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Nordic Feminist Perspectives on Law, New Materialist Insights, and the Renewal of the Finnish Personal Identification Code

Juho Aalto¹

1. Introduction

The current Finnish Personal Identification Code (PIC) discloses to anyone viewing it the person's birthdate and sex. The policy of Prime Minister Sanna Marin's Government is to change the PIC from 2027 onwards so that it will not reveal sex/gender and birthdate. The proposal challenges the prevalence given to distinguishing men from women in public and legal matters. Although not necessarily explicit in the proposal, it can be seen to employ the feminist critique of the binary approach to gender, i.e. male/female (m/f). This binary system, feminist scholars would argue, is also a hierarchy in which a male is considered superior to a female (m>f). Hereinafter I will refer to this as *the binary*. (Halley 2008) However, despite the seeming challenge this proposal makes to the binary system, the state will continue to register sex/gender data, without making it visible in the PIC.

According to Eva-Maria Svensson the privileged position of the Nordic Feminist Perspectives on law within "Western feminisms" has been declining since the internationalisation of feminist legal studies as a discipline. (Svensson 2012) She identifies a general need for the Nordic feminist perspectives on law to reassess its present disciplinary position as compared to when the field was formed as a discipline targeting "women's law" in Nordic Countries (Svensson 2012). Jannice Käll has drawn upon feminist scholars' work in

relation to new materialism and calls for a further opening up of the Nordic feminist perspectives on law via engagement with "the new materialist turn". (Käll 2020, p. 3) Käll also suggests thinking of law '—as an expression manifest in all bodies as well as directly expressed through them'. (Käll 2020, p. 11)

This article is the result of my encounters with Feminist New materialisms (FNM), which has once more brought the materiality of the body to the fore; thus, challenging the dualistic thinking exemplified in a binary definition of sex/gender. (Braidotti 2015) I believe that Nordic Feminisms could engage with and be inspired by FNM and by doing so generate new possibilities for readdressing the role of law as a source of inequality. Experimenting with FNM in law entails a change of the paradigm and a fight against our unconsciously implicit binary mode of thinking. A first step would entail addressing the world from an onto-epistemological perspective; meaning the need to acknowledge that there is no distinction between theory and practice, instead the two are entangled.

The aim of this article is first to map how Nordic feminism, especially its Finnish strand of Feminist legal philosophy, currently engages with the binary, and how this discussion could be interpreted from an FNM perspective. The final aim being to develop an analytical tool that would help to exemplify contemporary issues attached to binary thinking on sex/gender. This article answers the following questions: What kind of possibilities are there for analysing the binary from the FNM perspective? How has the binary been visible in the PIC renewal?

The article engages directly with the question posed in this special issue as to whether Nordic

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critical theory is dead or alive. I suggest that it is alive, but in order for it to stay alive it needs to continue to engage in the concrete struggles for equality played out in the legal arena and, more widely, in society. Furthermore, it needs to stay open in order to learn from new theoretical insights.

In the following section, I will address the Nordic Feminist discussion in general and then more precisely the Finnish feminist legal philosophical discussion. I will discuss how they have engaged and continue to engage with the binary and how this could be used to facilitate conversations with FNM. The goal of the analysis is the development of an accessible analytical tool for analysing the binary from a Nordic feminist perspective on law with new materialist insights and without downplaying of the role of materiality in analysis of law. This is an experiment with an onto-epistemological approach where I reflect on the role of the binary in sex-reassignment, treatment of intersex adolescents and the PIC renewal proposal in Finland. The results of my analysis of the written statements given in public hearing to the PIC renewal demonstrate how Nordic feminisms and society can and are engaging with the binary in the reification of essentialism and exclusions. This article ends with some concluding observations.

2.0 Current Challenges for the Nordic Feminist Perspectives on Law, and the Current Finnish Feminist Legal Discussion on the Binary and New Materialisms

Here I will outline my answers to Svensson's call for reassessing the current position of Nordic legal feminism "post women's law" and Käll's call for opening up the Nordic Feminist Perspectives on the law by engagement with the new materialist turn. I will approach these issues by offering a brief account of the approach from the Nordic feminist perspectives to the binary; this is followed by a deeper analysis of the current Finnish legal philosophical discussion on the topic. As I consider the binary system a central theme, I will pursue the development of an analytical tool for exemplifying

contemporary issues attached to it. I will especially rely on the notion of diffractive reading, a term coined by Barad. Barad explains how reading texts diffractively through one another fosters '—constructive engagements across (and a reworking of) disciplinary boundaries.' (Barad 2007, p. 25) Jannice Käll has previously read new materialist theory and the Nordic Feminist Perspectives on law "against each other" thus elaborating on the notion of justice advanced by the new materialists; I would consider this as being diffractive. Her aim was to infuse the Nordic Feminist Perspectives on Law with insights from FNM in order to create an understanding that sexism and racism cannot be seen as being outside of law but inside it.

Nordic feminism has been described as a form of state feminism, to use the term initiated by Helga Hernes in the 1980s. Namely, that Nordic feminists have fought, through the Nordic Welfare State Model, for a method of equality within binary practises, aimed at securing sufficient material and practical conditions for equality. (Nygren, Martinson and Mulinari 2018) It could be suggested that the welfare state and what Svensson described as the Nordic privileged position of the feminist perspectives on law have become entangled with Nordic identity. Furthermore, the long and successful history of "women's law" in the Nordic countries with its (historically) binary understanding of sex/gender, has been and still is manifested in Finland through the separate offices of equality and non-discrimination ombudsmen and specific discrimination laws.

The binary has been approached from the "women's law" perspective, where equality between men and women was the primary starting point. Later, the discussion became augmented with newer perspectives concerning gender and sexual identity; this was probably due to neoliberalism gaining traction in Nordic welfare state policies (Svensson, Pylkkänen and Niemi-Kiesiläinen 2004). Mitchell and Fazi have noted that the advancement of neoliberal policies greatly benefited from the linguistic turn with its emphasis on language instead of material class differences.

Thus, new arenas started to emerge for political struggles leading to a situation where, the previous political focus of the left wing on capitalism started to decline; it was then reconfigured with a focus on issues such as racism, homophobia, multiculturalism etc. Marginality became described through identities instead of material class differences. (Mitchell and Fazi 2017 p. 147) Since then, I would suggest, the Nordic equality driven projects have become founded upon claims for declarative “low cost” rights such as same-sex marriage and adoption rights for non-heterosexual people.

The Nordic feminist perspectives on law is already a theoretically diversified field. (Käll 2020, p. 3) I consider that Nordic feminist perspectives on law would benefit from ‘—a renewed focus on materiality post the social or linguistic turns in theory.’(Käll 2020, p. 2) However, we need to acknowledge that the main outcome of Nordic feminism has mainly relied on the relation between women’s material conditions and the welfare state. Regarding law, Nordic feminism has focused on equality between men and women (m>f), rather than holistically on the binary. I consider that, in a way, the binary has always been there implicitly, even if the debate has been blurred by women’s equality.

Nordic welfare state thinking could risk falling into nostalgic fantasies of its gender equality framework entangled with a heteronormative binary nation state. (Nygren, Martinson and Mulinari 2018, p. 5) Neo-conservative and populist feminism only reflects on equality within binary practice, and is often formulated by divisions based not only on binary sex/gender but also on nationality. In so doing it reaffirms heteronormativity and its connection with the nation state as exemplified by Katarina Nygren, Lena Martinsson and Diana Molinari. They consider Nordic gender equality as an open signifier that has been recently adapted by neoconservative political groups to justify

xenophobia and make equality an inherently Nordic feature in its heteronormative meaning. These political groups also simultaneously attack “gender ideology” by borrowing from the methodologies of international “anti-gender” movements. (Nygren, Martinson and Mulinari 2018) In other words, the open signification of gender equality in discourse has become selectively – and strategically – appropriated. It has consequently been formulated for dubious purposes in the interest of identity politics outside academia. Suvi Keskinen made similar remarks between 2015-16 when large numbers of displaced persons reached Finland, describing this as the “crisis” of white hegemony. (Keskinen, 2018) Nordic feminist legal scholars must continue to be aware that there are no singular equality projects based on sex/gender identities but one motivated by equality and hopefully in the future re-connected with materiality. As these developments have occurred in all Nordic states it provides the reason why the feminist perspectives on law need new theoretical insights and practical analytical tools in order to keep up to date and in connection with the material circumstances of the marginalised. Next, I will introduce current Finnish feminist legal philosophical discussion on the binary.

According to Minni Leskinen, Finnish feminist legal research was established as “women’s law” with Pirkko K. Koskinen’s seminal work *Naisoikeutta*² in 1983 (Koskinen 1983; see also Stang Dahl 1988) In Leskinen’s words, Koskinen had seemingly no problem thinking about the concept of “a woman” and that women’s legal position was a “cultural product”. (Leskinen 2020, p. 451) Furthermore, she saw the perspectives on women’s law as something that could be put on and taken off like a cape depending on the “angle” needed for the purpose in question. (Leskinen 2020, p. 451) The possibilities of science not being universal or neutral was not yet questioned. Ten years later, according to Leskinen, the universality of science had become evidently questioned and

² sv. kvinnorätt, engl. women’s law

the researcher's subject-position was being problematised. Soile Pohjonen noted in 1992 that '—defining and naming of a subject can never do justice against the backdrop of plurality but is often necessary for dealing with them.' (Leskinen 2020, p. 452) Kevät Nousiainen, in her turn, described Pohjonen's approach as a postmodern indication of the death of absolute truth. (Leskinen 2020, p. 452) Criticisms of feminist legal scholarship have been based on claims of its inappropriateness to legal research as legal research was considered to be based on universal truths. (Leskinen 2020, p. 452) These universal truths were entangled with the perception of the pre-existence of a sex/gender binary along with the distinction between "biological" sex and "socially constructed" gender. Sex/gender difference was seen as important because of its unjust material consequences to women produced in law and legal praxis. The binary was bolstered in terms of a biologically defined male/female as distinguished from the cultural gender definition of feminine/masculine.

Some 20 years ago Johanna Niemi found that the neutralising discourses in descriptions of reality in *travaux préparatoires* to the Sexual Offences Act reform 1998 led to a situation where the parties were depicted as sexless/genderless. Seemingly the reformers considered material differences as inconvenient in such a context. Furthermore, the *travaux préparatoires* contained normalising discourses of heterosexuality, penetration, and sexuality between autonomous subjects with self-determination. (Niemi 1998) Even though feminist legal scholarship had produced a variety of perspectives to be applied in policymaking and legislation, the universalist perspective still emerged as a potent agent in that law reform. There were still traces of considering the binary as a perspective, in Koskinen's terms, that did not qualify as "legal" which is paradigmatically considered to be based on universality. Davies notes that '—it is important to reflect on the position of the knower because it alerts us to the assumed perspective of any legal theory.' (Davies 2017, p. 113)

Niemi's analysis of the *travaux préparatoires* evoked the need for Nordic feminist perspectives to open up law in its analysis as both forming and regulating its subjects where subject-object positioning could be seen as entangled. This led to a consideration of whether it would be more beneficial to think in terms of differences not based on "gender that is so bound up with sexual difference" but instead on material differences of the parties; this had been already hinted at by De Lauretis in 1987 (De Lauretis 1987). Complementing the analysis of discourses with materiality would make visible the material differences of the parties, while simultaneously overcoming the dichotomy between sex/gender's social and legal construction. This might function when discussing how law's universalist discourse, which constrains and enables who/what can legally be the subject of the Sexual Offences Act, and subsequently produced legally and socially after the law's application.

Amalia Verdu Sanmartin's dissertation *Trapped in Gender* from 2020 demonstrates how '—the conservative use of gender in law and the confusion around, sex, gender, and feminism have hindered the transformation of law into a real non-discriminatory structure.' (Verdu Sanmartin 2020 p. 239) She suggests that the development towards true equality has stalled in terms of law as the binary has become questioned. (Sanmartin, 2020, p. 293) Furthermore, she recognises how law has failed to accept the new "truth" while the binary is becoming more contested in society, notwithstanding that the need to recognise the body is generally accepted. (Verdu Sanmartin 2020 p. 239) Similarly here, from the perspective of raising the problems of the binary problem seem to be a perspective paradigmatically considered unfitting to "the legal perspective."

Niemi sees sex/gender as socially and even legally constructed so that the discussions on the biological ontologies of "true sex" have become outdated. (Niemi 2010, p. 453) Leskinen, informed by Nousiainen (Nousiainen 1992), outlines the understanding of sex/gender in Finnish feminist

legal philosophy: ‘It feels somewhat obvious but necessary to state that feminist legal scholarship – as little as feminist philosophy – does not, nor does it have to assume its foundations in such ontologically rigid definition of sex/gender that could always be unambiguously categorised.’ She draws her analysis based on phenomenological feminist philosophy and its approach to the conceptual problem of sex/gender and otherness when attempting to find a solution to the in-built problem of legal science ever finding a final ontological solution to the concept. (Leskinen 2020, p. 449) Furthermore, Niemi is curious as to whether new materialism might be the “post” of discourse analysis. (Niemi 2020, p. 502) New materialism, would not have an issue concerning rigid ontologies because it is onto-epistemological and occupies a theoretical starting point that things ongoingly emerge as phenomena. Furthermore, the distinction between the legal and social construction of gender might be overcome with FNM. New materialism is challenging to laws which are based on construed categorisations derived from a range of paradigmatic scientific practices and theories.

2. 1 Moving into New Materialism

Since the 1990s neoliberalism has had an impact on Nordic welfare state policies, and, simultaneously sex/gender has been broadened as regards sexualities and sexual identities. This has sometimes lead to a decline in the analysis of material social-economic inequalities. Nordic Feminist Perspectives are historically familiar with the analysis of material conditions and could also continue to be relevant in the future as part of an internationalised feminist legal discipline. Otherwise, the feminist perspective might risk becoming an open signifier used by neo-conservatives as a singular equality project within the binary categories’ attached to the nation state; it would thus deepen the division between biological and socially constructed genders – legally and politically. Encouragingly, Finnish feminist legal philosophy does not the rigid ontological binary categories of sex/gender for granted. The possibilities for a new materialist

analysis of the manifestation of binary law through bodies should be further mapped. Next, I will offer a description of Barad’s theory of agential realism.

Generally speaking, a common aim of new materialisms is to reset the focus on materiality after the social or linguistic turn of the 1960s without neglecting the substantial power of language and discourse.(Barad, 2007, pp. 132–133) The main idea of Barad’s theory is that the ‘ontological unit is not independent objects with inherent boundaries and properties but rather *phenomena*.’(Barad, 2007, p. 139) This leads us to think that the universe is comprised of phenomena that are ‘—the ontological inseparability/entanglement of intra-acting” agencies’.(Barad, 2007, p. 139) Intra-action, a concept developed by Barad, is a term that explains that distinct entities, agencies and events do not precede interaction but rather emerge from/through their particular intra-actions. Thus, intra-action undermines the notions of subject and object in research where one precedes the other. Furthermore, Barad’s metaphysics of agential realism accepts that human beings do not exist as individually determinate “individuals” but instead emerge via intra-action as *phenomena*. Barad differentiates language from discourse and subscribes to the Foucauldian notion that: ‘[d]iscourse is not what is said; it is that which constrains and enables what can be said.’(Barad, 2007, p. 146) Barad speaks of *apparatuses* that produce phenomena through intra-action. The apparatus being material-discursive so that it simultaneously limits what kinds of conditions of possibility are available to distinct entities, agencies and events such as humans and non-humans in order to emerge as phenomena. (Barad, 2010, p. 148) My aim is to ponder on how new materialism could be experimented with as regards the binary by developing an analytical tool that would be an application of Barad’s apparatus. The tool would be used to exemplify contemporary issues attached to binary thinking on sex/gender and for determining how this binary thinking can perhaps even have material effects by means of its agency. Effects such as limiting the conditions of

possibilities for humans to emerge. This is an attempt to think how humans emerge in a binary framework and how law might express itself in bodies and through them.

Lena Holzer, working with new materialisms and subscribing to Anne Fausto-Sterling's work, argues that the civil registration of sex/gender does more than state an essential reality; it actually produces and shapes the bodies development in order to comply with understandings of the sexual dimorphism of male and female appearances and simultaneously reinforces the social norms attached to them. (Holzer 2019. p. 92) Although differently reasoned, it seems that Holzer's aim is to open up the law governing registration of birth with similar intentions to mine. However, I would suggest that Holzer's view read through Barad and Philippopoulos-Mihalopoulos could be seen as not producing dimorphic bodies as such, but instead seen to produce the phenomena of dimorphic bodies through intra-action. Next, I want to draw attention to the possibilities of opening up the Nordic feminist perspectives on law with insights from new materialism.

Law is, according to Käll, still '—linked to a textual or legislative order practiced by courts or other administrative agents subordinated to the nation-state.' (Käll 2021, p.21) Käll follows Andreas Philippopoulos-Mihalopoulos and Margaret Davies in questioning law's abstraction and demonstrates the many ways in which law can be material. (Davies 2017, p. 154) Furthermore, Philippopoulos-Mihalopoulos challenges law's inherent immateriality that enables its presentation as being abstract and universal.³ This challenge is central when considering the binary practices of law as pre-discursive (Butler, 1993, Butler, 1994, Fausto-Sterling, 2000) and not as formed, maintained and constrained by available [anthropocentric] subject categories. Keeping in mind the hierarchy m>f embedded within the binary practice, Philippopoulos-Mihalopoulos

notes that there are stronger bodies in the assemblage of the posthuman lawscape, "—such as corporations, a billionaire, religion, or tsunami (...)", in other words, some bodies have more influence. Bodies are not equally equipped to act and react, making them a source of categorical prejudices that might count for more than formal law. (Philippopoulos-Mihalopoulos 2015, p. 62) Thus, in the words of Philippopoulos-Mihalopoulos, these '—old categories between "the powerful" and "the weak" are just that: old categories in the service of existing structures.' (Philippopoulos-Mihalopoulos 2015, p. 62) Furthermore, according to Philippopoulos-Mihalopoulos: 'The law is not just the text, the decision, even the courtroom. That law is the pavement, the traffic light, the hood in the shopping mall, the veil in the school, the cell in Guantanamo, the seating arrangement at a meeting, the risotto at the restaurant.' (Philippopoulos-Mihalopoulos 2014, p. 410) Thinking in this way, and by giving the law a certain level of agency that effects the conditions of the possibilities for the given examples to emerge as phenomena. Opening up law to cover the problems of sexism and racism found in society, even though formal law takes account of them, and as raised by Käll, means in the words of Philippopoulos-Mihalopoulos, understanding that law is composed of both formal law and other norms governing societies in terms of the binary; this is also without giving precedence to its textual form. (Käll 2020, p. 8) In this sense opening up law would be twofold, firstly we need to think of law as having material effects, and secondly that it is an entanglement of both formal law and other societal norms. I see that by giving certain agency to the binary as a source of inequality within this "opened-up law", in order to explore how it might be material-discursive and involved in intra-actions.

As discussed above if law is opened up in the twofold meaning of having both material effects and being composed of both formal law and other

³ Like many feminists before, see in general: The Oxford Handbook of Feminist Theory by Disch, L. and 6

Hawkesforth, M., eds. 2015. *The Oxford Handbook of Feminist Theory*. Oxford University Press

societal norms. In order to consider the ways in which law affects the intra-actions through which humans emerge as phenomena, an analytical tool for the task is required. This is not an attempt to settle the issue once and for all within the limits of this paper, instead I am offering a tentative proposal for approaching the issue of how an “opened up” law might manifest itself in all bodies, as well as being directly expressed through them. In other words, I am proposing an analytical tool that is based on the results of the analysis found in previous sections – or an entanglement of Nordic feminisms and my reading of FNM.

The current configuration in the material-discursive apparatus limits the conditions of intra-action through which humans emerge within the binary. The emerging of humans as phenomena implies recognizing the agency of every element, such as the body and “the opened-up law”, which control the intra-action within the apparatus. I call the apparatus, with this configuration, BinaryTech. The reality of the material body is far from the idea of the body as a stagnant result of an imposed binary process as expressed by Holzer. Instead, when BinaryTech is in motion, the emerging of humans as phenomena is limited by the binary, within “the opened-up law” or in other words between the legal/social construction of sex/gender. They are the same. This means, that the conditions for possibilities to emerge through intra-action in BinaryTech are always limited to the binary also in future intra-actions. The body is becoming an agent entangled with “the opened-up law” in BinaryTech producing the phenomena of sexed/gendered bodies. In the next section I will illustrate BinaryTech in motion with three examples.

3.0 BinaryTech in Motion: Sex/gender-reassignment, Intersex Adolescents and The Renewal of the Finnish Personal Identification Code

My first example is sex/gender affirming surgery connected to a change of judicial sex/gender. In the Nordic countries Sweden (2013), Denmark (2014) and Norway (2016) have dropped sterility as a prerequisite for changing judicial sex/gender. Denmark allows the change of judicial sex/gender as a matter of choice, whereas in Sweden, a medical diagnosis is still needed. In Finland a medical diagnosis, sex/gender reassignment surgery and sterility are prerequisites by law.⁴ These material and bodily alterations in order to be able to change juridical sex/gender is the first example of BinaryTech in motion. In other words, people seeking sex/gender affirmation surgery are subjected to a choice within the formal binary law. BinaryTech manifests itself more visibly and materially, in and through certain bodies. The actual surgery is followed by *inter alia* voice therapy to make the person meet the cultural aspects of gendered behaviour, once again this is BinaryTech in motion. In this sense, the person undergoing the sex/gender affirmation process emerges repeatedly through BinaryTech as a binary and material phenomenon in different places and times, with different reconfigurations.

This connection between sex/gender affirmation surgery and a judicial change of sex/gender will hopefully soon be a thing of the past in Finland. The Constitution of Finland 1999/731 §53 allows for a minimum of 50 000 citizens to present a proposal for a new law to parliament. These initiatives can be made public on lausuntopalvelu.fi, a website maintained by the Ministry Justice, where the signatories are also collected. The “Oikeus olla” initiative, aiming to change the status quo, collected the required 50 000 signatories in two days and will therefore be passed on to the Parliament. The aim of the initiative is to make the change of judicial sex/gender a personal choice for

⁴ 2002/563 §1 (1) Lag om fastställande av transsexuella personers könstillhörighet

persons over 15 years of age, although the choice is still within the binary framework.

Another example concerns alterations made on intersex bodies. Nystén, in her master's thesis, studied the dilatation treatment of adolescent intersex individuals provided by Finnish public healthcare. These adolescents' atypical genitals were defined as repairable in a medical sense (Nystén 2021). Usually, the condition of being intersexual is diagnosed in puberty in connection with the absence of menstruation and oftentimes infertility. Often, people diagnosed with the condition are comfortable with their appearance and their sex/gender and conform to societal expectations. The condition is treated with a dilatation treatment that materially dilates the vagina in order to be suitable for heterosexual intercourse. She found that the intersex body was not necessarily a traumatic experience for the persons and that the dilatation treatment did not consolidate their experience of sex/gender. Instead, the treatment was conducted on the premise of producing an ideationally functional and normalised female body capable of heteronormative intercourse. (Nystén 2021, p. 56) Here, BinaryTech materially alters otherwise healthy bodies to fit the expectations of society that females must be prepared for heterosexual intercourse within the binary, even though the social gender correlated with societal norms.

My last example concerns the Finnish personal identification code (PIC) which was introduced in 1960, based on the Swedish model from 1947⁵; it is widely used in healthcare, commerce, and social security. The number consists of the subject's date of birth, an individual number, and a control character⁶. The individual number is odd for males and even for females. A newborn receives a PIC directly when the hospital transfers the data to the

Finnish Population Information System.⁷ Currently, the existing sex/gender categories are based on the binary and the PIC itself carries the sex/gender information.

According to current legislation, any change of the PIC is strictly limited to situations where the change 1) is absolutely necessary for the protection of the person's health and security from a manifest and permanent threat, 2) in cases of fraud that has caused significant economic harm and that the change will *de facto* prevent the continuation of that harm, or 3) when the person *has been confirmed to belong* to the opposite sex according to the law governing transsexuals.⁸ The law is strict because its object and purpose is to maintain the PIC as permanent.

In 2017, the Ministry of Finance established a working group to study how the PIC system should be changed and how the identity guaranteed by the state should be managed. (valtiovarainministeriön julkaisuja, 2020) The working group stated in its interim report that '[t]he abolition of judicial wrongs related to sex/gender is not a matter solely attributable to personal identification code. Instead, reforming the personal identity code to be sex/gender neutral would create a foundation for future amendments to laws.' (valtiovarainministeriön julkaisuja, 2017, p. 30) The main concern was to make sure that the PIC system meets the needs of society in the long-term. (valtiovarainministeriön julkaisuja, 2020) The original proposal was to change all existing PICs, but later this was replaced by version that would grant the new PICs to newborns and people without prior registration. The final report of the working group proposed removing sex/gender and birth date from the PIC altogether. Furthermore, Prime Minister Sanna Marin's government programme included an explicit statement of removing the

⁶ 2009/661 § 11 Lag om befolkningsdatasystemet och de certifikattjänster som tillhandahålls av Myndigheten för digitalisering och befolkningsdata

⁷ 2009/661 § 13 Lag om befolkningsdatasystemet och de certifikattjänster som tillhandahålls av Myndigheten för digitalisering och befolkningsdata

⁸ 2009/661 § 12 Lag om befolkningsdatasystemet och de certifikattjänster som tillhandahålls av Myndigheten för digitalisering och befolkningsdata

sex/gender marker. I conducted a thematic content analysis of the written statements given in the public hearing of working group's the final report (valtiovarainministeriön julkaisu, 2020) addressed above, during the public hearing procedure on the Finnish lausuntopalvelu.fi.⁹ Therefore, from 2027 onwards, the PIC will not reveal the sex/gender of its holder. A new law reform project was established in 2020 with an explicit goal to implement the gender neutrality of PIC.

Next, I will introduce the results from the conducted thematic content analysis of the written statements sent to lausuntopalvelu.fi. This is/ an online service maintained by the Finnish Ministry of Justice for public hearings on matters that are being prepared by authorities.

The written statements were given by: 26 municipalities and a municipal umbrella organisation, 24 publicly funded institutions, 14 NGO's, 16 businesses and business lobby organisations, eight courts and prosecutor offices, seven labour unions and student's organisations, six ministries, five hospital districts, five universities and universities of applied sciences, five private individuals and 2 religious organisations and churches. The circulation attracted 131 commentaries.¹⁰ The data set is interesting because it covers a variety of societal bodies from specialised knowledges to individual opinions. I classified the written statements into 3 categories: positive, neutral, and negative according to the reasoning found on removing sex/gender data from the PIC. I looked for explicit statements of support for the positive category, for the neutral I looked for no explicit statement of support for or against the issue or that the issue was not addressed at all, and finally any explicit statement of being against was classified as negative. Some cases included several types of reasoning. In those cases, I classified the statement according to the most explicit content of the

reasoning. If the statement could not be classified, it was omitted. The statements were coded as follows: positive 37, neutral 51, negative 18. The themes that arose from the data set were further classified according to the reasoning. I classified the negative stances into 2 subcategories: the overall cost and other reasoning. The 14 negative statements presented cost and marginalisation as the main argument against the renewal. The statements in the latter category depicted the renewal as only catering to a marginal group that would cause disproportionate costs to society in relation to its aim. The two remaining negatives were given by a private agricultural organisation without any reasoning whatsoever and an individual based on religious conviction. I also filtered the material based on whether the cost was seen as the primary obstacle, this resulted in 65 statements.

The purposes for use of the sex/gender data was found in 29 statements: 14 raised concerns about access to data for research and equality reporting purposes, 12 for healthcare and welfare services and three for commercial uses. A total of 28 statements included reasoning following the EU General Data Protection Regulation (GDPR) aiming at minimizing the unnecessary processing of personal data and anonymity. Human rights reasoning was found in 19 statements out of which one was against the idea. Covid19 was found in 15 of the statements. Data breach and identity theft reasoning coded 13 statements, and more precise ways of identification were found in 13. The cost for accessing sex/gender data was found in six and finally, an explicit mention of the problems of the sex/gender binary was made in three statements.

The data shows that most statements contained neutral or positive reasoning on the topic of erasing sex/gender data. The primary concern of the negative opinions was the overall cost of the renewal, furthermore in general the needs of equality reporting and health care were raised but

⁹ Final deadline for the statements was 1st of June 2020. I used NVivo 12 for conducting the analysis and as data repository.

¹⁰ Totalling 370 pages with pre-set questions by the responsible ministry, most of the written statements were given in Finnish, apart from one in Swedish.

not as opposing the renewal *per se*. Furthermore, the statements show that equality is still to a great extent seen as a binary struggle and research and healthcare seem to take the binary system an established and permanent fact.

4. Conclusive remarks

This article has mapped how the binary has been approached in Nordic and Finnish feminist legal theory and what kinds of possibilities might lie in experimenting with the new materialist approaches to this problem.

In the 1980s, the Nordic perspectives on law mostly targeted “women’s law” with claims made that would advance the material conditions of women. To meet these goals during this era, the ideal of a Nordic welfare state was paramount. Binary thinking was not contested to a great extent. Following the gaining of traction by neoliberalism in Nordic welfare state policies, focus was shifted to linguistics and materialism became less important. Current Finnish feminist legal philosophy no longer seems to be attached to rigid ontological differentiation within the binary. Thus, I see the possibility for new materialist insights to be brought into discussion from the Nordic feminist perspectives when dealing binary aspects embedded in law. There seems to be a growing interest both in Finland and in the Nordic region towards new materialisms. Law’s reluctance to accept the new truth about sex/gender requires new theoretical insights to be presented - hopefully in the form of Nordic Feminist New Materialist perspectives on law.

I have in this paper proposed an analytical tool, BinaryTech, as a means of illustrating the role of law as “opened up” as regards to the binary and how the apparatus with this reconfiguration limits the conditions for humans to emerge as phenomena through intra-actions. The tool seeks to exemplify how opening up law inspired by new materialisms could offer theoretical insights into future Nordic feminist legal writing that could advance equality driven goals not based on ontologically rigid sex/gender distinctions.

In terms of the Finnish PIC renewal the working group reflections on the judicial wrongs related to sex/gender led them to reason that a change in the PIC would be a starting point for future law amendments. Interestingly, no deeper analysis was conducted on the overall need for a sex/gender marker in PIC. The working group was perhaps aware of the risk of the discussion culminating in a set of theoretically complicated issues related to the binary system, which had been taken for granted in 1960 and not widely questioned since. It can be stated that, at least in this data set, arguments for defending the paradigmatic understanding of binary thinking were rare. The statements suggest that sex/gender is no longer seen as a fundamental factor that needs to be included as a publicly visible part of the PIC. In comparison, more concerns were raised about removing the birth date from public visibility for practical reasons *inter alia* reassuring of age for age-limited products such as tobacco and alcohol, loans, instalment payment arrangements and telecommunication contracts. In addition, the swift and wide popular support of the “Oikeus olla”-campaign for detaching sex/gender affirmation surgery and the need for medical diagnosis from judicial change of sex in Finland, is encouraging in terms of hopefully a shift in paradigmatic thinking about ontological rigid categorisations of humans. In meeting the future needs for the PIC, it would be feasible to suggest that the creation of a third or “other” category to complement the binary m/f would lead to another categorisation that new materialisms aims to overcome. (Barad, 2011) Furthermore, this would be another re-configuration of the BinaryTech to another form of binary: males and females/others.

It seems that Nordic critical theory is definitely alive. Nordic feminist perspectives on law can also continue to be relevant internationally they remain open to the traditional theoretical plurality of this perspective and avoids falling into nostalgic fantasies of equality within a binary classification coupled with the Nordic welfare state model.

List of References

- BARAD, K. 2007. *Meeting the Universe Halfway: Quantum Physics and the Entanglement of Matter and Meaning*. Duke University Press: Durham & London
- BARAD, K. 2010. Quantum Entanglements and Hauntological Relations of Inheritance: Dis/continuities, SpaceTime Enfoldings, and Justice-to-Come. *Derrida Today*, 3(2): 240–268.
- BARAD, K. 2011. Nature 's Queer Performativity " O. *Qui Parle*, 19(2). 121–158.
- BRAIDOTTI, R. 2015 Posthuman Feminist Theory. In *The Oxford Handbook of Feminist Theory*, ed. Lisa Disch and Mary Hawkesforth, 673-698. UK:Oxford University Press.
- BUTLER, J. 1993. Critically Queer. *GLQ: A Journal of Lesbian and Gay Studies* 1(1). 17-32.
- BUTLER, J. 1994. Against Proper Objects. *Differences* (6)1, 1-26
- DAVIES, M. 2017. *Law Unlimited: Materialism, Pluralism, and Legal Theory*. Routledge: London
- DE LAURETIS, T. 1987. *Technologies of Gender: Essays on Theory, Film, and Fiction*. Indiana University Press, USA
- DISCH, L. and HAWKESWORTH, M., eds. 2015. *The Oxford Handbook of Feminist Theory*. Oxford University Press, United Kingdom
- FAUSTO-Sterling, A. 2000 The Five Sexes, Revisited *The Sciences* (40)18, 19–20.
- GIRITLI NYGREN, K., MARTINSSON, L. and MULINARI, D. 2018. Gender Equality and BEyond: At the Crossroads of Neoliberalism, Anti-Gender MOvements, "European" Values, and Normative Reiterations in the Nordic Model. *Social Inclusion* 6(4). 1-7.
- HALLEY, J. 2008. *Split Decisions: How and Why to Take a Break from Feminism*. Princeton University Press: Princeton
- HOLZER, L. 2019. Sexually Dimorphic Bodies: A Production of Birth Certificates. *Australian Feminist Law Journal*, 49(1) 517-24
- KÄLL, J. 2020. The potential for new materialist justice via Nordic feminist perspectives on law. *Nordic Journal on Law and Society*, 3(02). 1–28.
- KESKINEN, S. 2018. The 'crisis' of white hegemony, neonationalist femininities and antiracist feminism. *Women's Studies International Forum*, 68(May 2017). 157–163.
- KOSKINEN, P. 1983. *Naisoikeutta : naisnäkökulma työoikeuteen*. Suomen lakimiesliiton kustannus: Helsinki
- LESKINEN, M. 2020. Feministinen oikeusfilosofia - fenomenologia lähtökohtia oikeuden ja sukupuolen tutkimukseen. *Oikeus*, 49(4), 447–471.
- MITCHELL W. and FAZI, T. 2017. *Reclaiming the State: A Progressive Vision for Sovereignty for a Post-Neoliberal World* Pluto Press: London
- NIEMI, J. 1998 Naisia, miehiä vai henkilöitä: seksuaalirikokset ja sukupuoli. *Oikeus*, 2. 4-19.
- NIEMI, J. 2010 Oikeuden tekstit empiirisen tutkimuksen kohteena In *Empiirisen oikeustutkimuksen kokemukset, haasteet ja tulevaisuus*, ed. Anssi Keinänen, Mia Kilpeläinen and Ulla Vääänen, Finland: Itä-Suomen yliopisto
- NIEMI, J. 2020. Oikeus konstruktionistisena käytäntönä. *Oikeus*, 49(4). 447–471.
- NOUSIAINEN, K. 1992 Johdattelua Naisoikeuden Näkökulmien Pariin In *Naisnäkökulmia oikeuteen*, ed. Riitta Turunen. Finland: Gaudeamus.
- NYSTÉN, C. 2020 "Tee nämä asiat, että olet terve ja normaali yhteiskunnan jäsen." - Emättimen dilataatiohoidon merkitykset ilman emätintä syntyneiden henkilöiden puheessa.' Finland: Helsingin yliopisto
- PHILIPPOPOULOS-MIHALOPOULOS, A. 2014. Critical Autopoiesis and the Materiality of Law. *International Journal for the Semiotics of Law* 27(2) 389-418.
- PHILIPPOPOULOS-MIHALOPOULOS, A. 2015. *Spatial Justice: Body, Lawscape, Atmosphere*. United-Kingdom and USA: Routledge
- STANG DAHL, T. 1988. *Women's Law: An Introduction to Feminist Jurisprudence*. Cambridge University Press: Oxford
- SVENSSON, E.-M., PYLKKÄNEN, A. and NIEMI-KIESILÄINEN, J. eds. 2004. *Nordic equality at a crossroads : feminist legal studies coping with difference*. Aldershot, United Kingdom
- SVENSSON E-M 2012 Is there a future for Scandinavian Womens Law? In Ruth Nielsen and Christina D. Tvarno ed. *Scandinavian Womens' Law in the 21st Century*, Copenhagen: Djøf Publishing, 15-29

Valtiovarainministeriön julkaisuja - 2017
Henkilötunnuksen uudistamista koskevan
työryhmän johtoryhmän väliraportti
(VM/1158/00.01.00.01/2017)
Valtiovarainministeriön julkaisuja – 2020:20
HETU-uudistuksen loppuraportti
VERDU SANMARTIN, A. 2020. *Trapped in
Gender: Understanding the concept of gender and
its use in law*. Turun yliopisto: Turku