dive into the questions of the right to education for Roma minorities but this is done with the ambition that the main point will become clearer if I do not just talk the talk, but also, at least to certain degree, walk the walk.

It is fundamental that children learn to read, write, count, and get basic tools to understand themselves and their world. Depriving children of these opportunities diminishes the conditions for a dignified adult life and undermines the foundations of a functioning democracy. Almost all children in Sweden have a statutory right to education and their guardians have an obligation to ensure that their children attend school.[2] This right and corresponding guardian obligation are enforced by the statutory imposition of compulsory schooling.[3] Nevertheless, in practice, far from all children in Sweden get a primary and secondary school education. Statistics from 2022 (Skolverket 2023, 4) show that 15 percent, approximately 17,900 students, of that year's cohort lacked eligibility to start a secondary school program. As well, fairly recent investigations (Skolinspektionen 2016) indicate considerable problems with school absences. There are many reasons why children do not complete their compulsory education. These can be summarized in broad categories connected to school, home/family and individual factors (Skolverket 2010). However, children from the Roma minority are particularly vulnerable. Roma children have long experienced limited, discriminatory access to education (Skolverket 1999), (Skolverket 2007). The reasons for this can be found both in widespread antiziganism and difficult socio-economic conditions. Investigations conducted by public authorities and other actors show that Roma minorities in Sweden are denied full access to social and economic rights. (SOU 2010:55, 35),

[2] "Almost" is put here to highlight that there are questions whether persons that are so called "EU migrants" have the right to education. See Harris et al. (2017, 247-249).
[3] Skollag (2010:800) (The Education Act) chapter 7 § 2.

(SOU 2016:44, 20-21). In sum, Roma minorities in Sweden experience both social and economic inequality and an absence of power and influence (SOU 2010:55, 205). This has been acknowledged by the Swedish government as an unaddressed domestic situation caused by racist structures affecting the national Roma minority of around 50,000 people (SOU 2010:55, 205), (DS 2014:8), (SOU 2016:44).

Roma communities in Sweden are diverse and school results are likely to vary between different Roma students and across different municipalities (Regeringens skrivelse 2011/12:56, 30). Historically, Swedish authorities speak of five different groups of Roma, a classification based mainly on Roma immigration patterns to Sweden; Swedish, Finnish, and non-Nordic Roma as well as travelers and newly arrived migrants (SOU 2010:55, 114). The Swedish Roma include Kelderash-speaking but also Lovari- and Tjurari-speaking Roma who came to Sweden at the end of the 19th century from Russia. The Finnish Roma, Kaale, arrived in Sweden in 16th century and were then deported to the region that is now Finland. Many Kaaleros moved to Sweden in the 1960s following the introduction of Nordic passport freedom in 1954. The group who call themselves Travelers (Resande or Resandefolket) have various narratives about their history. Some identify as descended from the first Roma migration to Sweden in the 16th century. Other groups of travelers believe that they are descended from German and French Swedish army soldiers from 17th century wars, from Russian prisoners of war or from ethnic Swedes who, for various reasons, lived a traveling life in the 19th century. Within the group of non-Nordic Roma many are Lovarite-speaking Roma who came to Sweden from Poland, Hungary and Czechoslovakia during the 1960s–1970s. This also includes Roma from other groups such as Kelderash, Rumungri and Tjurara, who are mainly from Eastern Europe. Newly arrived Roma are predominantly Roma asylum seekers and refugees who have come to Sweden from the former Yugoslavia and Kosovo in the 1990s and belonging to groups such as Arli and Gurbeti (SOU 2010:55, 114-115). During the 2010s, there was also an increasing amount of EU migrants, without an EU right to reside, many of them Roma with school-age children (Harris et al. 2017, 248).

There is no overall picture of how education results look for Roma youth in comparison with other youth groups. However, reports from both municipalities and Roma representatives give clear indications that the conditions within and surrounding school, as well as school results are not satisfactory (Regeringens skrivelse 2011/12:56, 30), (Skolverket 1999), (Skolverket 2007).

For the last decade Sweden has had a national strategy for Roma inclusion (Regeringens skrivelse 2011/12:56), based on an EU framework. Together with the rights to work, to health and to housing, education is identified as a key requirement for Roma inclusion (Regeringens skrivelse 2011/12:56, 7).

Education is also connected to Sweden's commitment to the United Nations Declaration of Human Rights.[4] The Swedish government states the following.

> In order for Sweden to live up to its commitments under the United Nations Universal Declaration of Human Rights and a number of other international conventions and documents on the right to education, which is also expressed in Chapter 2, Section 18 of Regeringsformen, and in Chapter 7, sections 2 and 3 of the Schools Act (2010: 800), measures must be taken to improve the conditions for Roma children to complete primary and secondary school. Roma children have the same schooling and right to education as everyone else has (Regeringens skrivelse 2011/12:56).[5]

As mentioned, the national inclusion strategy takes as a point of departure that Roma minorities across Europe do not get equal access to education. This is due to historical and present discrimination, as well as socio-economic vulnerability (European Commission 2011, 2). On the other hand, there are also scholars (Goodwin et al. 2013), (Rostas 2019, 147-150) who claim that EU's focus on socio-economic improvement is more about securing economic growth by transitioning Roma communities into the majority society than about respecting minority rights and focusing on anti-discrimination. Another line of critique claims that the common European strategy obscures the varied contexts and life conditions for different Roma communities in Europe (Van Baar 2019, 154). Such strategy fails to take account of the diversity of the Roma experience.

The Swedish inclusion model (SOU 2010:55, 204) claims to be a rights-focused approach that avoids treating Roma minorities as "the other" or as objects of state's paternalism. The rights-based approach entails that lack of access to education for Roma minorities should be tackled with legal tools. However, to assess to what extent there are legal tools and legal barriers connected to the Roma communities' more limited access to education is not an easy task. There are no, or close to no, formal laws that create direct barriers (Harris et al. 2017, 230-267). The Swedish model of right to education (and a corresponding duty to attend school) applies also to Roma.[6] The inclusion strategy (Regeringens skrivelse 2011/12:56, 37) has also created a specialized program focusing on educating persons with Roma language or cultural competence to become "bridge builders" at schools or social services. Furthermore, if you belong to one of the national minorities (Roma is one of them), you have rights to mother tongue education that exceeds that of "just" having another language as mother tongue. This means that there is no requirement for you to speak the language at home or have any prior knowledge of it and the right applies also in situation

4 Article 26 of UNs Universal Declaration of Human Rights.
5 Translation of the author.
6 Skollag (2010:800) (The Education act) chapter 7 chap. § 2.

where there is only one child enrolled at the school. If there is no available teacher, the school should make remote learning available.[7]

Certainly, the inclusion strategy has resulted in many successful bridge building efforts in schools and municipalities in several Swedish cities (Länsstyrelsen Stockholm 2022, 21). However, the half time evaluation of the inclusion strategy indicates that more efforts are needed. The authority responsible for monitoring the inclusion strategy notes that the strategy has lost speed and is in need of more long-term financing (Länsstyrelsen Stockholm 2022, 2). The government, on the other hand, concludes that the renewed framework on Roma inclusion from EU-level, mentioned above, for the period 2020-2030, does not give rise to any necessary legislative changes or budgetary consequences (Regeringskansliet, Kulturdepartementet, 2021, 1).

In sum, at present there are few or formal barriers to Roma minorities' realization of the right to education. Still, evaluation concerning the first ten years of the inclusion strategy shows that progress has been slow. The question to examine, then, is whether there are practical legal barriers to Roma's realization of a right to education, barriers that are more elusive to find and indirect. The research collaboration on which I focus in this paper has led to the revelation of such problems, and we will get back to examples of this in section 5.

The collaboration will be developed in section 2. In section 3, I unpack challenges such collaborations face, with help of concepts from Miranda Flicker. In section 4. I look at how the analysis Buber establishes offers promise for resolution of such challenges. In section 5, as mentioned, I give two examples of legal research problems that have been made visible through the collaboration. These problems highlight barriers to education constituted by a legal infrastructure that at first glance may not seem to be connected to the question of "right to education". Section 6 concludes, by employing Buber's theoretical framework, that university researcher collaboration with a local NGO creates possibilities for the genuine and ontologically constitutive I-Thou, and, reduces the risk of marginalizing and silencing within legal scholarship of the voices that the NGO represents.

## The collaboration

The narrative of this paper is grounded in a project between students and researchers at the department of law, Gothenburg University and the Roma women's organisation, Trajosko Drom. The project's goal is to empower the Roma minority and fight discrimination. The collaboration, which started in 2018, focuses on legal issues in the broadest sense; it has no specific focus on any field of law. The project eventually, in 2022, developed into a successful joint

7 Skollag (2010:800) (The Education act) chapter 10 chap. § 7. Lag (2009:724) om nationella minoriteter och minoritetsspråk (The Act on National Minorities and Minority Languages) § 2.

grant application[8] funding salaries for employees at Trajosko Drom, researchers at the law department (20 percent of a full-time position) during two years. The grant is focused on legal structuring of relationships between schools, social services and parents of students in the particular schools, and connected to these issues, on the legal framework for financing work with Roma inclusion on local level in Sweden. Focus on educational issues became relevant in the project due to the stories that Trajosko Drom received from the local Roma community. In sum, the project seeks to identify barriers and thus assist in limiting discrimination, to empower Roma youth, women and children, and to support capacity-building by Roma civil society, especially with regard to access to education. Law students involved in the project write their master essays in collaboration with Trajosko Drom. The project also includes 'learning seminars' to which local Roma community members and relevant municipal policy makers are invited. Trajosko Drom's main task in the project, apart from sharing its knowledge about the local Roma community, is to host the students and facilitate connections relevant to the project and the students' research. Each participant group, students, researchers and the NGO, has distinctive objectives for the project, all in aid of the larger goal of identifying and limiting discrimination. The students, hopefully, pass the course where collaboration creates an environment assisting them in finding relevant topics for essays. The researchers receive funding and produce research, also gaining from the topics and ideas that students generate. The NGO receives funding and increases its legal knowledge through input of students and researchers. Knowledge is also spread to the local Roma community and to local policy makers, particularly by way of learning seminars. During the first year, 3 students were engaged for their Master thesis, and during the second year, 2 students were involved. In the second year, an additional 88 students were engaged in advanced courses in the law program as well as eight students from the social work programme. The students' work has involved in-depth legal investigations relevant to municipal administration for school and family contacts, as well as concrete folders and advice for the Roma community. Representatives from Trajosko Drom have lectured in the law department as part of the advanced courses. During the second year two Learning seminars have been held for key policy makers on a local and national level and at the end of the projects current financing two research articles where finished and new applications for funding were sent in. The student collaboration on master thesis level and advanced courses continues.

## Research challenges

Unavoidably, research collaborations aimed at social justice change can have rocky paths, at times. The project with Trajosko Drom is no exception to this. In

8 Funds from EU's "Rights, Equality and Citizenship Programme".

this section I discuss some of these challenges in reference to Fricker's notion of "epistemic injustice" (Fricker 2007).

More traditional critiques of collaboration between university researchers and community actors often claim that such collaborations imperil the objectivity of research, that distance between the researcher and research object is imperative (Brydon-Miller 2008, 203). However, the idea of legal knowledge as contingent and shaped by context is well developed by critical legal theory and, especially, Nordic feminist legal theory.[9] Research cannot be "neutral"; it is always shaped by its contexts. Distanced approaches may have different methods than the collaboration described here, but they are not more "objective". It is simply another context (of course, much doctrinal research also openly displays its context). Nevertheless, this is not to be understood as a position of "anything goes" regarding research settings or research entry values. On the contrary, I simply argue that all research needs to take seriously its starting position and situated context, and to be explicit about these

An evident challenge is to manage power asymmetries that may be embedded into the research context. Such power differentials can emanate from structural injustices due to ethnicity, class, gender, sexual orientation etc. Miranda Fricker explores these challenges in her book *Epistemic injustice* (Fricker 2007). The book addresses issues of how individuals can be disadvantaged when lack of knowledge prevents their experiences of life from being understood in society at large, and how knowledge they themselves produce is not given credibility, this due to structures related to power, identity, and social dynamics.

Fricker claims that the structural injustices of society, that lead to systemic forms of discrimination and unfair treatment, also distort production of knowledge. She highlights two types of epistemic injustice: *testimonial injustice* and *hermeneutical injustice*. *Testimonial injustice* occurs when someone's testimony or knowledge claims are undermined or dismissed because of prejudices or stereotypes associated with their social identity. (Fricker 2007, 21-23). *Hermeneutical injustice*, on the other hand, concerns situations where individuals are unable to fully make sense of their experiences or articulate their concerns due to a lack of shared interpretive resources. This can occur when a marginalized group is not only the target of discrimination but also experiences a collective gap in understanding since the group's challenges and perspectives are unexplored (Fricker 2007, 152-154). Both testimonial and hermeneutical injustices risk disrupting a collaboration between university researchers and an NGO working with Roma minority issues. Legal scholarship, in general, has not deeply explored minority perspectives; previous research have taken the majority position for granted without realizing that there may be alternative entry points to the subject. Injustice may also arise from the fact that the individual researcher, as in my case, belongs to the majority society and thus

9 For comprehensive texts on this, see, for example Alonso Bejarano (2021) and Gunnarsson et al. (2018, 39-43).

runs the risk of overlooking crucial issues, experiences, and perspectives visible only to the minority.

An adjacent problem concerns the formation of knowledge in the academic institutional setting. As argued by, for example, Svensson (2013), research formulation reflects academic institutional demands, such as criteria set by publication channels and funding agencies, demarcation of academic disciplines and promotion routes for the individual scholar. Such considerations risk moving the research problem away from the overarching goal of social change, toward a more internal academic discourse and goals.

Fricker's main point is that the marginalisation and silencing of certain voices in research, what she calls epistemic injustice, leads to serious knowledge consequences for individuals and society. I will return to this in section 5. Addressing epistemic injustice requires recognizing and challenging implicit biases, creating inclusive spaces for diverse perspectives, and promoting epistemic virtues such as humility, openness, and intellectual fairness (Fricker 2007, 86ff, 169ff). It is such an inclusive space that I suggest Buber's distinction between I-It and I-Thou may assist in creating, as I will discuss in the next section of this paper.

## Problem mitigation

In order to mitigate the possible epistemic injustices in a research collaboration as described above; I have taken inspiration from the relational philosophy of Martin Buber.

In *I and Thou,* Buber claims that relations can be either in the form of I-Thou or I-It, where the former is genuine, and the latter is instrumental. I-Thou denotes an ontologically constitutive meeting (Buber 1958, 15-18). Meetings of this kind are "ends-in-itself" and consist of genuine encounters between subjects (Aspelin et al. 2011, 13). I-It, on the other hand is individuals that coordinate their behavior in relation to something beyond the relationship itself. For example, in a student-teacher relationship the goal for the student is learning (or passing the course) and the goal for the teacher is to perform his or her profession (or getting a salary). This is an example of an I-It relationship. Similarly, when two colleagues collaborate on, say, a research application or an article, this is also an example of I-It relationships. I-Thou relationships, in contrast, have no instrumental purpose. I-Thou relations *constitute each of the individuals*. Buber believes that the I-Thou relationship precedes the self simply because the understanding of the self is completely dependent on relational positionings towards the other in the relationship, the Thou.

> If a man does not represent the a priori of relation in his living with the world, if he does not work out and realise the inborn Thou on what meets it, then it strikes inwards. It develops on the unnatural, impossible object of the I, that is, it develops where there is no place at all for it to develop. Thus confrontation of what is over against him takes place within

> himself, and this cannot be relation, or presence, or streaming interaction, but only self-contradiction. (Buber 1958, 93-94)

Without the other there is simply no influence that can trigger "real" change, difference or development of the I but only reconfigurations of the same. A meeting with Thou, on the other hand, is not predictable or possible to control in advance. It follows that the encounter with an other in this way is an ontological reality which is unpredictable and dizzying for the self (Buber 1958, 22-24). I-Thou is a relationship between subjects, but the subjects do not necessarily have to be a human persons. The ontological constitutive meeting can also occur between a person and an animal, an object or a phenomenon (Buber 1958, 124-125). The crucial component is that the "I" is open for the other to take part in the ontological constitution of the self (Buber 1958, 25). Buber's choice of "Thou" instead of "You" in English translations is significant. In older English, "thou" was used as an intimate, direct form of address, often implying closeness or personal engagement (similar to the use of "tu" in French or "du" in Swedish, as opposed to the more formal "vous" or "ni"). Thou have therefore been used in the English translation of the original German title "Ich und Du". Buber says that "the primary word I-Thou can only be spoken with the whole being" whereas "the primary word I-It can never be spoken with the whole being" (Buber 1958, 15-16). "Primary" is used by Buber to signify relations: "Primary words do not describe something that might exist independently of them, but being spoken they bring about existence" (Buber 1958, 15). The I-Thou meeting here has an ethical dimension as it, borrowing here from Levinas (1969), avoids "reducing the other to the same" or in other words, avoids assimilating the other into a pre-existing conceptual framework.

In I-It relations, the meeting occurs between a subject and an object. The "other" in such an encounter is merely instrumental for the I in the sense that such a relationship does not affect the self on an existential ontological level (Buber 1958, 31-36). Buber's distinction helps us understand that meetings between persons can be one-sided and instrumental, and, at the same time, mutual. We help each other to gain something beyond the meeting itself (such as a degree or a finished paper) but we can do this without necessarily being affected (constituted) by the meeting itself. This is, of course, a double-edged sword. On the one hand, it protects us from being consumed or hurt by others, but it also hinders us from changing our own position in the ontological sense mentioned above, and thereby also hinders us from understanding our surroundings in new ways.

I will suggest below that research problems and research questions can benefit from I-Thou meetings. This may seem paradoxical since the I-Thou relation shouldn't be instrumental. My point is that research questions benefit in that the I-Thou meeting has the potential to co-create, or recreate, the *researcher*. I will develop this in the next section. But first, I would also like to

suggest that the first step to mitigate potential epistemic injustice in a research collaboration is to ground the collaboration in a mutually benefitting I-It relation.

Several aspects of the collaboration between the law department and Trajosko Drom are instrumental in character. *Law Students* participate in a course (or write an essay) where they engage with tasks managed by the organization and the researchers (in their role as teachers). *Researchers* benefit from the experiences of and problem formulation by the organization, as well as on students' continuous interpretation and collection of these experiences deployed in a legal clinical setting. *The organization* benefits from legal skills and resources flowing from student and researcher activity, as well as funds for participating in the student supervising. Furthermore, both the NGO and the academic institution gain advantages from being associated with each other for example by improving their respective credibility when collaborating with third parties.

This, so to say, "mutually benefitting I-It setting", creates a sustainable basic collaborative level that ensures that the collaboration favors all parties despite, perhaps, failing in the greater endeavor, in this case removing educational access barriers for Roma children and young people. If we fail in "bettering society", each actor still leaves the collaboration in more favorable position compared to before. Thus, the potential risk of the knowledge production getting lost in academic discourse, the potential risk of paternalistic solutions, or the risk of structural discrimination leaking into the research collaboration, are, at least to some extent, mitigated by the underlying reciprocal, win-win, I-It setting.

If we follow the assumption above that research is contingent and situated by research interests, the research context and the actors involved, then the potential for the research itself is also dependent on the researchers' ability to see and understand new perspectives. This is where the I-Thou relationship enters. A collaboration that includes I-Thou relationships also creates potential for the generation of new research questions and new perspectives (at least for the specific researcher). In other words: the I-It relationship can create space because of mutual benefits where an I-Thou relationship has room to emerge. But, as mentioned above, this seems paradoxical since the I-Thou meetings are not supposed to be instrumental (in the sense of having as their purpose the creation of new research questions.)

This is another reason to make sure there is an underlying beneficial I-It setting. I use my sample research collaboration to illustrate why. Within such a setting there is a possibility for continuous meetings between legal scholars and employees at Trajosko Drom, where the purpose is not to investigate a certain legal aspect connected to the right to education, but rather to simply listen to one another without framing the problem in a legal discourse. The surrounding I-It setting consisting of collaboration concerning students, learning seminars, for example, creating a situation where problem identification does not have to

lead to anything in particular, since the instrumental relevance of the relationship is already in place. This setting allows for problem-oriented discussions with less institutionalized and juridified pressure. The researcher thereby has a greater chance of understanding the underlying problem without falling back in to predetermined legal categories. Vice versa, the cooperating organization is not dependent on the researcher's 'help', since the value of the collaboration is already secured by the underlying I-It setting.

But here is the important point. With a secure I-It setting, the collaboration can move to I-Thou relations. A setting without an I-It basis would risk the I-Thou meeting disintegrating into an one-sided I-It meeting, the party lacking the I-It base would in fact be dependent on the I-Thou to succeed (and therefore forces it into an I-It relation). In other words. if an organization collaborating with the researchers only gains from the collaboration in the event that the research achieves some good, then stakes for the organization are higher and the potential to find relevant research questions reduces. In sum, then, appreciating the different characteristics of the two types of relationship, allows a mutual fostering of each.

## In search of the legal barriers to Roma right to education

In the remaining part, I will try to demonstrate these more theoretical observations about epistemic injustice and research relationship in relation to the project looking at legal barriers to Roma right to education. I will do this by giving two examples. The point of these examples is to highlight the legal frameworks at play from a local Roma perspective. The point is not to introduce a new kind of methodology or even to present "new" or "unusual" materials for legal scholarship. Rather, the point is quite blunt: that the same legal phenomena will be quite different when portrayed from the viewpoint emerging from the collaboration. The main argument is that research positions are assisted by collaborations that involve both a I-It and I-Thou dimension. The two examples are not "fully explored" in this paper. Their function here is to make the point of illustrate how epistemic injustice can be mitigated by these kinds of collaborations.

### *The double faces of law*

Conversations with Trajosko Drom made it evident that, for many Roma families in Gothenburg, the relationship with school includes fear that the authorities do not believe that the child's home environment is supportive enough. This fear is well grounded: Sweden has a long track record of antiziganism. This prejudice is also well documented elsewhere (SOU 2010:55, 165-199). The legislative act that regulates municipalities' obligations towards securing a child's right to education is "Skollagen" (the education act). Other central legislation regulating parents' relationship with the municipality include "Socialtjänstlagen" (social

services act) and "Lagen om vård om unga" (compulsory care act). The portal paragraphs of these acts read as follows (my translation):

> SkolL § 1:4: Education within the school system aims for children and students to acquire and develop knowledge and values. It shall promote the development and learning of all children and students, as well as a lifelong desire to learn. The education shall also convey and anchor respect for human rights and the fundamental democratic values on which Swedish society rests.[10]

> Socialtjänstlag § 1:1: Community social services shall, on the basis of democracy and solidarity, promote people's
> - economic and social security,
> - equality in living conditions,
> - active participation in community life.[11]

> LVU § 1: Interventions within social services for children and youth should be carried out in consultation with the young person and their legal guardian.[12]

These paragraphs inform the overarching objectives of the legislation and their foundation in the welfare state. The joint message is that the state seeks to empower members of society as part of a democracy with strong individual rights. Furthermore, the Education Act emphasizes that the responsibility for a child's education is shared jointly by parents and the municipality.[13] These paragraphs, in the same way as the Compulsory Care Act, *presuppose* parents some degree of trust toward the public authorities.

However, the portal paragraphs are not the ones debated in the everyday work of Trajosko Drom. Instead, the following regulations from the legal acts are in the forefront:

> Skollag § 7:19 a: If a student has repeated or longer absences [...] the principal, regardless of whether it is a valid or invalid absence, must ensure that the absence is promptly investigated, if it is not unnecessary.

10 Skollag (2010:800) (The Education Act) chapter chap. 1 § 4: "Utbildningen inom skolväsendet syftar till att barn och elever ska inhämta och utveckla kunskaper och värden. Den ska främja alla barns och elevers utveckling och lärande samt en livslång lust att lära. Utbildningen ska också förmedla och förankra respekt för de mänskliga rättigheterna och de grundläggande demokratiska värderingar som det svenska samhället vilar på."
11 Socialtjänstlag (2001:453) (Social services act) chap. 1 §1: "Samhällets socialtjänst skall på demokratins och solidaritetens grund främja människornas - ekonomiska och sociala trygghet, - jämlikhet i levnadsvillkor, - aktiva deltagande i samhällslivet."
12 LVU (1990:52) (Compulsory Care Act ) § 1: "Insatser inom socialtjänsten för barn och ungdom ska göras i samförstånd med den unge och hans eller hennes vårdnadshavare."
13 See Skollag (2010:800) (The Education Act) chap. 7 § 20-23.

> The investigation must be carried out in consultation with the student and the student's guardian and with the student health department.[14]
>
> Socialtjänstlag § 14:1: The following authorities and professionals are obliged to immediately report to the social welfare board if, in the course of their activities, they become aware of or suspect that a child is in harm's way:
> 1. authorities whose activities affect children and young people,
> 2. other authorities within health care, other forensic psychiatric examination activities, social services, the Correctional Service, the Police Agency and the Security Police,
> 3. employees of such authorities referred to in 1 and 2, and
> 4. those who are active in professionally conducted individual activities and perform tasks that affect children and young people or in other such activities within health care or in the field of social services.[15]
>
> LVU § 2: Care shall be decided if, due to physical or mental abuse, improper exploitation, deficiencies in care or any other situation in the home, there is a tangible risk that the young person's health or development will be damaged. Law (2003:406).[16]
>
> LVU § 3 Care shall also be decided if the young person exposes his health or development to a tangible risk of being harmed through the abuse of addictive substances, criminal activity or any other socially destructive behavior.[17]

The point here is not that chosen clusters of paragraphs from these legal acts can either create a welfare narrative or cast a controlling narrative. The point is that the latter paragraphs are activated and "lived" through contact between schools and many Roma families. Where there is understandable mistrust of public authorities and often discriminatory mistrust from schools toward Roma families, these welfare regulations *become* a legal cluster establishing

14 Skollag (2010:800) (The Education act) chap. 7 §19 a: "Om en elev har upprepad eller längre frånvaro […] ska rektorn, oavsett om det är fråga om giltig eller ogiltig frånvaro, se till att frånvaron skyndsamt utreds om det inte är obehövligt. Utredningen ska genomföras i samråd med eleven och elevens vårdnadshavare samt med elevhälsan."
15 Socialtjänstlag (2001:453) (Social services act) chap. 14:1: "Följande myndigheter och yrkesverksamma är skyldiga att genast anmäla till socialnämnden om de i sin verksamhet får kännedom om eller misstänker att ett barn far illa: 1. myndigheter vars verksamhet berör barn och unga, 2. andra myndigheter inom hälso- och sjukvården, annan rättspsykiatrisk undersökningsverksamhet, socialtjänsten, Kriminalvården, Polismyndigheten och Säkerhetspolisen, 3. anställda hos sådana myndigheter som avses i 1 och 2, och 4. de som är verksamma inom yrkesmässigt bedriven enskild verksamhet och fullgör uppgifter som berör barn och unga eller inom annan sådan verksamhet inom hälso- och sjukvården eller på socialtjänstens område."
16 LVU (1990:52) (compulsory care act ) § 2: "Vård skall beslutas om det på grund av fysisk eller psykisk misshandel, otillbörligt utnyttjande, brister i omsorgen eller något annat förhållande i hemmet finns en påtaglig risk för att den unges hälsa eller utveckling skadas."
17 LVU (1990:52) (compulsory care act ) § 3: "Vård skall också beslutas om den unge utsätter sin hälsa eller utveckling för en påtaglig risk att skadas genom missbruk av beroendeframkallande medel, brottslig verksamhet eller något annat socialt nedbrytande beteende."

surveillance and control with no obvious connection to overarching welfare. From the point of view of the local families, schools, because of the legislative duty to report in the Social Services Act, appear as a nexus of gathering information concerning whether the family is supportive enough or "normal" enough. Thus, an institution of learning becomes, instead, a site of potentially racist control and discipline. The legal barriers to accessing education, according to this formulation of the problem, are not found within the school itself or within regulations directed toward education. Instead, the problem is situated in historic and current discrimination and in how the current framework of contacts with public authorities (where schools are included) continue to uphold a reason to fear and mistrust the intentions of public officials. The law, not being formally or facially discriminatory, thus produces effects that counter and undermine the ideals behind the long-term strategy of Roma inclusion, such as "the principle of participation" and "minority and MR-competence" (SOU 2010:55, 222-223). For sure, both minority participation and MR-competence are priorities for municipalities working with Roma inclusion but, as we shall see in the next section, such efforts have difficulty becoming effective if the structures of implementing them are not long term and directed toward the relevant local context.

Of course, this argument is not accessible "only" through the I-It/I-Thou setting of this collaboration, but such a collaboration may assist in strongly revealing these experiences and understanding. Furthermore, and perhaps more importantly, the collaboration setting also helps safeguard against legal scholarship contributing to epistemic injustice by not identifying a minority perspective on an issue at hand. Here, the issue concerns both testimonial injustice in the sense that the minority perspective risks being obscured, as well as hermeneutical injustice in the sense of failure to understand the Roma experience of the legislation's monitoring effect.

*The asymmetry of the Roma inclusion strategy*

The second example considers the regulatory design for the EU framework for Roma inclusion and its national implementation strategy. The point is to illustrate how the model, with the aim of promoting inclusion, is made dependent on local initiatives already working on Roma inclusion. The research collaboration, in this regard, has made visible that the framework, despite its outspoken ambition to be long term, fails in that aspect due to its inbuilt limited financial structure. My point is not a sociolegal one describing "law in books" as compared to "law in action". The point is, instead, to show that there is an inbuilt tendency in the *regulatory design* of the inclusion framework to accommodate already functioning Roma inclusion programs as part of the strategy. Local contexts in need of new investments are left outside. This works as an indirect barrier to the Roma right to education, which I will return to below.

The overarching Swedish strategy for Roma inclusion includes the creation of public co-operative bodies to facilitate dialogue, like the City Council for the Roma National Minority, as well as the initiation of a specific Roma Civic Centre (Romano Center). With the aim of building trust between schools, social services and the Roma community, there are also several schools in Gothenburg that have employed "Brobyggare" (Bridge Builders) educated at a specially adapted program at Södertörn University (also financed as part of the EU inclusion strategy) and equipped with skills to act as bridges between the minority and majority society (Skolverket 2016).

The long-term national strategy for Roma inclusion (Regeringens skrivelse 2011/12:56) originates, as mentioned, from an EU level Commission communication (2011), namely, "An EU Framework for National Roma Integration Strategies up to 2020.

The inclusion strategy is in place in tandem with other EU level laws such as the Framework Convention for the Protection of National Minorities[18] and the Communication from the Commission (2010) concerning the social and economic integration of the Roma in Europe. The Swedish inclusion strategy implementing COM(2011) has the overall objective that Roma young persons who turn 20 in 2032 should have equal opportunities in life as those of non-Roma young persons who turn 20 in 2032 (Regeringens skrivelse 2011/12:56, 1).[19]

The government has made the assessment that the strategy is dependent on active responsibility on a municipality level (Regeringens skrivelse 2011/12:56, 21). This has been done, so far, by "pilot activities" in five Swedish municipalities, funded by the state with 700 000 Swedish crown for each municipality, during the years 2012-2015. Thereafter, there has been a possibility to apply for "development grants", a grant of 500 000 Swedish crowns for two years with possible prolongation of two years, during 2016-2020. For the development grants, the following criteria were decisive in determining which municipalities would be prioritized and granted funds:

[18] Framework Convention for the Protection of National Minorities (ETS No. 157).
[19] On this matter also see Berglund (2023). Berglund has written one of the master essays emanating from the colaboration between Trajesko Drom and the department of law, University of Gothenburg.

> Political anchoring and political will;
> Anchoring the application with Roma civil society;
> Needs (based on the situation of Roma in the municipality);
> Long-term perspective and opportunity to integrate development work into the municipality's regular structures and operations;
> Planned municipal organization with division of responsibility for development work;
> Implementation capacity (e.g. opportunities for systematic knowledge acquisition, method development);
> Financial and personnel conditions;
> Collaboration partners (e.g. civil society, county council).
> (Regeringskansliet, Kulturdepartementet, 2016, 2-3)

Thirteen municipalities applied for funding and five municipalities were granted funds (Regeringskansliet, Kulturdepartementet, 2016, 3). There is, currently, also an ongoing possibility for municipalities to apply for state funding for Roma inclusion projects until the end of 2023 with the same model of prioritizing municipalities with already successful activities in place.[20]

Seen from the local municipality perspective, it is evident that the Roma inclusion strategy presupposes existing knowledge and competence of applicant municipalities and already established "bridges" between minority and majority society. In this regard, the core conditions for a functioning Roma inclusion project in the municipality must already be fulfilled in order to activate engagement from the national level. The EU level long term strategy, stretching decades, is in this regard dependent on a successful inclusion strategy already in place, which, in turn, may be financed on a short-term basis.[21]

From the perspective of the research collaboration with Trajosko Drom, the inclusion strategy was not experienced as a large-scale and long-term EU-sanctioned initiative for Roma inclusion. Instead, it appears as an opportunity for municipalities that already have performed successful inclusion efforts, and officials adept at seeking funding, to receive additional short-term financial support for already established activities. A possible effect of the strategy is thus that it fails to assist in discovering the contexts where barriers to education endure and thereby becomes an indirect barrier to education itself. Legal scholarship focusing on the EU-level and national level of the Roma inclusion strategy level may reinforce epistemic injustice if these aspects are not highlighted. The discrepancy between long term normative goals and short-term implementation strategies, as well as the focus on already successful examples, risks testimonial and hermeneutical injustices continuing without being

[20] Förordning (2022:259) om statsbidrag till kommuner för att främja romsk inkludering (Regulation on state grants to municipalities to promote Roma inclusion).
[21] The EU level strategy is now prolonged to 2030: (European Commission, 2020). As mentioned above the Swedish Government response to the new communication from EU is that no legislative changes or budgetary consequences are needed (Regeringskansliet, Kulturdepartementet, 2021, 1).

discovered by activities emerging from the inclusion strategy. This due to the inbuilt financing model that only sees the needs of inclusion as they appear from established knowledge from a majority institution perspective. Both testimonial and hermeneutical injustice come into play in these instances as the framework is not a strategy to *build* structures between the municipality and the local Roma society, but rather offers money where such a structure is already in place. The regulatory design for financing the inclusion strategy in this way makes difficult identifying problems that are most precarious, where a municipality has no information at all of discrimination against Roma. The inclusion strategy indirectly obscures these situation (testimonial injustice) as well as misses contributing to create knowledge in order to understand Roma better (hermeneutical injustice).

Without a research collaboration where everyday conditions of Roma minorities can leak into legal research, via I-Thou relations, this aspect of the EU framework is not easy spotted within legal scholarship. Without a I-Thou staring point, it is, of course, not impossible to assess the framework from a perspective where the difficult path to financing becomes visible, and where the precarious situation of municipalities, with no Roma inclusion strategy already in place, is identified. As mentioned above, Länsstyrelsen has to some extent already critiqued the strategy in this way, although this critique is not formulated in terms of the regulatory design for the Swedish implementation of the inclusion framework. However, it is not the research questions that are most evident and straight forward for a legal scholar interested in the implementation of the framework. And vice versa, from the perspective of the local NGO, these aspects of the framework are not something that necessary appears as a *legal* aspect of the framework, as the regulatory design is not the most evident place to start assessing a normative document. It is our experience that I-Thou cultivation, in conjunction with I-It, makes these sorts of insights possible where they would otherwise be obscured by traditional legal research.

## Conclusion

In this paper I argue that Buber's distinction between I-It and I-Thou can be used to assess whether a research collaboration has the ingredients to mitigate risks of epistemic injustice. The main objective is to avoid marginalisation and silencing of voices in research, failures which lead to serious knowledge consequences for individuals and society.

The concrete context of this paper concerns barriers to education for Roma minorities in Sweden. The two examples highlight two kinds of possible informal barriers to education. These barriers are visible in materials well-established within legal scholarship. However, the risk of not noticing these barriers are evident without a minority perspective, such as the one provided by the collaboration with Trajosko Drom. This paper's main argument is that collaboration with a local NGO that creates possibilities for the genuine and

ontologically constitutive I-Thou relationships reduces the risk of marginalizing and silencing voices that the group represents within legal scholarship. However, in order to create possibilities for I-Thou there is a need of a mutual beneficial I-It (as the paper describes in section 4). Research collaborations with local NGO's set up in that manner reduce the risk of epistemic injustice.

## Acknowledgements

This publication was funded by the European Union's Rights, Equality and Citizenship Programme (2014-2020). The author would also like to thank Professor Margot Young for very valuable comments and suggestions.

## References

Alonso, Bejarano. 2021. Law at the Intersection, in Illian Rua Wall, Freya Middelton and Sahar Shah (eds.). *The Critical Legal Pocketbook*. Oxford: Counterpress, 151-169.

Aspelin, Jonas and Persson, Sven. 2011. *Om relationell pedagogik*. Malmö: Gleerup.

Berglund, Olivia. 2023. Europas största minoritet utan land: Kritisk rättsvetenskaplig granskning av den svenska strategin för romsk inkludering. Master essay, Gothenburg University.

Buber, Martin. 1958. *I and Thou*. Edinburgh: T&T Clark.

European Commission. 2010. Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions. *The social and economic integration of the Roma in Europe*. COM/2010/0133 final.

European Commission. 2011. Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions. *An EU Framework for National Roma integration Strategies up to 2020*. COM/2011/0173 final.

European Commission. 2020. Communication from the Commission to the European Parliament and the Council. *A Union of Equality: EU Roma strategic framework for equality, inclusion and participation*. COM/2020/620 final.

Fricker, Miranda. 2007. *'Testimonial Injustice', Epistemic Injustice: Power and the Ethics of Knowing*. Oxford: Oxford University Press.

Goodwin Morag and Buijs, Roosmarijn. 2013. Making Good European Citizens of the Roma: A Closer Look at the EU Framework for National Roma Integration Strategies. *German Law Journal 14* (10): 2041-2056.

Gunnarsson, Åsa, Svensson, Eva-Maria, Käll, Jannice and Svedberg Andersson, Wanna. 2018. *Genusrättsvetenskap*. Lund: Studentlitteratur.

Levinas, Emanuel. 1969. *Totality and infinity: an essay on exteriority*. Pittsburgh: Duquesne University Press.

Länsstyrelsen Stockholm. 2022. *Redovisning av uppdrag att samordna, följa upp och genomföra insatser inom ramen för strategin för romsk inkludering*. KU2019/02101/CSM (2022) [Count Administrative Board, Stockholm, Report on the mission to coordinate, follow up, and implement measures within the framework of the strategy for Roma inclusion] (Swed.).

Harris, Neville, Ryffé, David, Scullion, Lisa and Stendahl, Sara. 2017. Ensuring the Right to Education for Roma Children: An Anglo-Swedish Perspective. *International Journal of Law, Policy and the Family*, 31(2): Pages 230–267.

Regeringens skrivelse 2011/12:56. *En samordnad och långsiktig strategi för romsk inkludering* [Written communication from the Government 2011/12:56, A coordinated and long-term strategy for Roma inclusion] (Swed.).

Regeringskansliet, Arbetsmarkandsdepartementet. 2014. *Den mörka och okända historien: Vitbok om övergrepp och kränkningar av romer under 1900-talet*. Ds 2014:8 [The dark and unknown history – White Paper on abuse and rights violations against Roma in the 20th century] (Swed.).

Regeringskansliet, Kulturdepartementet. 2021. *Rapport avseende Europeiskt ramverk om romers jämlikhet, inkludering och delaktighet 2020-2030.* PM 2021-10-21 Ku2021 [Government Office, Ministry of Culture, Report on the European Framework for Roma Equality, Inclusion, and Participation 2020-2030] (Swed.).

Rostas, Iulius. 2019. *A task for Sisyphus: Why Europe's Roma Policies Fail*. Budapest: CEU Press.

Skolinspektionen. 2016. *Omfattande frånvaro: en granskning av skolors arbete med omfattande frånvaro*. Diarienummer: 40-2015:2855 [The School Inspectorate, Unauthorized absence: a review of schools' efforts regarding extensive unauthorized absence] (Swed.).

Skolverket. 1999. *Romer och den svenska skolan.* Rapport 98:2652 [National Agency for Education, Roma and the Swedish school] (Swed.).

Skolverket. 2007. *Romer i skolan – en fördjupad studie*. Rapport 292:2007 [National Agency for Education, Roma in School – An In-depth Study] (Swed.).

Skolverket. 2010. *Skolfrånvaro och vägen tillbaka: Långvarig ogiltig frånvaro i grundskolan ur elevens, skolans och förvaltningens perspektiv.* Rapport 341:2010 [National Agency for Education, School Absence and the Road to Recovery: Prolonged unauthorized absence in elementary school from the perspectives of the student, the school, and the administration] (Swed.).

Skolverket. 2016. Uppdrag till Statens skolverk och Socialstyrelsen att ta fram och tillgängliggöra en utbildning för brobyggare med romsk språk- och kulturkompetens. Ku2016/00995/DISK [National Agency for Education, Assignment to the National Agency for Education and the National Board of

Health and Welfare to develop and make available training for mediators with Roma language and cultural competence] (Swed.).
Skolverket. 2023. *Slutbetyg i grundskolan våren 2023.* 2023:1798 [National Agency for Education, Final grades in elementary school spring 2023] (Swed.).
SOU series 2010:55. *Romers rätt - en strategi för romer i Sverige*. [Swedish Official Report (SOU) 2010:55, Roma Rights - A Strategy for Roma in Sweden]. (Swed.).
SOU series 2016:44. *Kraftsamling mot antiziganism.* [Swedish Official Report (SOU) 2016:44, The dark and unknown history – White Paper on abuse and rights violations against Roma in the 20th century]. (Swed.).

Svensson, Eva-Maria. 2013. Boundary-work in legal scholarship. In Åsa Gunnarsson, Eva-Maria Svensson and Margret Davis (eds.). *Exploiting the Limits of Law: Swedish Feminism and the Challenge to Pessimism*. Farnham: Ashgate, 17-50.
Van Baar, Huub. 2019. Governing the Roma, Bordering Europe: Europeanization, Securitization and Differential Inclusion. In Huub van Baar and Angéla Kócé (eds.). *The Roma and Their Struggle for Identity in Contemporary Europe.* Oxford: Berghahn, 147-214.

## Notes on contributor

Erik Björling, LL.D. in legal theory and Senior lecturer in procedural law at the Law Department in Gothenburg.