

## **Conference report: Nordic legal culture – myth or reality?**

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In early June 2023, leading scholars of European comparative law gathered at the University of Bergen, for a conference organised by the University's Research Group for Legal Culture, Legal History and Comparative Law on the topic "Nordic Legal Culture: Myth or Reality?".

This report covers a selection of topics that were of particular interest, from the perspective of third year law students currently taking the subject 'Legal History and Comparative Law' at the University of Bergen.

In his keynote, [Professor David Nelken](#) likened the term 'Legal Culture' to a 'Bergen Joke' - a joke that "takes copious amounts of effort while producing low to moderate levels of humour, and in the end being enjoyed most by the joke-teller". Nelken provocatively stated that similar features can be identified when talking about legal cultures. Applying legal culture requires "copious amounts of effort to study while producing low to moderate levels of enlightenment". Judging by the audience's reaction, this comparison did not qualify as a 'Bergen joke' itself, as it seemingly produced a high level of humour.

### **The term 'legal culture' as an analytical tool**

Of particular interest for us as students, was seeing the differing opinions of experienced scholars, concerning the concept of legal culture. It gives awareness to the fact that there is not just one 'correct' approach.

Several speakers touched upon the concept of “legal culture”, and how this is best understood. [Professor Mads Andenæs](#) referred to Sunde’s definition of legal culture, which delineates legal culture into its intellectual and institutional components, encompassing various subcategories. Andenæs found the legal cultural model presented in Sunde and Koch’s [publication](#) well-suited for legal research, as it assists in providing an understanding of the concept of ‘legal culture’.

[Professor Heikki Pihlajamäki](#) was more sceptical to the analytical value of ‘legal culture’. For him, the term is more apt for describing residual elements of law, such as legal institutions and attitudes towards law. Pihlajamäki’s perspective was met with a certain scepticism from Nelken and [Professor Jaakko Husa](#). Nelken pointed out how such a narrow definition would make it difficult to use the concept of legal culture in any meaningful way. Husa described how the term ‘legal culture’ can be viewed as an empty vessel, in the sense that it can be filled in any way desired by the will of the scholar. Many other speakers agreed that the purpose and epistemological interest determines the scope and meaning of legal culture in every comparative analysis.

### **Legal culture - A controversial concept**

In Nelken’s presentation, one of the things he looked at was instances of ‘legal culture as a value’, as this pertains to stating that a particular practice is superior, because it aligns with one’s own legal culture. Of particular interest in this regard, was an example made by following Nelken’s presentation. Michaels referred to how the global North, in an imperialist manner, would often push to replace local legal cultures in non-western countries with their own legal culture, justifying this by stating that the former legal culture is different from-, and therefore inferior to, their own. Hearing Michaels’ words, it was easy to think that he was describing a problem of the past.

In response, however, [Professor Anna Nylund](#) emphasised that this colonialist practice is still active in Greenland (Denmark), Norway, and Sweden, exemplified by the suppression of the indigenous Sámi- and Inuit people’s legal cultures, and displacement by the legal cultures of

the non-indigenous population. Nylund's reminder of the on-going legal colonialism in the Nordic countries today was of particular interest for the Norwegian part of the audience due to the so called "Fosen"-case, referring to the Norwegian Supreme Court judgement [HR-2021-1975-S](#). In this case, the Supreme Court ruled that the Norwegian government's permission for the construction of wind-turbines on Sámi land constituted a violation of Article 27 of the UN Covenant on Civil and Political Rights, regarding the right of indigenous people to "enjoy their own culture". The Norwegian government has failed to act following this judgment, resulting in a large amount of protests demanding the removal of the wind-turbines, or other appropriate action on part of the government. The case is an important illustration of how the non-indigenous legal culture, and interests, have been deemed more important or prioritised, at the expense of the indigenous perspective.

### **The existence and conceptualisation of a Nordic legal culture**

In the opening speech of the conference, Associate [Professor Ingvill Göller](#) examined how the Nordic Legal cultures are represented in non-Nordic literature. Using a navigational metaphor, Göller found that "the map" this literature lays out, "does not fit the terrain" of the actual legal cultures, exemplifying this by pointing out several misconceptions in non-Nordic literature. She identified the scarcity of English literature written by Nordic authors as the main cause for this. Suggesting that the discrepancy between "the [English-speaking] map" and "the [Nordic Legal cultural] terrain" could be remedied if Nordic academics published more of their work in English, making the information available for an international audience.

A recurring theme throughout the conference pertained to the precision of characterising Nordic legal culture as a unified construct. Nylund was one of the speakers who underscored this issue, by proffering alternative categorisations within the European North in her presentation. One illustrative division revolved around the presence of administrative courts, with Sweden and Finland emerging as the sole members of this category.

[Professor Iris Nguyen Duy's](#) presentation demonstrated how the formulation of a Nordic legal culture is influenced by the perspective of the definer. She delved into how foreigners

often harbour preconceived notions and expectations regarding this culture, which are frequently affirmed by nationals. Nguyen Duy observed that Nordic countries frequently present a unified image abroad, despite their inherent differences.

Senior lecturer [Katalin Capannini-Kelemen](#) raised a thought-provoking question regarding the tendency to define Nordic culture by negatives, questioning the validity of defining something by what it is not. She pointed out how defining the otherness of the culture by comparing them to features in dominating legal cultures such as English or German legal culture, diverts attention from the original features of the legal culture. The system of categorising legal cultures as either common or civil law is an example of this, as in practice the evaluation will be based on whether the legal culture resembles more the English, or continental European legal traditions.

Throughout the conference, questions arose concerning the importance and relevance of defining distinct legal cultures. Juxtaposing some of this scepticism, [Professor Helle Krunke](#) introduced 'constitutional identity' as an illustration wherein defining legal culture bears paramount significance. With this, she was referring to the obligation of EU legislative acts to respect member states' national identities, in accordance with TEU Article 4(2). Where a 'national identity', which will largely be coinciding with a national legal culture, is not communicated, it cannot be respected or affect EU-legislation. In countries such as Germany, constitutional courts exist to perform constitutional review, and therefore constitutional interpretation, which results in the national constitutional identity being formulated and communicated by an independent institution on a regular basis. The Nordic countries do not have such constitutional courts. Instead, the courts have traditionally been more reluctant when interpreting the constitution, while political institutions have been stronger in this regard. The EU has met this larger political responsibility with scepticism, particularly highlighting the ripe opportunity for abuse of power which arises when political institutions formulate constitutional identity, recent trends in Poland and Hungary being examples of this. The consequence of the Nordic member states' less formulated, and when formulated less acceptably formulated, constitutional national identity seemed to be potentially large, and very problematic.

During the discussion segment, the destructive aspects of constitutional identity were raised by [Associate Professor Johann Ruben Leiss](#), who referred to examples from German law, where Constitutional identity has been used to obstruct the integration between the EU and the German legal orders. Professor Krunke specified that she was not particularly positive towards constitutional identity, but instead wished to communicate the challenge Nordic countries face in this regard.

### **Technological aspects of the Nordic Legal Culture and the way forward**

The concluding session featured a panel debate in which the panellists engaged in discussions on various matters, including digitalisation of the court system. From a student perspective, the challenges associated with digitalisation were of particular interest, particularly due to having grown up with technology, and digitalisation being an integral part of our lives, and having experienced an increased focus on digitalisation throughout our studies. Technology and digitalisation in this context have consistently been presented in a positive light, especially when said technology has been new. It was therefore both surprising and interesting when the panel debate raised these negative aspects. An example, raised by Judge Torstein Frantzen, is the recently implemented system in Norway wherein proceedings from the first instance are video recorded for potential use during the appellate stage. The issue for the judges is that they are unable to observe the parties in real-time or ask questions themselves.

The judges' viewpoints served as a valuable complement to the legal scholars' more theoretical approach during the conference. In sum, the conference thus delved into a wide range of subjects, spanning from abstract considerations regarding the study of the term 'legal culture' to more targeted inquiries about the nature of Nordic legal culture, ultimately extending to how elements of legal culture give rise to practical challenges and complexities.

The conference underscored the significance of international communication concerning Nordic legal cultures as a countermeasure to address the intricate misinterpretations and missing influence in the international decision-making. It also brought to light various indicators of a renewed interest in Nordic legal culture, including the establishment of entities such as the European Law Institute's Nordic hub, the Norwegian Association for Comparative Law, and the Nordic Centre run by the UNIDROIT in Rome, in addition to the conference itself. Yet, it is important to recognize that while the institutionalisation of knowledge dissemination can serve as a countermeasure to rectify these issues, it can simultaneously contribute to the creation of a myth surrounding Nordic legal culture.

### **List of chairs, speakers, and debate participants**

#### Chairs:

Professor [Barbara Pozzo](#) of the Università dell'Insubria,

Dr. hc. mult. [Kathrina Boele-Woelki](#) from Bucerius Law School in Germany

Professor [Giuditta Cordero Moss](#) from the University of Oslo and head of the International Academy of Comparative Law

#### Speakers:

Professor David Nelken from King's College London

[Professor Jørn Ø. Sunde of the University of Oslo](#)

Ralf Michaels, Director of the Max Planck Institute for Comparative and International Law in Hamburg

[Mark van Hoecke](#) from Queen Mary University London and the University of Ghent

Professor Heikki Pihlajamäki from the University of Helsinki

Professor Jaakko Husa from the University of Helsinki

Professor [Mathias Siems](#) from the European University Institute in Florence

Professor Helle Krunke from the University of Copenhagen

Professor Anna Nylund from the University of Bergen

Professor Mads Andenæs from the University of Oslo

Professor Iris Nguyen Duy from the University of Agder

PhD Candidate [Axel Jonsson](#) from the University of Bergen

PhD Candidate [Thorbjørn Waal Lundsgaard](#) from the University of Copenhagen

[Associate Professor Magnus Esmark](#) from The Inland Norway University of Applied Sciences

PhD Candidate [Anna Maria Wilmot](#) from Vrije Universiteit Brussel

Debate participants:

Associate Professor Johann Ruben Leiss

Torstein Frantzen, justice of Gulating Court of Appeal

Professor [Frederik Waage](#) from the University of Southern Denmark and former justice in the Eastern High Court in Denmark