

Sweden, a Society of Covert Racism: Equal from the Outside: Everyday Racism and Ethnic Discrimination in Swedish Society

EVA SCHÖMER*

Schömer, E. 2016. Sweden, a Society of Covert Racism: Equal from the Outside: Everyday Racism and Ethnic Discrimination in Swedish Society. *Oñati Socio-legal Series* [online], 6 (3), 837-856. Available from: <http://ssrn.com/abstract=2834059>



Abstract

Sweden is widely considered to have one of the most equal and gender-equal societies in the world. But the Swedish society is also one in which the Labour Court can find discrimination when a 60-year-old 'Swedish' 'white' woman fails to get a job interview – yet not when workers call a colleague of Gambian background 'blackie', 'big black bastard', 'the African', and 'svartskalle', or a man of Nigerian background 'Tony Mogadishu' and 'Koko stupid'. In this article, I will try to explain the logic behind these positions. I will also suggest an extended jurisprudential methodology that might help to prevent laws and the legal system from reinforcing societal processes of racialization. In this article I will argue that it is necessary to develop the legal methods to make it possible to forestall and prevent racism. To prevent everyday racism in the way intended by the law in books, the courts must take into account the living law and the law in action. If the courts are allowed to continue applying the law according to their whim, without even considering their position as representatives for the power of dominant 'white' groups over subordinated people of colour, then it is obvious that the living law that is the dominant discourse of 'white' normalcy will never change.

Key words

Gender and law; intersectionality; racism; sociology of law; Swedish labour court

Resumen

Es comúnmente aceptado que Suecia tiene una de las sociedades más igualitarias, también en cuestiones de género, del mundo. Pero la sociedad sueca es también aquella en la que el juzgado de lo laboral puede encontrar discriminación en que una mujer de 60 años, "sueca" y "blanca" no consiga una entrevista de trabajo – pero no cuando trabajadores llaman a un colega de origen gambiano "negrito", "gran bastardo negro", "africano", y "espalda mojada", o a un hombre de origen nigeriano "Tony Mogadiscio" y "Koko estúpido". En este artículo, se va a intentar explicar la lógica de estas posiciones. También se va a sugerir una metodología jurisprudencial extendida que podría ayudar a evitar que las leyes y el sistema legal consoliden la racialización de procesos sociales. En este artículo se defiende que es necesario desarrollar métodos legales para que sea posible impedir y prevenir el

* Associate professor in Sociology of Law, Lund University, Lund, Sweden and Professor in Law Department of Accounting and Logistics, Linnaeus University, Sweden. Box 42, 221 00 Lund, Sweden. eva.schomer@soclaw.lu.se ; eva.schomer@lnu.se



racismo. Para evitar el racismo cotidiano en la forma prevista por el derecho en los libros, los tribunales deben tener en cuenta el derecho vivo y la ley en vigor. Si se permite que los tribunales sigan aplicando la ley a su antojo, sin considerar siquiera su condición de representantes del poder de los grupos dominantes "blancos" sobre las personas de color subordinadas, es entonces obvio que el derecho vivo, que es el discurso dominante de mayoría "blanca", nunca va a cambiar.

Palabras clave

Género y derecho; interseccionalidad; racismo; sociología jurídica; tribunales de lo laboral suecos

Table of contents

1. Background.....	840
2. Multiple discrimination and intersectionality	841
3. Anti-discrimination work and problems of methodology	842
4. Methodological dilemmas in the area of anti-discrimination	844
5. Multiple discrimination: an intersectional analysis	845
5.1. The burden of proof.....	846
6. Using intersectionality: questioning what we take for granted	846
7. Reinforcing everyday racism	847
8. Postmodernist feminism and its implications for the law.....	849
9. Dominant paradoxes in discriminatory structures.....	851
References.....	853

1. Background

Sweden is widely considered to have one of the most equal and gender-equal societies in the world.¹ But the Swedish society is also one in which the Labour Court (Arbetsdomstolen, AD) can find discrimination when a 60-year-old 'Swedish' 'white' woman fails to get a job interview – yet not when workers call a colleague of Gambian background 'blackie', 'big black bastard', 'the African', and 'svartskalle',² or a man of Nigerian background 'Tony Mogadishu' and 'Koko stupid'. In this article, I will try to explain the logic behind these positions. I will also suggest an extended jurisprudential methodology that might help prevent laws and the legal system from reinforcing societal processes of racialization.³ This article focuses primarily on legal problems connected to labour law: that is, questions that concern to employer-employee relations. Closely related questions in other areas, such as criminal law, will therefore not be taken up. There is a strict jurisprudential divide between civil and criminal law, in terms of both legal procedure and questions of fact. As a result, although some similarities are certainly evident among cases in different kinds of courts, it is problematic to draw more than superficial comparisons between court arguments in the areas of criminal and labour law. Two interim reports from the Swedish government, *Arbetslivets (o)synliga murar* (The (in)visible walls in working life) (de los Reyes 2006) and *På tröskeln till lönearbete: Diskriminering, exkludering och underordning av personer med utländsk bakgrund* (On the threshold of a paying job: Discrimination, exclusion, and subordination of people of foreign background) (Neergaard 2006) examine how racism and discrimination develop, and how they are practiced and perpetuated:

Internalized perceptions of 'the other' as different and as a bearer of essential characteristics are an important element in the organization of work, and so circumscribe both an individual's position at work, and his or her opportunities on the labour market. Unequal conditions of employment, racism in the workplace, exclusion from the job market or confinement to menial and low-paying jobs, preconceived notions of incompetence, stigmatization, active disregard, and disparagement are all components in an ethnic hierarchy that fosters discrimination, subordination, and exclusion (de los Reyes 2006, p. 17).

In this article I seek to further develop this line of thought, using a sociology of law perspective to challenge the boundaries of traditional jurisprudence. My method combines a strictly legal understanding and the traditional legal dogmatic method with the interpretative framework of the social sciences, relying on an intersectional perspective.

One of the central questions in the sociology of law is how human behaviour and *law in books* affect the evolution and status of *living law*. One of the fathers of the discipline, Eugen Ehrlich (1862-1922), described the relationships between law and society in terms of *law in books* (the content of the written law and the judgments of the judiciary and other agencies that administer justice), *law in action* (how people relate to, or obey, law in books), and *living law* (how people behave independently of law in books and law in action). Living law might be defined as *ingrained habits* (Hertogh 2009). While social sciences speak of *taken-for-granted* ideas about images of people and phenomena (re-)created by society, law rarely describes such phenomena. I will make the distinction here between questions that involve relationships about (*outside*) law, as is the case for research in the sociology of law (law in books in relationship to law in action and living law), and questions that involve relationships *in(side)* law, as is the case for traditional legal research (law in books) (Schömer 2012). Below, I will attempt to describe a

¹ The Global Gender Gap Report (World Economic Forum 2014) ranks Sweden in fourth place, after Iceland, Finland, and Norway (in that order).

² *Svartskalle* ('black head/skull') is a derogatory name for a person with dark hair or skin. It is similar in tone to the American 'spic' or British 'Paki'.

³ The present article is partly based on several previously published articles by the author (Schömer 2011, 2012, 2013, 2014).

process in which taken-for-granted ideas about people as different "others" are made neutral and transformed into law in books, as occurs when discrimination cases come before the Labour Court. We can understand this as a process of structural discrimination. Structural discrimination divides society into the "we" who belong and "the others" who remain outside (deviate from) societal norms. This process is commonly characterized as "otherization". For example, a group is defined on the basis of ethnic affiliation as "other," as opposed to the "normal" we. Otherization arises out of preconceived notions about ethnic differences (ethnicization), in other words the idea or belief that there exist "cultural" differences among different nationalities (or ethnic groups; this brings up the concept of race again). (Sarnecki 2006).

2. Multiple discrimination and intersectionality

An extended jurisprudential methodology, in combination with a tool called intersectional analysis, can shed light on how different mechanisms of oppression work in tandem with one another. We call discrimination on more than one basis at the same time multiple discrimination. The phenomenon itself, however, says nothing about how different mechanisms of discrimination interact. For that, we can turn to the notion of intersectionality; this can be described as the effect of multiple discrimination. The concept of intersectionality originated within a feminist discourse about anti-discrimination in the United States, where 'black feminism' began to challenge what had been an essentially homogenous feminist movement, questioning its basis in the privileged lives and life stories of 'white women'. The practice of identifying people as 'black' or 'white', in fact, can also be traced to a U.S. context in which racial discrimination was legitimate until 1965, when the Voting Rights Act, by protecting the enfranchisement of racial minorities, placed all citizens (including 'black women') on an equal footing. Sara Ahmed, professor in Race and Cultural Studies at Goldsmiths College at the University of London, has described a process by which 'white' skin colour becomes a marker for social access and privilege. People who are not 'white' are 'marked as different', and a 'hesitation on strange bodies allows the "community" to imagine itself as unmarked and hence white' (Ahmed and de los Reyes 2011, p. 367). With the help of intersectionality, we can reach a better understanding of how people in socially vulnerable positions can be given the opportunity to gain power and influence, and how they can avoid the trap of social exclusion constituted by social inequality. The intersectional perspective allows us to do so by making visible the ways in which power is inextricably intertwined with notions of whiteness, masculinity, gender, heterosexuality, class, etc. (de los Reyes and Mulinari 2005, Mohanty 2006).

Intersectionality is both a theoretical perspective and an analytical tool for studying, understanding, and dissecting the interactions among various power hierarchies. Intersectionality as a concept has been present in Swedish scholarship since the early 2000s (SOU 2014), but has been only sparingly employed in the field of jurisprudence (Schömer 2013). Nor is it a completely clear-cut concept. Some academics perceive the categories it works with as static and predetermined. Others describe them as movable positions, shaped in the encounters between power and various forms of repression. Rosenberg and Skeggs have discussed the issue in terms of which categories should be included in an intersectional analysis, and how and on which grounds certain categories should be given precedence over others (de los Reyes 2014, p. 19).

The concept of intersectionality originated in the American anti-discrimination discourse, within which black women challenged a fairly homogeneous feminist movement by questioning the assumptions that guided privileged white women. An article entitled 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics' Kimberlé Crenshaw by used the case of *DeGraffenreid v. General Motors* to illustrate the way that black women fell outside the purview of anti-discrimination

legislation (Crenshaw 1989). The plaintiff claimed that the company had discriminated against black women. The Court ruled that women could not have been discriminated against on the basis of either race or gender given that nearly all the factory workers were black men and all the office workers were white women.⁴ The article had an enormous impact, particularly in British and American literature and law (Harris 1989). It was followed by a slew of other articles demonstrating that white women were given priority both in the antidiscrimination discourse as such and by the way in which leading white feminists ignored the interests and perspectives of black women (Frankenberg 1993).

An intersectional perspective focuses on how vectors of gender, class, race and sexuality have pervaded the writing of black feminist scholars. (Spelman 1990, Smith 2000, Collins 2000, Davis 2001).

Scandinavian feminists, especially feminist legal scholars, have long turned a blind eye to black feminism on the grounds that their societies have no history of slavery or colonialism. Their focus on gender equality has neglected differences among women and/or men as such. In my view, this situation is a result of the discourse about equality that pervades Swedish and other Nordic societies. Sweden has long boasted of its high ranking when it comes to social equality. But these statements say more about formal regulations than actual conditions. Criticism of Western ethnocentric feminism has been stronger in countries outside Scandinavia (Mohanty 2006, Ahmed and de los Reyes 2011).

Sweden's first Anti-Discrimination Act took effect on July 1, 1980. Although the measure had long been called for, its ethnocentric perspective offered few benefits for immigrant women. In 1986 Woukko Knocke demonstrated that Swedish history was replete with racism and ethnocentrism (Knocke 1986). Her article, 'The Insidiousness of Structural Discrimination – An Historical and Contemporary Perspective' (Neergaard 2006) criticizes the regulation of the labour market, which is permeated by both open and covert racialization (Miles 1993, Ålund and Schierup 1991). Structural discrimination divided up society between the "we" who belong and "the others" who remain outside (deviate from) societal norms. This process is commonly characterized as "otherization" (Sarnecki 2006). For example, a group is defined on the basis of ethnic affiliation as "other," as opposed to the normal "we" (de los Reyes and Kamali 2005). Such ideas originate in post-colonialism, which assumes a feminist perspective to examine gender against the backdrop of an historical context in which colonialism involved both economic exploitation and political domination, leading to norms that view Western ideals as true and universal, thereby calling into question any knowledge that arises elsewhere (Ahmed and de los Reyes 2011).

To date, however, few lawyers have discussed these issues from a Swedish perspective. I would say that it would be quite fruitful to apply an intersectional perspective to rulings of the Swedish Labour Court, as there has been only limited critical discussion of law or its implications in a Swedish context. One way to learn more about how the law participates in perpetuating discrimination is to pose methodologically 'new' questions to the legal material.

3. Anti-discrimination work and problems of methodology

If we want to ask questions about whether any particular conduct is at odds with the law, we must first understand what the law is and what it is capable of doing. The question of whether something is right or wrong has to be studied in the context in which the problems arise. Harvard professor Martha Minow has discussed what happens at the interface of law and society, when individuals get sorted into legal categories. Her monograph *Making All the Difference* (Minow 1990) examines the functioning of the judicial system in situations where the law and legal

⁴ *DeGraffenreid v GM*, 558 F.2d. 480 (8th Cir. 1977).

classifications simultaneously include individuals and exclude them, which she refers to as 'the difference dilemma'. Jean Piaget (1970, 1972) described what he called the pre-operational stage of cognitive development from ages 2 to 6, when children begin to make generalizations and understand similarities and differences among nearby objects. Our thinking around legal classifications is of a similar nature. Piaget's insight is the point of departure for, for instance, the classic children's television show *Sesame Street*, which asks children to decide which objects fit in and which don't and therefore 'have to go'. Precisely the same thing happens in the law when the court must decide whether or not someone has been discriminated against. Minow is critical of the limited reach of legal classifications and their exclusionary effects, of which *DeGraffenreid v. GM* offers a vivid example. 'Black woman' is not a category in any legal sense; thus, the rights of 'black women' are not protected under the law. It is in precisely this way that individuals are excluded from society and everyday racism⁵ is reinforced.

Questions about discrimination (like many other legal issues) belong to the world of everyday life, working life, and society. Therefore, they fall within the sphere of the social sciences – to which, of course, the study of the law belongs. Other social science disciplines have many distinct methods and methodologies with which to approach various kinds of problems. In the field of jurisprudence, however, we really only talk about one method: the legal dogmatic method. In this article, I will argue that we need to expand our jurisprudential methodology. I think that this is especially important when we study questions of discrimination, as discrimination violates not only the rights of any one person subjected to it, but of all people who find themselves in similar situations. If a court rules that a particular kind of conduct does not constitute discrimination, that ruling can easily lead to a wider public perception: that racial slurs are not discriminatory, to take one example. In the article "Är rättvisan rättvis? Tio perspektiv på diskriminering av etniska och religiösa minoriteter inom rättssystemet" (Is justice just? Ten perspectives on discrimination against ethnic and religious minorities in the legal system), the authors offer multiple illustrations of the way that structural discrimination pervades the Swedish legal system (Sarnecki 2006).

The Swedish legal system is rooted in the Romano-Germanic legal tradition, which, as we know, is based upon readings of individual statutes. This is in contrast to the Anglo-Saxon common law tradition, where the law develops out of the precedential decisions of the courts. Many people without formal legal training often imagine it is possible to effect changes in the law by arguing for the changes in court, in the context of individual proceedings. In fact, this is impossible, because the law does not proceed from 'rights'. From the classic juridical perspective, however, the law is both objective and neutral, a viewpoint that depends on the belief that it is possible for judges to leave their personal political opinions on the doorstep when they enter a court of law. This principle of objectivity is laid out in the Swedish Constitution (Instrument of Government 1974, c. 1, ss. 9).⁶ From a perspective of social science, especially that of quantitative sociology, for judges actually to succeed at this is not possible; nor is it even desirable, since if we are unaware of our own values, we cannot successfully distance

from them. That the Swedish legal system is in no way free from discrimination is shown in detail by a report from a government commission of inquiry, "Utredningen

⁵ The concept of «everyday racism» and «gendered racism» has been explored by Essed (1991), and de los Reyes and Kamali (2005).

⁶ Interestingly, the idea that judges should be impartial has its roots in the *domarreglerna*, the ancient rules and guidelines for judges that date at least from the 13th century, the most famous of which are those assembled by Olaus Petri (1493–1552). The rules are believed to have been printed for the first time by the Royal Secretary Ericus Schroderus in 1635.

om makt, integration och strukturell diskriminering" (Official report on power, integration, and structural discrimination).⁷

4. Methodological dilemmas in the area of anti-discrimination

We might define the legal dogmatic method as the working method we use to get answers to questions about law. It involves examining the so-called 'sources of law' according to a deliberate methodology. The primary sources of law are the rules of law, in the form of Acts adopted by the Swedish Parliament and ordinances issued by the Government.⁸ Legal scholars also seek to understand the law as it is written by examining preparatory work (Government bills and Official Reports; these are the forerunners to the Acts adopted by the Parliament) and by applying so-called case law, the rulings of the highest authorities in similar cases. They may complement this understanding by studying pertinent legal commentary, including research reports and other documents of that kind. Sometimes the sources contradict one another. In that case, we bring to bear specific rules of legal interpretation that are rooted in the Romano-Germanic tradition and are still called by their Latin names, as follows: *Lex superior* states that a statute of a higher rank has precedence over one of a lower rank. The statutes of the Swedish Constitution, for example, have precedence over Acts of Parliament, which in turn have precedence over Government ordinances. *Lex specialis* states that specialized regulations have precedence over more general and universal rules. Finally, *lex posterior* states that new statutes have precedence over older ones.

The social sciences have traditionally viewed validity and reliability as highly important issues. Jurisprudence, in contrast, has paid little or no attention to these questions. This might be because, as we have seen, the court⁹ perceives itself to be both objective and neutral. In so doing, the court conflates its aims ('to be objective and neutral') with what it actually is, taking for granted that itself and its obligations are one and the same: failing, in other words, to separate what is from what ought to be. Validity has to do with whether a study actually measures what it intends and thus can trustworthy answers to the questions it poses. Reliability has to do with how those measurements are taken; it tells us about the fitness of our measuring instruments and our units of measure. Doing the same study again should reliably generate the same results (Ejvegård 2009, pp. 77, 80). Traditionally, these are central concerns in a scientific study. Jurisprudential research, however, has usually been focused more on defining the content of the law than criticizing its application in practice. As a result, legal scholars tend to see themselves as interpreters of the content of the law, rather than social scientists. They become, in a manner of speaking, closer to the law and to the courts. Their job is not to critique the law, but to quote, repeat, and clarify its content.¹⁰

I believe it is important that jurisprudence not simply support and reinforce the way the law is put into practice – by explaining why, for instance, if workers call a Gambian colleague 'blackie', 'big black bastard', 'the African' and 'svartskalle', or a Nigerian colleague 'Mogadishu' and 'Koko stupid', this conduct is not discriminatory.

⁷ See e.g. Diesen (2006), Sarnecki (SOU 2006), and Pettersson (2006), who use both legal arguments and text analysis to illustrate how "the law" and the legal system are coloured by racism. These are studies in criminal law, which has also received criticism for being pervaded by strong sexist opinions; see e.g. Andersson (2004), Burman (2007), Bladini (2013), and Wegerstad (2015). The present article looks only at the area of labour law, where the question of racism has hardly been discussed at all, with a few exceptions such as Laura Carlson's (2013) article, "Critical Race Theory in a Swedish Context."

⁸ In the area of labour law – legislation concerning the employer-employee relationship – the terms of a collective agreement carry the weight of law. Individual laws define the right to collective bargaining; it is permitted to the extent that the superior sources of law allow.

⁹ Here 'court' is used to collectively designate all of the writings that issue from the court. Of course, the Labour Court, discussed below, has more than one judge, and they all formulate themselves (somewhat) differently. Generally speaking, however, all the members of a court can be considered together under the designation of 'the court', especially given the fact that the court itself may issue general commentary and answers to questions put before it.

¹⁰ We might draw a comparison to the work of the 12th-century glossators.

My ambition is different. I want to understand and explain why these words are not ruled as discriminatory, something I believe is possible to achieve with the help of a critical discourse analysis of the judgments in these two cases (Bergström and Boréus 2012).

If an analysis has as its aim to confirm or refute the reasoning of a court judgment, it is not surprising if that analysis addresses only the consequences of the judgment and how specific legal issues should be understood and ruled when similar questions arise again, since the main concern here is to create coherence in the law. The question I am asking is really the opposite one, and this is why I have chosen to use a discourse analysis, which makes it possible for me to work with multiple statements at once and see what patterns emerge from the collective account (Winther Jørgensen and Phillips 2000). The theory of social constructionism views societies as jointly constructed by their members; this implies that a court may develop a picture of a case that differs from that of any one party in the case. It also means that society – for example, in the form of a workplace under scrutiny by the court – is shaped through discourse (Burr 2003). Examining and explaining the discursive construction of society – the workplace – is a kind of question that will not be addressed by traditional research, which focuses instead on determining the content of the law.

By pointing out truths that seem so natural and obvious that we normally take them for granted, it becomes possible to 'unveil' any declaration about the world and reveal it as only one of multiple truths. Social constructionism suggests that there always exist multiple positions from which we can explain society. This means that scientists need to acknowledge the positions from which they speak, an approach that is foreign to the positivist legal tradition to which traditional jurisprudence belongs. Adopting an objective, neutral position is, in my view, neither possible nor advisable, because doing so tends to conceal and mask the dominant structures in law instead of revealing them.

5. Multiple discrimination: an intersectional analysis

An intersectional analysis can help us develop an understanding of how the law works in society. To grasp the full meaning of intersectionality and to understand how we can use it to analyse the phenomenon of discrimination against minority groups, it is important to remember the criticism Crenshaw levelled at U.S. legislation: that it both rendered invisible and discriminated against the most vulnerable groups in society. It is also important to be aware of the problems that arise from legal classifications, which by their nature limit the ability of the law to cover more than a small part of the spectrum of societal phenomena.

It is striking that a search of the three largest Swedish law databases turns up only a few Labour Court cases¹¹ in which the Court declared that discrimination on the basis of ethnicity had occurred.¹² One explanation might be that the plaintiffs were without any legal grounds; another is that the plaintiff was not correctly stated. We might look for yet another in the judicial system itself and in the Labour Court's handling of discrimination cases. I will focus my attention on the third explanation, because a revised understanding of the law and discrimination cases might, in fact, make it possible for more people who believe their rights have been infringed on the basis of one or more of the grounds enumerated in the current Swedish Discrimination Act (or any of its predecessors) to obtain redress.

Legal classifications exclude what falls outside their boundaries, with the consequence that the grounds for discrimination are cleanly separated from one

¹¹ In only one of more than 30 cases the Court has heard involving ethnic discrimination was the judgment completely in the plaintiff's favour.

¹² Ethnicity refers to 'national or ethnic origin, skin colour, or other similar circumstance' (Swedish Discrimination Act 2008, c. 1, s. 5, ss. 3).

another, and the court must always answer the question of whether a person has been discriminated against. One thing this implies is that the judgments of the court are always considered in relationship to the conditions the law stipulates, which is of course a good thing. At the same time, as the rules define grounds for discrimination, they exclude everything that falls outside that definition. Intersectionality allows us to begin a process of self-critical reflection on the role of knowledge production and the legitimation and naturalization of the exercise of power. Intersectionality becomes a critical raster overlaying the positivist paradigm, fragmenting, atomizing and categorizing legal testimonies (de los Reyes and Mulinari 2005). Traditional legal scholarship has long been and still is intimately associated with a positivist attitude. Below, we will see how testimonies to the Labour Court become testimonies to the ways that individuals are otherized (Kamali 2005a, 2005b) and ethnicized. Ethnicization and racialization are intimately connected concepts.

The concept of "racialization" has been developed in recent years by scholars such as Robert Miles (1993). The concept of "ethnicization" has been used to designate institutional practices that – depending upon political, economic, and cultural claims and power relations – lead to the systematic exclusion of ethnic minorities [Ålund and Schierup 1991]. Racialization is a concept that seems to arise naturally within a British context, given the particular historical and etymological context and meaning of the concept of "race" in English, and its use in the public debate. Considering, however, the more specific and limited import of the concepts of "race" and "racism" outside of Great Britain, both historically and in present-day debate (general and academic), the term "racialization" is perhaps less useful on the Continent (de los Reyes 2006, s. 40)

5.1. The burden of proof

It is important to note that in the area of discrimination law, special burden of proof rules apply. The general rule is that the burden of proof lies with the party who makes the allegation; this party has to present evidence to support the claims against the plaintiff; accordingly, it should not be possible to simply make groundless allegation. Discrimination law in Sweden applied this principle until the early-1990s. The harmonization of Swedish law with European Union legislation, however, led to the introduction of what is known as the reverse burden of proof rule. This rule is usually described as a sharing of the burden of proof between the parties, as follows: if a plaintiff (a job applicant or an employee) presents facts that make it plausible that she or he has been discriminated against, this establishes a prima facie case of discrimination. Once a presumption of discrimination has arisen, the burden of proof shifts to the defendant (the employer), who must rebut the presumption of discrimination by proving that no violation of the principle of equal treatment has occurred. In cases of direct discrimination, a successful rebuttal requires showing that the unequal treatment does not constitute discrimination. In cases of indirect discrimination, a successful rebuttal must demonstrate that the employer objected that the policies are necessary from a business standpoint. Employers commonly seek to refute charges of discrimination by arguing that employees or job applicants had an uncooperative attitude or lacked personal suitability; the Labour Court accepts both defences more or less as a matter of course (Council Directive 97/80/EC).

6. Using intersectionality: questioning what we take for granted

We shall now consider how we might use an intersectional analysis to shed light on the workings of ethnic discrimination cases. I cannot give here more than a few examples of how this kind of analysis may be done. I have selected cases in which the fact of ethnic discrimination appears obvious to a layperson, but where the Labour Court found that no discrimination occurred.

Mari Matsuda is a U.S. lawyer and feminist who has suggested new ways to challenge normalcies in the substrate of the law. Matsuda's model suggests that we should ask questions about what is missing, and why:

The way I try to understand the interconnection of all forms of subordination is through a method I call 'ask the other question'. When I see something that looks racist, I ask, 'where is the patriarchy in this?' When I see something that looks sexist, I ask, 'Where is the heterosexism in this?' When I see something that looks homophobic, I ask, 'Where are the class interests in this?' (Matsuda 1991, p. 1189).

7. Reinforcing everyday racism

Let us return now to the two cases I mentioned at the start of this article, each of which normalize both racism and the social exclusion of minorities. In the first case, a rehabilitation aide originally from Gambia complained that he had been harassed because of his ethnicity, after which he was first suspended and then permanently reassigned on the grounds that he was uncooperative. Co-workers had called the aide names like 'blackie', 'big black bastard', 'the African', and 'svartskalle'. His unit head had accused him of practicing voodoo because he was so good with the residents of the treatment centre where he worked. The same unit head also denied the aide's request to take time off from work for a training program in 'disability leadership' and reduced his work hours from 98% to 80% of full-time, without any factual grounds for doing so (AD 2009:4). In the second case, the Court had to decide whether the employer of a welder of Nigerian background had discriminated against the welder in the way that it exercised its management functions on various occasions, and also whether the employer had neglected its duty to investigate and implement measures to prevent harassment on the job (AD 2012:27).¹³ In both cases, the Court dismissed the action brought by the plaintiffs.

In the 2012 case, the welder, B.O., had been employed at the Ringhals nuclear power plant in southwest Sweden. B.O. had experienced abusive behaviour from his co-workers, something he stated had begun in the fall of 2007, when they started calling him by the pejorative nickname 'Tony Mogadishu' and making cuckoo sounds. Once, an unknown person wrote the word 'Mogadishu' on a pipe in the active area of the plant (where B.O. and his colleagues worked). B.O. stated that he had brought these incidents to the attention of his supervisor, B.P., on at least four occasions, but the only answer he got was that it was not a big deal. In its judgment, the Court noted B.P.'s statement that he

had helped B.O. get hired by the company and had been a little like a mentor to him. B.O. was only a middling welder. The workplace atmosphere is fairly rough. Many of the workers are given nicknames by their colleagues, more or less in fun. B.O. was usually called 'Tony'. B.P. had never heard him called 'Mogadishu' or 'Koko stupid'. Nor had B.O. ever told him about any pejorative nickname. B.P. would not have accepted anything like that.

From what has been said, it is clear that B.O. and B.P. presented conflicting information about what took place between them. It is a case of one person's word against another's. It is possible that B.O. was the victim of harassment, but in the opinion of the Court, B.P. makes a credible impression in his firm denial that B.O. told him that he was given pejorative nicknames. Nor, in the opinion of the Court, has the plaintiff established that the company, during the negotiations with the national organization of B.O.'s trade union to resolve the dispute, confessed any knowledge of any instances of harassment. (AD 2012:27)

What the Court does in this case is to reverse the issue in their presentation of B.P. as normal and credible. The Court does not specifically mention the fact that B.P. is Swedish, but it implicitly informs the text of the judgment throughout: as, for

¹³ Some of the events occurred before the entry into force of the current Discrimination Act, when the previous Act (1999:130) was still in force. This is, however, of no consequence for the present analysis.

example, when the Court notes that B.P. helped B.O. get hired and then mentored him. Through its text, the Court constructs B.O. as the problematic one: he needs help to get a job, and once hired he needs mentoring. Meanwhile, B.P. is described as credible when he firmly denies ever hearing B.O. subjected to the kind of verbal abuse that B.O. claims. In other words, although the law directs the Court to apply the so-called reverse burden of proof, the Court actually rules based on something closer to a free sifting of evidence, rooted in the idea of two equal parties each responsible for putting forth evidence to be tested.

If the Court had possessed a better understanding of what victims of discrimination go through and a desire to change their situation, it would have asked itself why B.P. appeared to be a more credible witness than B.O. Instead, the Court constructs the normal (B.P.) by highlighting something that deviates from it (B.O.). The normal is made so obvious, so incontestable, that it requires no explanation at all.

The same thing occurred in the case of the rehab aide who was the recipient of multiple racial slurs. (Admittedly, this case was heard when the older legislation was still in force. In all likelihood, however, the outcome would have been the same if Court had ruled on the same events today, as the Court does not appear to have changed its reasoning since the new law entered into force.) The Court was satisfied that the plaintiff has been called 'blackie' (AD 2009:4), but wrote in its judgment that the plaintiff had not proved that other slurs had been used. Next, the Court stated that that the epithet 'blackie' in and of itself could certainly constitute behaviour that could be considered ethnic harassment – but, because the workers habitually used rough language among themselves, and the aide called his colleagues 'whitey', those colleagues had not understood that 'blackie' was insulting. The workers often joked and had fun with one another, noted the Court (AD 2009:4).

B.O., the welder, continued to be harassed more or less on a daily basis from the fall of 2007 until he was put on sick leave in June 2009. In negotiations between his employer and his trade union, the company management made statements such as 'in this business, you just have to count on that kind of language'. After being put on sick leave, B.O. was transferred to a post in the 'inactive' part of the plant. Once there, he seldom received work assignments commensurate with his skills and had to specifically request assignments to keep himself busy. As a consequence of the transfer, B.O.'s pay decreased substantially. B.O. recorded a private conversation in which a higher-up, H.H., said, 'You look like a slow-motion movie, when you're walking around here', and 'that's the truth... maybe it's not... maybe it's because you are black, but I think it depends on a cultural thing... not because of your colour'.

The company denied that B.O. had been discriminated against on the basis of his ethnicity. The Labour Court accepted the company's position, following basically the same line of reasoning as in the case discussed above. B.O. had been put on sick leave following a diagnosis of anaemia by the company health care service in March 2009. Just one month later, a doctor at a district health care centre gave B.O. a clean bill of health. Here, again, the Labour Court forbore to judge the events that had occurred. Instead it chose to evaluate B.O.'s personal credibility. In its judgment, the court wrote that documentation did exist to show that B.O. had recovered from his anaemia and therefore could have gone back to work in the active part of the plant, but that no evidence had been offered to establish that the company knew this.

On the issue of why B.O. did not receive work assignments commensurate with his skills, the Court stated that no evidence had been presented to show that B.O. had not received the same assignments as his co-workers. Nor did the Court accept claims by B.O. that he had been prohibited from visiting the restroom except during break time and that his lunchbox had been thrown in the trash. Here too, the Court

based its position upon the fact that a 'Swedish' supervisor had emphasized that the workplace atmosphere was generally pleasant and that although employees did sometimes address each other using nicknames or other monikers, he had never heard anyone address B.O. by anything but his real name. The supervisor also denied that he had stopped B.O. from visiting the restroom, as B.O. claimed.

Let us now juxtapose these two cases with a 2010 case in which the Labour Court ruled that an employer did discriminate against a job applicant, a woman, in favour of two younger men (AD 2010:91). A.H., a woman in her 60s, was not offered an interview for a position as a job coach, although she was highly qualified and more than met the job requirements that had been published. She was without question the most qualified applicant with the strongest résumé. The employer actually called more women than men for interviews; moreover, the interviewees also covered a range of ages. Because A.H. was far more qualified than the younger men, however, the employer could not successfully refute her charge of discrimination on the basis of age and gender. In my analysis, the judgment of the Court in this case does not offer any substantially new line of argument; the fact that the case was heard under the new Discrimination Act seems immaterial. Interestingly enough, the Court adopted a stance toward A.H. that is quite different compared to the two earlier judgments. The State argued that the woman had not been offered employment because she had personal characteristics that made her unsuitable for the job, describing her as having little empathy and an arrogant and superior attitude. In its judgment, the Court wrote:

As the Court understands the State's defence (Employment Agency), the State still argues that there was no causal relationship [between A.H.'s or gender and the adverse employment decision]. In other words, even if the judgment of A.H.'s personal suitability for the job was a misjudgement, it was that judgment which was the reason she was not given an interview, and not her age or her gender. It is possible that the decision not to call A.H. for an interview was indeed based solely on information produced by the flawed handling of the recruitment process. In the opinion of the Court, however, claiming this to be the case does not suffice by itself to prove that the decision was made completely without regard to A.H.'s age or gender. (AD 2010:91)

The Court's position with regards to the woman A.H., who was in her 60s, 'white', and Swedish', appears paradoxical when we compare it to how the two men of African descent were treated. In the case of A.H., the Court does not accept the explanation offered by the State (Employment Agency), as to why she was not considered for the position of job coach, declaring instead that the defence is insufficient in this respect. The way Court treats A.H. is respectful but also questionable. It is respectful in regards to A.H.'s status as a woman and as an older person; the Court recognizes A.H. as highly competent and the most qualified applicant for the job. It is questionable, however, when we consider that the duties of a job coach include liaising between jobseekers and potential employers as well as working in therapy groups to support jobseekers and help guide them towards employment. It is surely open to question whether jobseekers should be met by an arrogant person who lacks empathy.

8. Postmodernist feminism and its implications for the law

It is hardly so that the Labour Court sets out to support everyday racism. But what happens if we ask the classic sociology of law question, 'what signals is the Court sending with its judgments?' The answer is obvious: the Court is signalling that using words like 'blackie', 'big black bastard', 'the African', 'svartskalle', 'Tony Mogadishu', and 'Koko stupid' about people of African descent is not racist behaviour. It is therefore necessary to consider whether it is possible to use different kinds of 'methods' when judging issues of racism and discrimination, in order to forestall these kinds of conclusions. It seems somehow as if it is simply not possible to get at the phenomenon of racism using the classic methods. I think,

however, that it might be possible to use feminist methods and questions in this context and that they might be useful tools in denying racism free rein.

It is characteristic of feminist methods of research to ask, 'How do we know what we know?' (Weisberg 1993). Epistemology, of course, begins with theories of knowledge; thus, the question of whether a feminist method exists is highly relevant for more disciplines than just jurisprudence. Interestingly enough, these are questions that have been basically invisible in Scandinavian legal scholarship. The evolution of feminist methods in jurisprudence can be traced to research undertaken in the social sciences, where the focus is mainly directed toward critiquing the traditional methodologies of these fields, methodologies that are predicated on the notion that ideal scholarship is both neutral and objective.

Feminist scholars early on pointed out that trying to learn more about the situation of women using traditional research methods was problematic: the tools were far too blunt to be useful for studies by and about both women and men. There is no single theory of feminism, and there is no one method that we can call the feminist method. Often, however, feminist methods display a cross-disciplinary approach. Research in the social sciences has used qualitative research methods that include oral history, experimental analysis, narrative inquiry, and participant observation. Feminist theories and methods both question and challenge the positivist empiricist tradition, a tradition that was influenced by Enlightenment scientists like Descartes and Kant who championed *scientia*, or true 'knowing' rooted in the natural sciences, and that emphasizes empirical evidence, experiment, and the verification and falsification of conclusions reached through deductive logic. The feminist poststructuralist perspective, meanwhile, sees the notion of objective truth as based on a myth that serves only the interests of dominant structures.

One academic movement that has helped shape feminist methods in the area of jurisprudence is the critical theory of the Frankfurt School. The Frankfurt School developed in Germany during the 1920s and 1930s. Among its most famous representatives are Horkheimer, Adorno, Marcuse, and Habermas, all of whom were concerned with questions about how social interests, conflicts, and contradictions both produce dominant systems and are reproduced within them. They also challenged the idea that it is possible to be either objective, neutral, or impartial.

They argued instead that knowledge is socially constructed and that the way individuals understand reality is influenced by both society and history. Critical theory resembles the investigative research tradition in that it rejects the positivist theory of knowledge for the study of social phenomena. It is important, however, not to confuse the two. Being critical means more than just asking questions; it has rather to do with investigating and unmasking activities that set limits on human freedom. It is certainly quite different from the aims of the hermeneutic tradition (Nielsen).¹⁴ Habermas describes the goals of research for the hermeneutic tradition in terms of understanding, and for critical theory in terms of emancipation. Emancipation entails revealing the ideologies that preserve the status quo and limit or curtail the rights of different groups to information.

The terms postmodernism and poststructuralism are often used synonymously to describe work that draws on the thinking of French philosophers such as Lacan, Derrida, Foucault, and Kristeva. Postmodernist discourse can be thought of as 'deconstructive' (among other things), as it aims to show that beliefs about such fundamental notions as truth, power, and the self are socially constructed (Weisberg 1993, p. 532). A basic tenet of postmodernism is to reject the humanist belief in an authentic human 'I' – that is, a 'subject' with intentions, attributes, and a consciousness that distinguish it from the social world. The postmodernist position describes the subject as socially constructed, a product of many social, historical, and cultural discourses that are beyond individual control. Another

¹⁴ On the differences between the traditions, see generally Bernstein (1983).

postmodernist project addresses the question of whether it is possible to reach a universal, true picture of a world in which power and truth only exist if an outside authority grants them legitimacy. This implies, among other things, that it is impossible to discover any universal truths by appealing to a neutral scientific method. Instead, we should see knowledge as something produced through ideological or cultural invention. Nor is there any such thing as an objective language about knowledge: rational discourses are not neutral but socially constructed out of self-evident 'truths' that uphold prevailing power hierarchies. Among other things, this means that the subject is a cultural product, born out of a social discourse about power. The same insight also leads to an understanding of how gender is created and perpetuated. Deconstructing binary oppositions in language, the law, and other social institutions, however, offers a way for us to move beyond debates about likeness and difference. Claims about essential male and female characteristics are only ways to rationalize social constructions after the fact, and they exist only to uphold a prevailing discourse of power. The same considerations also make it impossible to claim that true and objective values can exist within the law. Instead the law becomes, and stays, a means of legitimizing social constructs and dominant structures like sexism and racism.

9. Dominant paradoxes in discriminatory structures

By exposing the underlying structures that so pervasively inform the thinking of the Labour Court on questions of ethnic discrimination, we can see how race becomes a marker in this context. 'Black' becomes an epithet, one that says 'less credible', while the words of a white supervisor carry weight simply because they come from a white man in a position of authority. Through such mechanisms, skin colour affects credibility in court; as a result, the Court contributes to popular perceptions that people of colour are not only less credible but poor workers too. In the cases discussed here, we can see how the Labour Court both realizes and furthers the stereotype of 'black and lazy' by choosing to abandon the principle of the reverse burden of proof for a discussion about credibility. On one side of that discussion is a person who claims to have been discriminated against, on the other the explanation of a white supervisor that the tone of the workplace was generally playful. The Court might have questioned the claim of a playful atmosphere, for example by noting that claims about 'practical jokes' are in themselves a way of belittling the person claiming discrimination. Instead, however, the court participated in completely disrupting the credibility of the person of colour. At the same time the Court furthered the dominant discourse that makes 'white skin colour' invisible and neutral while ethnicizing 'black'.¹⁵ 'Black' people become less credible, lazy, with no sense of humour.

In the case involving the rehabilitation aide, a unit head ('white' and 'female') was said to have claimed that a 'black' man used voodoo and to have ascribed other aspects of his conduct to his culture. She was also said to have stated that the residents in his care did what the 'black' man told them to do because he was big and black and so they were afraid of him. The Court said it was not satisfied that these statements had actually been made and dismissed the action. In this case, too, the dominant discourse is reinforced when the Court giving credibility to a 'white' workplace superior. The flip side of making the 'white' woman credible is that the 'black' man becomes someone who tells lies, someone untrustworthy. Again we see the man who is different ethnicized, turned into something different than the 'white' woman; 'whiteness' is something the Court reinforces through a shift in the way it examines the evidence in the case: in a leap of logic, the Court 're-reversed' the burden of proof without explaining why. Rather than applying the

¹⁵ Ethnicization (or racialization) refers to institutionalized practices that – as a result of political, economic, and cultural demands and power relations – lead to a systematic exclusion of ethnic minorities (Miles 1993).

prima facie principle, the Court elected to weigh the relative credibility of the stories of the two parties.

True, in neither of the two cases is the skin colour of these persons discussed. Not talking about the skin colour of the higher-ranking employees, however, means that 'white' becomes invisible – although as Sara Ahmed (2004) writes:

of course whiteness is only invisible for those who inhabit it. For those who don't, it is hard not to see whiteness; it even seems everywhere. Seeing whiteness is about living its effects, as effects that allow white bodies to extend into spaces that have already taken their shape, spaces in which black bodies stand out, stand apart, unless they pass, which means passing through space by passing as white (Ahmed 2004, p. 201).

In my view, this implies that it is impossible for the Court to conduct itself according to the 'neutrality' and 'objectivity' it claims to possess, because it lacks the ability to recognize itself, and the context in which it is situated, as constructed within the 'discourse of whiteness', which is the dominant discourse. This becomes especially clear when we contrast the first two cases with the case involving an older 'white' woman who is not assigned a colour at all. 'White', once again, becomes neutral, invisible to the court.

In the Court judgments, men with 'black' skin are different from their 'white' higher-ups. The result is that the Court participates in reinforcing the ethnicization of human beings, making 'black' people deviate from the norm and 'white' people normal. With the help of postcolonial feminism, however, we can draw attention to the position of marginalized groups and work toward social change.

Minow has described how the law, which is intended to offer a path out of discrimination, instead participates in creating 'differences' among people and in perpetuating a hierarchy that raises some people up while subordinating others. The law becomes not a deciding force for justice, but a way to patrol the borders between groups of people. In this way, paradoxically, the law itself becomes a barrier to justice:

[The] law provides vivid contexts for studying the assignment of the label of difference, whether by traits of race, gender, disability, or other minority identities. Law uses categories. Judges and administrators identify traits and place people and problems in categories on that basis. Law also backs up words and concepts with power. The names given by law carry real consequences in people's lives. In law, the press of the past has a special weight. Judges deliberately maintain continuity with ideas and practices of the past in order to promote social stability and protect expectations. Even the judicial model of individualized hearings and individualized judgments preserves and reinvents categorical solutions and neglects the relational dimensions of problems of difference (Minow 1990 p. 97).

One of the foremost voices in postcolonial feminism, Chandra Talpade Mohanty, also discusses the possibility of using feminist methods and analytical strategies with a starting point in the perspective of subordinated groups. She believes that a vision of universal justice is

the very opposite of 'special interest' thinking. If we pay attention to and think from the space of some of the most disenfranchised communities of women in the world, we are most likely to envision a just and democratic society capable of treating all its citizens fairly. Conversely, if we begin our analysis from, and limit it to, the space of privileged communities, our visions of justice are more likely to be exclusionary, because privilege nurtures blindness to those without the same privileges (Mohanty 2006, p. 231).

An approach like this can make visible the lives and concerns of marginalized women and men, which in turn makes it possible to reveal the workings of power and transform its use and abuse. An intersectional perspective is perhaps not the only solution to these problems, but at least it brings with it an ambition to effect change for subordinated groups. With the help of intersectionality, it is also possible

that we might have greater faith in a democratic and inclusive society and that the paradoxical consequences of the law might disappear; it might further be possible to erase the differences between formal and real equality. Crenshaw (1989) distinguishes between structural and political intersectionality. Structural intersectionality refers to the experience of discrimination, whereas political intersectionality refers to political strategies and policy documents. The discrimination people experience when they are assigned racially motivated epithets such "big black bastard," or ethnicized by being said to "look like a slow-motion movie" or "practice voodoo," becomes, through the decisions of the Court, a truth about "others." By this mechanism, prejudices about "others" (living law) become normalized behaviour in the form of everyday racism (law in action), in spite of the fact that anti-discrimination law (law in books) prohibits, for example, discrimination on the basis of ethnicity. Kantola and Nousiainen (2009) write that "political institutions and structures are theorized as governing and reproducing inequalities. They can be used to remedy existing problems but also have the power to ignore and silence others." In discussions about discrimination, this is usually described in terms of "structural discrimination [that] legitimizes and normalizes indirect forms of negative discrimination against 'the others.' It arises out of established ideologies, patterns of behaviour, and procedures that may not intend to discriminate against any particular group but that, in practice, systemically exclude certain groups of people from work and other opportunities" (Kamali 2005a, p. 32).

I believe that if we wish to forestall and prevent racism, whether against women or men, we have much to gain from the continued development of these methods, and from applying postmodern feminist methods to analyse the law as an instrument and its power to control. It does not matter that feminist methods were primarily developed to prevent the subordination of women, for the same mechanisms are used to exert power over other subordinated groups. Both racism and sexism can be prevented if the courts will open their eyes to new methods and consider discussing how they can help with this aim. To prevent everyday racism in the way intended by the law in books, the courts must take into account the living law and the law in action. If the courts are allowed to continue applying the law according to their whim, without even considering their position as representatives for the power of dominant 'white' groups over subordinated people of colour, then it is obvious that the living law that is the dominant discourse of 'white' normalcy will never change. The law conceived in books will never be more than an idea, or empty lines in the play of law in action.

References

AD (Labour Court) 2009:4.

AD (Labour Court) 2010:91.

AD (Labour Court) 2012:27.

Ahmed, S, and de los Reyes, P., 2011. *Postkolonial feminism. 1.* Stockholm: Tankekraft.

Ahmed, S., 2004. Declarations of whiteness: the non-performativity of anti-racism. *Borderlands* [online], 3 (2). Available from: http://www.borderlands.net.au/vol3no2_2004/ahmed_declarations.htm [Accessed 7 July 2016].

Andersson, U., 2004. *Hans (ord) eller hennes?: en könsteoretisk analys av straffrättsligt skydd mot sexuella övergrepp.* Thesis (PhD). Lunds Universitet.

Bergström, G. and Boréus, K., eds., 2012. *Textens mening och makt: metodbok i samhällsvetenskaplig text- och diskursanalys.* 3rd ed. Lund: Studentlitteratur.

Bernstein, R., 1983. *Beyond Objectivism and Relativism: Science, Hermeneutics, and Praxis.* University of Pennsylvania Press.

- Bladini, M., 2013. *I objektivitetens sken: en kritisk granskning av objektivitetsideal, objektivitetsanspråk och legitimeringsstrategier i diskurser om dömande i brottmåll.* Thesis (PhD). Lunds Universitet.
- Burman, M., 2007. *Straffrätt och mäns våld mot kvinnor: om straffrättens förmåga att producera jämställdhet.* Thesis (PhD). Umeå Universitet.
- Burr, V., 2003. *Social constructionism.* 2nd ed. London: Routledge.
- Carlson, L., 2013. Racism under the Law: Rethinking the Swedish Approach through a Critical Race Theory Lens. *Ragion Pratica*, 41, 491-509.
- Collins, P.H., 2000. *Black feminist thought: knowledge, consciousness, and the politics of empowerment* [online]. Rev. 10th anniversary ed., 2nd ed. New York: Routledge. Available from: <https://uniteyouthdublin.files.wordpress.com/2015/01/black-feminist-thought-by-patricia-hill-collins.pdf> [Accessed 7 July 2016].
- Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex.
- Crenshaw, K., 1989. Demarginalizing the intersection of race and sex: a black feminist critique of antidiscrimination doctrine, feminist theory, and antiracist politics. *University of Chicago Legal Forum*, 139-167.
- Davis, A., 2001 [1981]. *Women, race & class.* London: Women's.
- de los Reyes, P., 2014. 1. Introduktion – Inte bara jämställdhet. In: SOU - Statens Offentliga Utredningar, 2014. *Inte bara jämställdhet: intersektionella perspektiv på hinder och möjligheter i arbetslivet* [online]. Stockholm: Fritze. Available from: <http://www.regeringen.se/contentassets/5d2854cb8ddc4285af0aff0105c02540/inte-bara-jamstallldhet---intersektionella-perspektiv-pa-hinder-och-mojligheter-i-arbetslivet-sou-201434> [Accessed 7 July 2016].
- de los Reyes, P., and Kamali, M., eds. 2005. *Bortom vi och dom: teoretiska reflektioner om makt, integration och strukturell diskriminering : rapport* [online]. Stockholm: Fritzes offentliga publikationer. Available from: <http://www.regeringen.se/contentassets/10ca6c4d2daf4916a6fcf7e91bdee5b8/bortom-vi-och-dom---teoretiska-reflektioner-om-makt-integration-och-strukturell-diskriminering-del-1> [Accessed 7 July 2016].
- de los Reyes, P., and Mulinari, D., 2005. *Intersektionalitet: kritiska reflektioner över (o)jämlighetens landskap.* Malmö: Liber.
- de los Reyes, P., ed. 2006. *Arbetslivets (o)synliga murar: rapport* [online]. Stockholm: Fritze. Available from: <http://www.regeringen.se/contentassets/b83fece5ad284a579cc25fdfab953f7a/arbetslivets-osynliga-murar-sou-200659> [Accessed 7 July 2016].
- Diesen, 2006. Negativ särbehandling i rättskedjans alla led. In: J. Sarnecki, ed. *Är rättvisan rättvis?: tio perspektiv på diskriminering av etniska och religiösa minoriteter inom rättssystemet : rapport* [online]. Stockholm: Fritzes offentliga publikationer, 183-225. Available from: <http://www.regeringen.se/contentassets/106cc584ae1a489db46fde9bbbc090ab/ar-rattvisan-rattvis-tio-perspektiv-pa-diskriminering-av-etniska-och-religiosa-minoriteter-inom-rattssystemet-sou-200630> [Accessed 7 July 2016].
- Discrimination Act (Diskrimineringslagen, 2008:567).*
- Ejvegård, R., 2009. *Vetenskaplig metod.* 4th ed. Lund: Studentlitteratur.
- Essed, P., 1991. *Understanding everyday racism: an interdisciplinary theory.* Newbury Park: Sage.

- Frankenberg, R., 1993. *White women, race matters: the social construction of whiteness*. London: Routledge.
- Harris, A., 1989. Race and Essentialism in Feminist Legal Theory. *Stanford Law review*, 42, 581-616.
- Hertogh, M.L.M., ed., 2009. *Living law: reconsidering Eugen Ehrlich*. Oxford: Hart.
- Instrument of Government (Regeringsform) 1974.
- Kamali, M., 2005a. Ett europeiskt dilemma: Strukturell/institutionell diskriminering. In: P. de los Reyes and M. Kamali, eds. *Bortom vi och dom: teoretiska reflektioner om makt, integration och strukturell diskriminering: rapport* [online]. Stockholm: Fritzes offentliga publikationer, 29-69. Available from: <http://www.regeringen.se/contentassets/10ca6c4d2daf4916a6fcf7e91bdee5b8/bortom-vi-och-dom---teoretiska-reflektioner-om-makt-integration-och-strukturell-diskriminering-del-1> [Accessed 7 July 2016].
- Kamali, M., 2005b. *Sverige inifrån: röster om etnisk diskriminering : rapport* [online]. Stockholm: Fritzes offentliga publikationer. Available from: <http://www.regeringen.se/contentassets/1d93e7a133f74981be87214b5ad2f5bc/sverige-inifran---roster-om-etnisk-diskriminering> [Accessed 7 July 2016].
- Kantola, J., and Nousiainen, K., 2009. Institutionalizing Intersectionality in Europe. *International Feminist Journal of Politics*, 11 (4), 459-477.
- Knocke, W., 1986. *Invandrarkvinnor i lönearbete och fack. En studie om kvinnor från fyra länder inom Kommunal och Fabriksarbetareförbundets avtalsområde*. Stockholm: Arbetslivscentrum.
- Matsuda, M., 1991. Beside my sister, facing the enemy: legal theory out of coalition. *Stanford Law Review* 43 (6), 1183-1192.
- Miles, R., 1993. *Racism after 'race relations'*. Routledge: London.
- Minow, M., 1990. *Making all the difference: inclusion, exclusion, and American law*. Ithaca, N.Y.: Cornell University Press.
- Mohanty, C.T., 2006. *Feminism utan gränser: avkoloniserad teori, praktiserad solidaritet*. Stockholm: Tankekraft.
- Neergaard, A., ed., 2006. *På tröskeln till lönearbete: diskriminering, exkludering och underordning av personer med utländsk bakgrund: rapport* [online]. Stockholm: Fritzes offentliga publikationer. Available from: <http://www.regeringen.se/contentassets/b1c625aa10c94991b71cc971369f2258/pa-troskeln-till-lonearbete-sou-200660> [Accessed 7 July 2016].
- Nielsen, J.M., ed., 1990. *Feminist research methods: exemplary readings in the social sciences*. Boulder, CO: Westview Press.
- Pettersson, T., 2006. Särbehandlas gärningspersoner med utländsk bakgrund vid anmälningar om våldtäkter, grov misshandel och eget bruk av narkotika? In: J. Sarnecki, ed. *Är rättvisan rättvis?: tio perspektiv på diskriminering av etniska och religiösa minoriteter inom rättssystemet : rapport* [online]. Stockholm: Fritzes offentliga publikationer, 111-145. Available from: <http://www.regeringen.se/contentassets/106cc584ae1a489db46fde9bbbc090ab/ar-rattvisan-rattvis-tio-perspektiv-pa-diskriminering-av-etniska-och-religiosa-minoriteter-inom-rattssystemet-sou-200630> [Accessed 7 July 2016].
- Piaget, J., 1970. *Genetic epistemology*. New York: Columbia Press.
- Piaget, J., 1972. *Psykologi och undervisning*. Stockholm: Bonniers.
- Sarnecki, J., ed., 2006. *Är rättvisan rättvis?: tio perspektiv på diskriminering av etniska och religiösa minoriteter inom rättssystemet : rapport* [online]. Stockholm: Fritzes offentliga publikationer. Available from:

- <http://www.regeringen.se/contentassets/106cc584ae1a489db46fde9bbbc090ab/ar-rattvisan-rattvis-tio-perspektiv-pa-diskriminering-av-etniska-och-religiosa-minoriteter-inom-rattssystemet-sou-200630> [Accessed 7 July 2016].
- Schömer, E., 2011. Osynliggörande av multipel diskriminering i den svenska diskrimineringslagstiftningen. In: E-M. Svensson, et al., eds. *På vei: kjønn og rett i Norden*. Göteborg: Macadam, 115-144.
- Schömer, E., 2012. Multiple discrimination. A smokescreen over differences. *Retfærd*, 138 (3), 29-50.
- Schömer, E., 2013. Feministisk retssteori och rettsociologi. In: O. Hammerslev and M.R. Madsen, ed. *Rettsociologi: klassiske og moderne perspektiver*. Place of publication: Hans Reitzel, 605-629.
- Schömer, E., 2014. Arbetsrättsliga perspektiv på jämställdhet, diskriminering och intersektionalitet. In: Swedish Government Official Report 2014:34, *Inte bara jämställdhet: intersektionella perspektiv på hinder och möjligheter i arbetslivet*, 61-86.
- Smith, B., ed., 2000. *Home girls: a Black feminist anthology*. New Brunswick, N.J.: Rutgers University Press.
- SOU - Statens Offentliga Utredningar, 2005. *Det blågula glashuset: strukturell diskriminering i Sverige : betänkande* [online]. Stockholm: Fritzes offentliga publikationer. Available from: <http://www.regeringen.se/contentassets/0cf1e0d4944d469bb237b6b0945d08fe/det-blaugula-glashuset---strukturell-diskriminering-i-sverige-del-1---missiv-t.o.m.-kapitel-4> [Accessed 7 July 2016].
- SOU - Statens Offentliga Utredningar, 2006. *Integrationens svarta bok: agenda för jämlikhet och social sammanhållning : slutbetänkande* [online]. Stockholm: Fritze. Available from: <http://www.regeringen.se/contentassets/5241f7aba1244c68ba6043a868024472/integrationens-svarta-bok-agenda-for-jamlikhet-och-social-sammanhallning-sou-200679> [Accessed 7 July 2016].
- SOU - Statens Offentliga Utredningar, 2014. *Inte bara jämställdhet: intersektionella perspektiv på hinder och möjligheter i arbetslivet* [online]. Stockholm: Fritze. Available from: <http://www.regeringen.se/contentassets/5d2854cb8ddc4285af0aff0105c02540/inte-bara-jamstallldhet---intersektionella-perspektiv-pa-hinder-och-mojligheter-i-arbetslivet-sou-201434> [Accessed 7 July 2016].
- Spelman, E.V., 1990. *Inessential woman: problems of exclusion in feminist thought*. London: Women's Press.
- Wegerstad, L., 2015. *Skyddsvärda intressen & straffvärda kränkningar: om sexualbrotten i det straffrättsliga systemet med utgångspunkt i brottet sexuellt ofredande*. Thesis (PhD). Lunds universitet, 2015.
- Weisberg, D.K., ed., 1993. *Feminist legal theory: foundations*. Philadelphia: Temple University Press.
- Winther Jørgensen, M., and Phillips, L., 2000. *Diskursanalys som teori och metod*. Lund: Studentlitteratur.
- World Economic Forum, 2014. *The global gender gap report 2014* [online]. Geneva: World Economic Forum. Available from: http://www3.weforum.org/docs/GGGR14/GGGR_CompleteReport_2014.pdf [Accessed 29 May 2015].
- Ålund, A, and Schierup, C.-U., 1991. *Paradoxes of multiculturalism: essays on Swedish society*. Aldershot: Avebury.