Disability in court: intersectionality and rule of law
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Intersectionality is a commonly used perspective in issues regarding social inequality and injustice in several fields, and has also been introduced in disability studies. In legal systems, social inequality and rule of law are closely connected. The court is an arena that is known both to produce and reproduce social inequality. The purpose of this article is to raise and discuss the question of how intersectionality may serve as a productive theoretical approach in research on disability and rule of law. We discuss in what ways intersectionality as a perspective may contribute to rule of law for disabled people in Western legal systems. Our intention is to investigate the potential of intersectionality as a sensitizing perspective within a process-oriented model for analytical sensibility. Intersectionality as a perspective in relation to disability and rule of law is explored with categorization and gender in focus.

Keywords: Legal systems; rule of law; disability; intersectionality; gender

Research on disability and rule of law – an emerging field of research
Within the field of disability studies, it has been argued that there is a need for ‘a sensitizing framework’ that (may) support combining the development of ‘both theoretical and empirical sensitivity’ (Gustavsson 2004, 68). Gustavsson claims that a longstanding call for theoretical perspectives in disability studies has resulted in more frequent use of such perspectives and analyses. Applying broader theoretical perspectives, with a language that cuts across disciplines, has led to greater interaction with researchers in other fields. This more frequent use also implies ‘increased opportunities for the development of critical perspectives on current ideologies and power structures’ (Gustavsson 2004, 67). The title of Gustavsson’s article ‘The Role of Theory in Disability Research – Springboard or Strait-jacket?’ infers, however, that disability studies may be an easy target for presiding theories in social science or the humanities. When it comes to intersectionality as a perspective, Söder (2009) for instance suggests that disability studies may serve as more of a testing ground rather than as an area for applying intersectionality as a perspective in general.

At the core of the concept of intersectionality is the entanglement of various differentiating social categories and their impact on individuals, social practices, institutions and cultural ideas of power relations (Gullikstad 2013, 68). The purpose
of the present article is to look into how intersectionality may serve as a productive theoretical approach in research on disability and rule of law and how it could contribute to rule of law for disabled people. Our aim is to create a meeting point between disability studies and criminology, two research fields with a shared interest in disability and rule of law. To explore how intersectionality may serve as a theoretical perspective, we look at the connection between disability and criminals/crime as a case to be explored, and focus on categorization and gender. We identify categories in order to emphasize the importance of critically examining aspects of knowledge development and elements that constitute our knowledge.

Our choice of approach is based on the results of an earlier literature review, the authors Lundberg and Simonsen (2011) carried out to identify research on practices concerning disabled people in the criminal justice system, nationally and internationally. Guiding questions in our literature review were whether and eventually in what ways judicial systems secure rule of law and legal protection for disabled people. Within some Western countries, the development of social policies and democratization has at the same time led to an increased awareness of the relation between disability and justice, linked to justice and rule of law for disabled people (Dullum 2011; Kermit, Mjøen, and Olsen 2011; Luckasson 2001; Lundberg and Simonsen 2011; Malmberg and Färm 2008; Petersilia 2001; Syse 1995).

Rule of law represents an underlying framework of rules and rights in which no citizen, including government, is above the law. Laws protect fundamental rights, justice is accessible to all and legal protection implies that the individual is protected from encroachment or arbitrary action by the government or other authorities (Echoff and Smith 1997). There are several principles pertaining to legal protection within the criminal justice system. One should be able to defend one’s rights, not be deprived of the opportunity to take part in one’s own court case, and also have the possibility of submitting an appeal and have cases re-examined. These principles are both an ideal and a practical guideline in several aspects of the criminal justice systems in liberal democracies in Western Europe and the USA. In a wider sense, legal protection also means that laws and the enactment of them should be in line with general human rights (Kjønstad and Syse 2005), such as the Convention on Rights for People With Disabilities.1

People assigned to specific categories of disabilities such as intellectually disabled and deaf people often do not receive just or equal opportunity to take part in their own court case (Lundberg and Simonsen 2011). This is the result of the categories deafness and intellectual disability having been positioned on the lowest rung of what may be identified as an historical hierarchy of disabilities (Kirkebæk and Simonsen 2012), thus making them particularly vulnerable in any societal context. Our literature search showed that research related to rule of law for these two categories of disability constitutes the major part of all research undertaken in this field. An American literature review on the treatment of the deaf in the criminal justice system concludes that there is a lengthy history of unjust and discriminatory treatment of the deaf in the provision of meaningful access to the legal system based on the literature (Pravda 2011). Communication and interpretation may be failing, particularly when deaf persons are involved (Brennan and Brown 1997; Brunson 2008; Kermit, Mjøen, and Olsen 2011; Russel and Hale 2009).

There is also often a distinct gender aspect involved. When disabled women, particularly those with intellectual disabilities, are victims of sexual crimes, offenders tend to be regarded in a more lenient way when judgment is passed. Research undertaken in
several Western countries has argued that women with a disability experience social oppression and domestic violence as consequence of the interconnections of gender and disability (Mays 2006).

According to Burgess-Proctor (2006, 39), criminologists have started to recognize the benefits of adopting an intersectional approach in their work as it ‘incorporates an appreciation of difference in the patterns of crime’. Spalek (2006) claims that criminologists traditionally have marginalized analyses of disability; so this is an area yet to be explored. On the other hand, conceptualizations of disability and gender in terms of masculinity are encouraged in disability studies (Shuttleworth, Wedgewood, and Wilson 2012). Various constructions of masculinity, ideas on criminal behaviour in males (and females) and gendered interpretations of victimization may be identified in both past and present discussions of disability, crime and rule of law.

In the following, we present the concept intersectionality and introduce intersectionality as a sensitizing approach in a process-oriented model. Thereafter we present a brief socio-cultural historical contextualization of categorization of disability, gender and crime in the Western World, exemplified by deafness and intellectual disability. The current context of categorization of deafness and intellectual disability in relation to crime is thereafter introduced, and intersections with gender are identified. We then go on to examine categorization as an element both within disability studies and in legal systems. Finally, we discuss in what ways it would be feasible to further explore intersectionality as a perspective in studies on disability and rule of law. The discussion centres on the potential of intersectionality as a sensitizing framework and also as a means of connecting disability studies and criminology as research fields with some thought-provoking issues in common.

**Intersectionality and disability**

Both as a concept and as a perspective, intersectionality may be traced to feminist theories from the 1970s when anti-racist critique of feminism was developed (Crenshaw 1989). The concept intersectionality itself has its roots in the word ‘intersection’, which leads to the metaphor of a crossroads or street corner as coined by the African American law professor and critical race theorist Kimberlé Crenshaw. Crenshaw discussed issues of black women’s rate of employment in the USA (Crenshaw 1989). At the crossroad, race and gender meet and may have multiplicative interactive effects such as racism and sexism (Crenshaw 1989). A disabled person is not only disabled, but also has a gender, class position, ethnicity, age and sexual orientation. An intersectional perspective implies analysing how these variables intersect. Whether descriptions of intersections are discussed in terms of dimensions, categories, power axes or variables, depends on the methodology and the study in question.

Discourse on categorization is a main issue in intersectionality, both as a theory and as a means for action (Crenshaw 1989, 1994; Gressgård 2013; Gullikstad 2013). Legal systems may be said to rely on distinct and clear-cut categories in their general way of conceptualizing phenomena. While classification of impairment and disability into specific social, medical, judicial and educational categories is universal in society in general, researchers within Disability Studies have dissected these generally accepted categories of deviance or nonconformity. This situation opens up for an analysis of the dynamics between legal systems and interpretations of disability from the perspective of intersectionality, primarily focusing on conceptualization and construction of categories.
This feminist concept has emerged during recent years in numerous discursive spaces globally and in different disciplines (Lewis 2013). Intersectionality as a concept has recently gained attention among some disability studies scholars and has provided an opportunity to study disability as a multidimensional category (Björnsdóttir 2010; Björnsdóttir and Traustadottir 2010; Cramer and Plummer 2009; Erevelles and Minear 2010; Hollomotz 2011, 2012; Mekoosha 2006; Natapoff 1995; Olsvik 2006; Shaw, Chan, and McMahon 2012; Söder 2009; Traustadottir 2006). Parallel with the use of intersectionality as a perspective, disability studies have approached disability as a category, not as an individual characteristic or medical pathology, but as a key defining social category on par with race, class or gender (Kudlick 2003, 793). Much of the research about disability and legal systems has been published in fields that historically have been undertaken within a medical model approach emphasizing disability as individual pathology. In order to apply intersectionality as a perspective, a move beyond the medical model is required (Shaw, Chan, and McMahon 2012, 84).

The field of intersectionality is framed in by three different strands of enquiry, according to three of the pioneers within the field (Cho, Crenshaw, and McCall 2013). The first one entails the mere application of an intersectional framework. Discursive investigations of intersectionality as a theory and methodology as to its limits and potential represent the second strand of enquiry. Gullikstad (2013) argues that intersectionality is a productive concept that stimulates researchers to do analyses in new ways. The third strand consists of political interventions seen from an intersectional viewpoint.

For our purpose we use the first strand of enquiry; the intersectional framework as a sensitizing approach in order to identify current international discourses on disability and gender and of justice/rule of law. Taking into account the array of discourses that exists in various national and cultural contexts, intersectionality as a perspective emerges as an approach to understanding how discourses on disability and discourses of crime are intersected in legal systems, which is worth pursuing in order to enhance justice/rule of law for disabled people. National legal systems are based on historical and contextual features and ideologies, and as such these systems cannot be generalized. Similarly, disability is constructed and perceived in a variety of ways within various national contexts, across time and space.

According to Cho, Crenshaw, and McCall intersectionality is best framed as ‘an analytical sensibility’ (2013, 795). ‘What makes an analysis intersectional is not the use of the word “intersectionality” (…) but “its adoption of an intersectional way of thinking about the problem of sameness and difference and its relations to power”’ (795). Regarding disability (and rule of law), this framing means ‘conceiving of categories not as distinct but as always permeated by other categories, fluid and changing, always in process of creating and being created by dynamics of power – and emphasizes what intersectionality does rather than what intersectionality is’ (795). ‘(Intersectionality) primarily concerns the way things work rather than who people are’ (Chun and Lipsitz Shin, cited in Cho, Crenshaw, and McCall 2013, 797). Disability feminist Garland-Thomson (2011) defines categories as a complex and interrelated socio-cultural system of power that shapes people’s odds, opportunities and options in life. Shildrick (2009) points to the shifting constructions of categories as fluid and slippery, deeply intersectional and beyond definition.
A process-oriented model for analytical sensibility

The American sociologist Leslie McCall (2005) has developed a method with three different ways of using categories to explore intersectionality. The first is anti-categorical. Anti-categorical methodologies deconstruct analytical categories and, in McCall’s terms, are a constructivist version of intersectionality. According to Choo and Ferree (2010), constructivist understandings of intersectionality, ‘anti-categorical’ methodologies, share with ‘inter-categorical’ analysis a focus on the social structural process of what McCall calls ‘inter-categorical’ analysis. The analysis highlights dynamic forces more than categories, and recognizes the distinctiveness of how power operates across particular institutional fields (Choo and Ferree 2010). This is also described as a process-oriented model, as it emphasizes change over time as well as between sites and institutions (Choo and Ferree 2010). Within the field of disability and rule of law, researchers have rarely investigated the socio-historical context within which crime and criminals are constructed (Lundberg and Simonsen 2011). As a theoretical perspective for analysis, intersectionality insists on a social-historical contextualization of social and scientific categories and identity formations (Choo and Ferree 2010; Ontario Human Rights Commission 2001; Staunæs 2010). This implies discussing dynamics and forces that create categories, such as disability and gender. Cultural meanings and the social construction of categories are acknowledged as central processes in their own right.

Some researchers regard this as a parallel to the British-oriented social model of disability that conceptualizes disability as largely a social construction, where the various barriers created by society and not the impairment itself produce disability (Breivik 2008; Choo and Ferree 2010). However, the social model tends to exclude gendered implications of the lives of people with disability. Feminist research, however, examines gender as a certain cultural and historical product. Although the definition of gender often refers to women, it also includes men and discussions on diverse constructions on masculinities.

In the following, we look into some dominant earlier and contemporary discourses on disability in legal systems, including gender within these discourses, producing, transforming and reproducing truths about the relation between disability and crime.

Disability and crime – a gendered historical context

The following paragraphs focus on classification and history of categories, their emergence, their life and their disappearance. A cross-disciplinary approach, including psychology and psychiatry, history and criminology, may be applied for an inquiry of how the concept of disability; that is, deafness and intellectual disability have been constructed, transformed and linked to crime in time and space. Historically, crime and disability have been closely connected (Grue 2010; Kirkebæk 1993; Kudlick 2003; Simonsen 2000; Stiker [1997] 2005). In 1858, the French psychiatrist Auguste Morel launched his theory on degeneracy and disability, followed closely by Darwin’s theory of evolution in 1859. Since that time social politics, criminology, psychiatry and later on psychology have been entangled in a shared interpretation of crime as a criterion constituting diagnoses of disability, in particular intellectual disability, but also as far as deafness has been concerned. In the first part of the 20th century, constructions of categories of disability had become closely connected to...
contemporary theories of recapitulation (Haeckel in Edlund 2008), social Darwinism and representations of disabled people as children, in accordance with influence from the emerging field of developmental psychology. Female sexuality was included in constructions of disability such as intellectual disability when it was diagnosed in poor women whose sexual behaviour did not conform to current norms for female sexual behaviour (Kirkebæk 2005). Kirkebæk writes about the girls at Sprogø, a Danish institution established in 1923 to deal with women with a ‘loose and promiscuous character and low intelligence’. Through specific constructed professional diagnoses of what previously had been termed ‘moral mental deficiency’, social problems were declared in a specific group of women. The employees at Sprogø were engaged to report any signs of ‘sexual impulses’ in the confined women. One recurring aspect was that sexually, the women were seen as the active and inviting part, and so their behaviour was deemed deviant. Kirkebæk demonstrates how constructions on gender, sexuality and constructions on ‘moral mental deficiency’ intersect and reinforce each other in the constructions of sexual crimes, and the tenacious character of these constructions. Engwall discusses how in the beginning of the 20th century all sexually harassed women, regardless of having a disability or not, might be accused of being ‘an accessory in crime’ (2004, 90). Thus, the constructions on ‘moral mental deficiency and ‘feeble mindedness’, but also in this case the interconnected ideals of femininity, meant the risk of being incarcerated (Engwall 2004, 90).

As mentioned earlier, deafness and intellectual disability were positioned on the lowest step of what may be identified as a historical hierarchy of disabilities (Kirkebæk and Simonsen 2012). The hierarchal ranking of disabilities was derived from the fact that language and communication, along with cognitive challenges, have been markers of deafness and intellectual disability. These signs have been interpreted as indicators of primitive minds and distorted personalities, led by impulses and emotions and predisposed for violence and crime (Kirkebæk and Simonsen 2012). The idea of the deaf personality as predisposed for violence and crime had been expressed in public in Scandinavia in 1806 by the first Nordic expert on deafness, Peter Atke Castberg (1806). In a view sustained by social Darwinism, social hygiene and eugenics, deafness came to be perceived defined, problematized and studied within the perspective of heredity and social deviance. Language deficiency and its negative consequences for the deaf personality were a main concern in research both in Scandinavia, Germany, the UK and the USA during the first part of the 20th century (Ewing 1956; Hanselmann 1939; Levine 1956; Myklebust 1960; Wigert 1932). As a category, deaf people were characterized as intellectually inferior, often with a distinct deviant personality.

A shift in perspective and approach towards both men and women in studies in the field occurred from the start of the 1960s, prompted by new insights into sign language as a genuine language (Stokoe 1960), and also by an emerging process of democratization and normalization towards disabled people in the Western world. But former views on the deaf personality as deviant and dangerous still prevailed. In their book on the status of ‘Violence in the deaf and hard-of-hearing people’, Vernon and Greenberg (1999) summed up that a ‘clear and significant positive correlation exists between violence and hearing loss, as reflected primarily by correction statistics’ (Vernon and Greenberg 1999, 268), with ‘a propensity towards violence’ (Vernon and Greenberg 1999, 256). The diagnosis ‘Primitive Personality Disorder’ was seen in 5% to 10% of the deaf community. In Scandinavia, the Norwegian psychiatrist Terje Basilier independently identified a similar condition in deaf people as a category and labelled it
surdophrenia’ (Basilier 1968, 1973), a corresponding diagnosis to the medical category ‘oligophrenia’ or ‘mental retardation’ at the time.

In the 1970s, a deaf man in Norway was wrongfully convicted of two cases of murder, but was acquitted a couple of decades later (see also the introduction in this volume). A governmental commission in 2007 documenting the criminal injustice in the two verdicts on this deaf man NOU (2007–7) confirms how historic constructions of disability may be traced into recent and current legal practice. The commission reports that during the entire process, even when the cases were reopened in 2001, that there had been no reason to believe that ‘misunderstandings’ and ‘communication problems’ caused these two serious cases of miscarriage of justice (NOU 2007–7, 318). Actually a trajectory of conceptualization of deafness as correlated with crime can be traced backwards from 2007 to the 1970s and the two verdicts mentioned, and also to previous decades. The text in the report echoes representations of deafness from the past, presenting the ‘surdophrenia’ diagnosis of the past as current and valid knowledge in 2007. The dichotomy of biology versus environment and ‘Nature and/or nurture’ is still the basis for understanding. Deaf people are still ‘linguistically disabled because of their deficient development or damaged sensory apparatus or central nervous system’ (NOU 2007–7, 37). This statement from 1994 by a medical expert is referred to ‘a person without hearing cannot be said to be psychologically normal, because the hearing function is vital to the total functioning of the central nervous system’ (Foreland 1994, in NOU 2007–7, 37). Foreland goes on to say that deaf people in general do not possess the ability to think in abstract terms (NOU 2007–7, 42). From this medical point of view, deaf people belong more or less to the same category as children and as people with intellectual disabilities, in principle not accountable for their acts. But in practice, as the case of the convicted Fritz Moen demonstrates, these notions of deafness only served to underpin his deviant personality, rather than to secure the rule of law.

Current context of disability and crime

Categorizations of disability and crime in contemporary discourses are also dependent on the assumptions taken up from previous. The socio-historic perspective illustrated how in particular intellectually disabled, but also deaf people, and the relationship to offending is beset with difficulties, as for instance the relationship between ‘feeble mindedness’ and ‘criminality’ was seen as evident. Studies of the link between deafness and intellectual disability with a predisposition for criminal activity have been of considerable interest, and as we saw, this particular idea made such an impact on policy-makers at that time that special eugenics programmes were developed. In the following paragraphs, we will provide a contemporary context of constructions of disability and crime ending with reflections upon intersections of gendered processes.

Although the intersection between disability and crime appears less prominent today than from a historical point of view some will argue that the intellectually disabled and the deaf still exhibit characteristics that are associated with a vulnerability for crime. For instance the contemporary dominating explanatory models of disabled are medical in parts of the criminal justice system, which locates the problem of disability in the criminal justice system mainly in terms of physical limitations or psychological losses (Lundberg and Simonsen 2011). This may contribute to legitimizing a certain authoritative view that conceptualizes people with disabilities as vulnerable, but without sufficiently addressing the barriers in the criminal justice system that
places them in a vulnerable position in the legal system. According to the Norwegian psychologist Eric Søndenaa (2009), several male prisoners with intellectual disabilities did not understand the content of the legal terms used in court. It means that the courts fail in identifying those individuals who need simplified information, and that the question is about the rule of law. In conjunction with this, some researchers point out how expert (forensic) knowledge, if it supports the categorical and essentialist thinking in law, seems to be preferred more often to other more complex perspectives which draw in the social context of disabled people (Edward, Harold, and Kilkommmins 2012; Lundberg 2008). Some implications of such medical reasoning may be that deaf and intellectually disabled, both as victims and offenders, run the risk of being constructed as less credible, as susceptible of false confessions and also unable to defend themselves of accusations (Calderbank 2000; Handegård and Olsen 2009; Lewin 2002, 2004, 2007; Luckasson 2001; Petersilia 2001; Søndenaa 2009; Talbot 2008, Viemerö 2005).

Further discriminatory stereotypes of both offenders and victims, such as the intellectually disabled regarded as eternally childlike, as pointed out in the socio-historical context, are still present in the criminal justice system (French 2007; Handegård and Olsen 2009; Jacobsen and Talbot 2009; Lundberg and Simonsen 2011; Viemerö 2005). An example from a Norwegian report illustrates this (Handegård and Olsen 2009). The starting point is sexual abuse that in the labour market for men and women with intellectual disabilities. The victim in question was a young woman, but the judge in court drew a parallel between her testimony and research on children’s testimonies dealing with sexual abuse. However, the parallel drawn was not questioned, which implies that the mental age and chronological age are indicated as the same. Several Norwegian researchers have pointed to the problem of this categorizing and described it as a tendency to group thinking, and in contrast to newer ways of understanding disability (Handegård and Olsen 2009; Syse 1995).

Despite the fact that researchers within this field problematize the lack of knowledge about the social contexts of disability, there are also some signs of incorporating some of the social contexts of disability in the legal system and rather highlighting social and economic conditions that are associated with criminality. According to the Norwegian criminologist Dullum (2011), Norwegian courts make an overall assessment when meting out sentences. Great importance is put on the social characteristics of the defendant, like marginalization (Dullum 2011). This seems to be the case in Scandinavia where the penal system is embedded in a strong welfare state, as opposed to more punitive sentencing policies in the USA (Dullum 2011).

What about intersections to gender in the recent conceptualizations of disability and crime? In a recent literature review on masculinity and gendered topics on males and females with intellectual disability by Wilson et al. (2010), it is pointed out how male social pathologies may have evolved together within the intellectual disability research, providing a more negative construction on this group. Various constructions of masculinity and ideas on criminal behaviour in males may be identified in both past and present discussions of criminological feminist thought (Wilson et al. 2010). Within critical studies on men and masculinities, the most widely accepted form of analysis is known as hegemonic masculinity (Connell 1985), which represents the patriarchal dominance over the females, but also over other masculinities. Such a focus reduces all sets of stereotypical male behaviours, and in this sense offers an explanation for male aggression and violence (Wilson et al. 2010). Some masculinities writers have started to challenge this discourse by
arguing instead for a strength and positive construct of maleness. According to Wilson et al. (2010), it seems as if the focus on male social pathologies seems to dominate the more positive constructs in the literature on intellectual disability. The researchers found that crime/anti-social behaviour and problematic sexual expression were one of the main concerns with regard to men and boys with intellectual disabilities (Wilson et al. 2010). Such findings call for a deeper analysis of gender in interaction with intellectual disability, also with regard to people who are deaf.

Another point of interest is to be found in the conceptualization of crime victims, mostly described as women. In the socio-historic context, we saw one example of a gendered interpretation of the ‘sexual deviance’ of women constructed as ‘feebleminded’ or as having ‘moral mental deficiency’. Following the intersection of the categories gender and disability in constructions of the crime victims, it may imply that the injustice experienced by non-disabled victims also can be experienced by women who are deaf or have an intellectual disability. For instance, it is acknowledged in research literature that the victim of a sexual assault may be blamed for her own victimization, also in the criminal justice system, as their behaviour in some cases is deemed as provoking a criminal act to happen.

Summing up, the medical model has been the dominant model of understanding of disability in the legal system, but Dullum’s study (2011) reveals that the court also is considering marginalization as a mitigating circumstance. Both disability studies and studies in the legal systems thus seem to be on a course that may provide an argument for including analyses of interaction between various systems of categorization and constructions of disability, such as the intersection to gender. In the following, we pursue the issue of categorization from discourses on categories in disability studies and in a legal system, and after that we discuss intersectionality, disability and rule of law.

Discourses on categorization in disability studies and in legal systems

Since the launching of the so-called social model of disability (Oliver 1990), discourses on categorization of disability have, to a large degree, centred on the dichotomy between ‘the medical model’ and ‘the social model’. The ‘problem logic’ of the welfare state has been related to distinct medical diagnoses, according to the Norwegian sociologist Per Solvang (1997, 32). Different parts have coinciding interests – to promote biological and individually oriented explanations, and there is a strong link between diagnostic categories and the rights that come in consequence. Within societal arenas such as education and health, disabled people have undisputable strategic identities connected to the medical model. The medical paradigm has also been easily adapted within the logic of the legal system, as, for example, Lundeberg (2008, 2009) has pointed out. The dichotomy between the medical and the social model may rightly be described as a strait-jacket with regard to developing new theoretical approaches in disability studies. Attempts at dissolving this polarization of positions have been made by a number of researchers – in Scandinavia, for instance by the Swede Lars Grønvik (2010) and the Norwegian Jan Grue (2011a, 2011b).

Disability rights movements have also been condemned for treating disability as a ‘unitary group’, not recognizing individual differences and diversity (Pal 2011, 162). Another critique in line with what Pal points at, is raised by Jan Grue towards Julia Kristeva for sustaining a dichotomy of people being either within or outside the category ‘disabled’ (Grue 2011a, 100). Identity as ‘disabled’ or ‘different’ must be seen
as a means to serve a purpose, to reach a specific goal, a strategic identity that varies according to the setting. Adopting an identity as ‘disabled’ must have a purpose – socially, economically or politically, according to time and place. Thus, it may be said that fixed or solid categories of disability as such may no longer exist in the old sense of being either the result of a medical diagnosis or a result of structural conditions. Categories are ‘always in the process of creating and being created by dynamics of power,’ as stated by Cho, Crenshaw, and McCall (2013, 795).

As we have seen, a central discourse on categorization in the legal system revolves around how a primary aspect of court decisions pertaining to disability traditionally has been the reliance on medical knowledge, and there has been a close relationship between medical and judicial discourses (Anders 2013; Lundeberg 2008). Medical disciplines and legal institutions both configure material and social contexts for the actions of individuals, but also discursively shape the identity of disabled people through the authority of scientific knowledge (Anders 2013). According to Pothier, ‘the legal mind has a tendency to compartmentalize’ (2001, 61). Prediction, objectivity, universalism and classification occupy central decisions within the legal system and criminal justice decision-making (Christie 2005; Gottfredsson 1987; Marchietti 2008). Gottfredsson (1987) also claims that the aim with classification in the form it takes in the criminal justice system is to develop groups whose members are similar to another and who differ from members of any other group, which is close to the statistical concept of minimizing in-group differences while maximizing between-group variability. As we have seen, this may reduce the opportunities for intersectional awareness.

**Intersectionality, disability and rule of law**

Feminist criminologists already support the use of an intersectional perspective in legal systems (Burgess-Proctor 2006; Potter 2013). Class, race, gender, sexuality, age, nationality, religion and physical ability and also disability co-exist and relate to injustices and rule of law. As opposed to some of the other fields where specific categories of people with disability are target groups, legal systems and rule of law always relate to individuals and specific events and situations. Thus, sensibility in the sense of awareness of how intersectionality works is needed. It is a prerequisite that legal systems are familiar with disability as a phenomenon. An individual as a legal subject is both unique and at the same time a result of intersecting categories, such as gender and disability as discussed in this article. In Canada, the Ontario Human Rights Commission (2001, 2) reported that ‘some courts and tribunals have started to acknowledge the need to make special provision discrimination based on multiple grounds’. Recognition was being given to the impact that the social, historical and economic context may have. The Commission admits, however, that ‘a proper intersectional approach is still in its infancy’ (Ontario Human Rights Commission 2001, 16).

Based on our analyses, we argue that current international discourses on both disability and rule of law are on a path that may lead to more open, pragmatic and less fixed ideas on medical and other types of categorization. Sorting out and judging phenomena by labelling and classifying them separately is contradictory to an anti-discriminatory approach, as opposed to applying intersectionality as a sensitizing basis or outline. A sensitizing position means scrutinizing naturalizing ideologies, rejecting conventional representations of phenomena, looking critically at what is usually taken for granted, investigating and opposing stereotyped ideas and positions. Both categorization and gendering may be said to represent naturalizing ideologies that
need to be dissected within various contexts. An encounter between disability studies and criminology may constitute an arena for developing mutual critical perspectives both on ideologies and power structures, as stated by Gustavsson (2004).

Intersectionality applied as a process-oriented model for analytical sensibility may further serve to dissolve dichotomies that have been straining the field of disability studies such as the ‘medical model versus the social model’. Even though this dichotomy is showing signs of being loosened up (Grue 2011b), a further drive in favour of moving beyond this dichotomy is unquestionably welcome. Whether intersectionality in disability studies may represent a new springboard or a new strait-jacket in disability studies, as Gustavsson (2004) spoke of, will depend on to what degree researchers are willing to be critical, sensible and ready to include new disciplines than the traditional social sciences in disability studies. Applying intersectionality for perceiving ‘categories not as distinct but as always permeated by other categories, always in the process of creating and being created by dynamics of power,’ as stated by Cho, Crenshaw, and McCall, may serve as a springboard rather than as a strait-jacket in disability studies as well as in criminology. This is in line with what Grue (2011a) also claims as the very purpose of constructing categories and identities of disability. Categories of disabilities should be created differently according to their specific purposes: for political and civil rights movement goals, for educational purposes, for medical purposes, for access to the labour market, for access to buildings and transport, for housing and finally for individual personal and private life (Grue 2011a).

And here one may add: for justice and rule of law in legal systems (Grue 2011a)

With sensibility as a framework, intersectionality may potentially contribute to less essential and more sensitized, contextualized, perceptive, updated and individualized interpretations of disabilities, particularly in legal systems. Securing and improving rule of law in this manner is an ongoing process within many legal systems. In the course of such processes, new areas and dimensions of the concept of rule of law emerge. As stated initially, criminologists have begun to recognize the benefits of adopting an intersectional approach in their work (Burgess-Proctor 2006, 39). Expanding critical awareness in the sense of intersectionality to rule of law for disabled people implies opening up social arenas that have been unnoticed and invisible to the public eye as well as to researchers. Linking rule of law to disability in this manner may serve to inform both disability studies and criminology as research fields.

**Concluding remarks – ‘the way things work’**

Legal systems are societal arenas of main and sometimes grave importance to all individuals, with disabled people as a group placed in a particularly vulnerable position. But in real life, it is the interplay of several social categories (identities) that produces multiple disadvantages (Pal 2011, 160). Approaching this arena with intersectionality as a perspective may deepen our understanding of ‘the way things work’ with regard to justice and rule of law for disabled people. In order to get a better understanding of how ‘things work’ Shildrick (2009) promotes intersectionality as sensitizing lenses. In the case of disability and justice/rule of law, we will argue that this perspective may help legal systems loosen up and move beyond fixed (and sometimes outdated) ideas on categories of disabilities. Awareness of how categories of, that is, disability are constructed for specific purposes and interests, shifting in time and space and deeply intersectional may contribute to enhance justice in legal systems for disabled people. It is essential that legal systems are familiar with constructions of disability
as a phenomenon, in addition to understanding how the position of an individual as a legal subject is unique – a result of intersecting and changing categories and identities.

In disability studies, improved awareness of how legal systems work with regard to disability means opening up another arena for analyses of encounters between disabled people and societal power structures. New arenas may offer new perspectives on how marginalization and discrimination work, both on an individual level and on a group level. Intersectionality may be applied as a sensitizing perspective, while it is kept in mind that this ‘buzz word’ (Choo and Ferree 2010) must never serve as a ‘quick fix’ (Gressgård 2013) leading to a reductionist understanding or just another theoretical straight-jacket in disability studies. Applied as lenses through which to understand more about ‘how things work’ as advocated by Chun and Lipsitz Shin, this perspective seems promising. Mutual interest in disability studies and criminology in the way ‘things work’ may enhance rule of law for disabled people in legal systems.

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Note

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