

The Advent of the Stockholm Centre for Commercial Law

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1. Introduction

At regular intervals, the Faculty of Law at Stockholm University has been hit by significant financial setbacks, resulting in changes for the worse for the employees and the discontinuation of various of their benefits in a way that has stuck in the craw of certain of them. It has always been a practical challenge to have to offer conditions of employment to jurisprudential academics which have not in any way been able to match those of legal practitioners, even those at the start of their careers. Jan Hellner once said to me that one only chooses an academic career if one cannot think of anything else to do. The main attraction is of course academic freedom, that is to say the possibility of devoting oneself to just those questions for which one feels a burning passion, and also the chance through teaching to inspire new generations of young lawyers. If, however, the conditions of employment appear less attractive, then it can become extremely tempting to give up academic life, and the difficulty of attracting truly first-rate people to join one is a contributing factor. As I write this, circumstances at the Faculty in Stockholm seem to be marked by reductions at a level never seen before. The situation at the end of the 1990s was similar, if not yet as comprehensive, in that a number of my colleagues had indicated that they were considering resigning and terminations had been carried through in order to save costs.

For my own part, I was at the time – the 1990s – tied to the Centre for Commercial Law at Queen Mary College in London in the capacity of so-called Visiting Professorial Fellow. I had, as a result, been inspired by the

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connection between practising lawyers and the Centre's academic teachers. The education and training of lawyers is after all a professional one and jurisprudence is, in many respects, a science with a practical aspect. Since, at the end of the 1990s, I had just left the business of the Swedish law journal *Juridisk Tidskrift* (which I had started as far back as the late 1980s), I considered trying to create something which would correspond to what there was at Queen Mary in London. A very important consideration was to create an environment with research resources which could compete with the extravagant terms being offered by many of the larger law firms, one where academic freedom in combination with the chance to develop one's creative curiosity might outweigh the significantly less attractive financial conditions which academia was unfortunately only able to offer. There was a need in Frescati¹ for a new milieu that was better suited to co-operative research and that in turn required significant external resources. The University was not able to contribute anything which could help lead in such a direction. In consequence, although there were reasonably good prospects for specific individual projects, it would have been significantly more difficult to support an entirely new operation. There were few allies that we could rely on.

2. The original working group

A project of the scope that I had in mind could be no one-man show, it required a number of people willing to put their weight behind it, which in turn meant a working group. To form the Centre itself would on the other hand be relatively simple. We could adopt our own regulations and ourselves draw up the guidelines for its activities.

Even though the Centre was to be firmly anchored within the academic world, it was considered that the chairman of the working group should be a prominent external lawyer. Since the former Institute for Corporate Law (*bolagsrättsinstitutet*) would be incorporated into the Centre, the former Supreme Court Justice Hans-Gunnar Solerud was asked if he might be interested. A discreet approach was also made to advokat Gunnar Nord – he had already helped the Faculty in various different ways. From the Faculty

¹ *Frescati* is a scenic area in northern Stockholm, located within the Royal National City Park. It is best known for housing Stockholm University, with its modern campus set amid lush greenery and close to the bay of Brunnsviken. Stockholm University is sometimes referred to as "Frescati" (editor's note).

itself, in addition to me, Professors Anders Victorin and Peter Melz were also among the first of our colleagues to back the project.

Meetings were held relatively often and in time an initial idea emerged, to the effect that the Centre should stand firmly on a number of “legs”, each with a different focus. Young researchers would be attached to the Centre and they should develop a number of different research projects. Some doctoral candidates which I had supervised had recently completed their doctoral defenses. They were eligible for a number of post-doctoral scholarships recently allocated to the Centre by the Söderberg Foundations, thanks to Professor Ingemar Ståhl. The post doc-positions made it possible for the new Doctors to continue as researchers and the majority of these are now professors.

An important contribution came from the creation of a number of research panels, which in time grew to 15, even though some have subsequently disappeared or been folded into others. The research panels were intended to initiate research within their respective areas and also to organise research seminars with the participation of practicing *advokater* and judges, but with a preponderance of researchers tied to the Centre. The interaction between academia and legal practice was to be the centre point, even if purely jurisprudential topics were to be given significant focus. Another important task was to act as a support group for doctoral candidates.

The working group also wanted to build up a significant library of materials, which should be easily accessible at the Centre itself. The Centre received both donations from lawyers as well as external subsidies for the creation of such a library. A collaboration was instituted with the publisher Jure AB, which included an agreement on advantageous terms with the Centre for the publication of (among other things) a yearbook and continuous donations of new books to the Centre’s library.

The working group subsequently turned into a board of directors. In addition, in order to maximise the input from the surrounding environment, a scientific advisory board gathered twice a year and gave its views on the ideas being presented and also generated its own suggestions and thoughts. This was a very creative and inspiring period during the Centre’s early existence. The support from the world of practising lawyers was significant.

3. Opposition and support

During the Centre's formative period, it encountered differing attitudes from the Faculty's managing bodies and the project often ran up against mistrust of various kinds. Already from the start, there were people who opposed the idea of forming a centre with its own premises, seeing that as a threat to the unity of the Faculty. And when a number of the larger research foundations, for example the Foundation of Marianne and Marcus Wallenberg, made a significant level of support available, there was even a certain amount of simple envy. The management of the University was on the other hand more positive. Since some of the Faculty management had opposed the creation of the Centre in the form of a separate physical location, I was forced into one of the more dramatic decisions during the course of my work in bringing the Centre into being. I asked the Rector of the University for a personal meeting with, among others, myself, Chairman Hans-Gunnar Solerud and the Managing Trustee of the Wallenberg Foundations, Johan Stålhand. At the meeting I stated that the approximately 20–30 million kronor which the Foundation had granted us could not be used for their intended purpose since the Faculty management would not allow us to occupy the premises which the Rector was offering us, for which reason I would have to return the support which we had been offered.

My tactics were based on the thought that a University Rector who was from the world of natural sciences, in which the Wallenberg Foundations were almost a prerequisite for research, would never say no to the offer of a research grant on the basis that the University was opposing the activity in question. Not only was my guess right, but the Rector also summoned the Faculty management, who reversed their earlier decision, and in addition the Rector promised to see to it that the Faculty would receive a special grant for the Centre's premises which would not pass through the Faculty's budget and would not therefore cost the Faculty anything. This additional special grant would, what is more, continue to be received for so long as the Wallenberg Foundations continued to give their support to the Centre. One assumes that this promise remains valid today. The Foundations also chose to let us keep the significant support that we had received for the costs of our premises despite the fact that the Rector had now promised to cover these. It was with enormous relief that I was able to establish that our activities were now guaranteed for several years ahead. I will not weigh this account down by describing the many reverses that occurred during the years that followed

and I will limit myself to just one example. In connection with a Nordic appraisal some years later, the Centre was refused inclusion on the basis that the Faculty management did not consider “*commercial law*” to be a topic!

4. The future development

Once the Centre was in place, its popularity became clear. Young researchers streamed to it and support from a number of other foundations and external providers of grants such as the newly formed *Advokatvänerna* (“The Lawyer Friends”) gave significant backing and showed strong endorsement of the intended activities. This endorsement later grew even more.

A succession of Nordic as well as international conferences took place and the Centre’s position was further strengthened. In this connection I would like to give special mention to Professor Ulf Bernitz’s contribution. He had already, in his position as Dean of the Faculty of Law in the late 1980s, given me significant support when the law journal *Juridisk tidskrift* came into being and he also took an extremely positive position towards the founding of the Centre. One of his most important initiatives was to introduce me to the leadership of Oxford University. I was suddenly one day rung by its “Central Office” who asked if they could meet me to discuss forms of cooperation.

To my great surprise, they wanted to fly over to Stockholm at once in order to discuss the forms which some sort of concrete collaboration could take. These were debated over the course of a lunch in Stockholm some days later. My problem was that I almost immediately had to produce a number of millions of kronor because the Centre could not on its own fund such a large undertaking. Once more I chose to turn directly to Rector Kåre Brehmer, who again lent his weight to the project, so I left *Bloms hus*² with cornerstone funding of 1 million kronor. In addition, I received significant support from The Lawyer Friends and the Foundation for Faculty Courses (*Stiftelsen Fakultetskurser*), which later became dormant. Now, all that remained was to initiate the call for applications, which was admittedly rather slow to begin with, presumably on the basis that it was all “too good to be true”.

I should add that advokat André Andersson, via his own contacts at Christ Church College, Oxford, arranged for the recipient of the post doc position to be affiliated with this prestigious college and thereby gain expe-

² *Bloms hus*, designed by architect Fredrik Blom and inaugurated in 1838, currently serves as the administrative centre for Stockholm University. It houses the university’s management, including the Rector’s office (editor’s note).

rience of what a complete research term at Oxford was like. About a year later, I renegotiated the arrangement so that a senior researcher could also be linked to the project. This project has, so to speak, rolled onwards for a relatively long time now. New post doc- and senior researchers have continuously been appointed by what came to be known as *the Oxford Committee*, which I started and led for a number of years. The Project was also complemented by a biennial seminar initiated by André Andersson. As a whole, the Oxford Project is perhaps the Centre's most successful international cooperation and maybe even the largest project stemming from the Faculty of Law in Stockholm.

Already from the start, the Centre benefited from a lively exchange of researchers visiting the activities in Stockholm. It was primarily doctoral candidates from the Nordic countries, but also more established researchers who had the opportunity to spend a longer or shorter term in Stockholm. At the Centre, either the working areas in the Centre's library or the momentarily unoccupied rooms were placed at their disposal. This too brought with it many new international and perhaps most of all Nordic contacts and exchanges.

The Centre also, from its very beginnings, played host to a long succession of Nordic and international conferences, especially on the subjects of international private and commercial law and international arbitration. Even though these areas of law took a leading position, there were also other topics which from time to time were the focus of equal attention. What came to dominate the seminar activities was, however, the activities at the various research panels, which were increasing in number. Swedish and international practitioners got together with Swedish and international researchers and seminars were held in English as well as in Swedish. At first, these larger gatherings were held at conference facilities in central Stockholm but, as the Centre grew in size, it acquired both a smaller and a larger conference room with appropriate technical equipment.

The idea of developing a centre has spread and there are now new, similar research centres in, among other places, the Universities of Oslo and of Lund.

I had myself supervised several doctoral candidates who, at the time when the Centre's premises were ready in 2007, were beginning their post doc-projects. They could, themselves, initiate seminars of different kinds. New research panels were initiated, one after the other. Some panels did not, however, develop as had been hoped and they were therefore put on hold, whereafter they either received new leadership or were simply closed down.

All along, the thinking was that the Centre should grow organically, that it to say not as a result of direction from the outside but based on the participants' own initiatives and wishes. The idea was always that it was, first and foremost, the academics who should lead the activities in the different panels. However, if there was a lack of interest in a certain field of law, there were usually very engaged practitioners who were willing to put time aside to develop it. For my own part, I felt that the panels' activities should – if possible – take place in the Centre's own premises and not at the offices of the law firms, even if they were often willing to step up if necessary. It was constantly stressed that the Centre's activities should be initiated and led by academically active lawyers.

5. The Centre's series of publications

One thing that I prioritised from the very start was the creation of a publications series which would put out both a number of shorter jurisprudential monographs as well as collections of articles. One thing that was especially pleasing was the appearance of *the Centre's Yearbook*, which is included in *the Centre's publication series*. The idea behind the Yearbook was mainly to reflect smaller pieces of work which had been completed by the Centre's researchers during the year just passed. The Yearbook might contain new items but it was also important for the Centre's researchers to be able to re-publish pieces that were perhaps previously published in places which some might have considered to be more out of the way such as, for instance, festschrift articles or articles published abroad. The Centre's publication series has served well as a shop window for the Centre's activities. Other contributors too have been given the opportunity to publish articles, especially if their contributions have had some connection to the Centre's activities. A number of festschriften have also been published in this series; large pieces of work containing very ambitious material. The authors are not paid for their contributions but the Centre does receive a certain compensation which has gone towards funding its activities.

Since 2019, a new series of publications has also been produced at the Centre in collaboration with Wolters Kluwer. It was decided, in that year, to reinvigorate the Centre's arbitration panel. This was achieved by (among other things) the organising of a biennial international conference in cooperation with the Institute of European and Comparative Law (IECL) at Oxford University, with the involvement of (amongst others) Axel Calis-

sendorff, Christer Danielsson and Patrik Schöldström. They have also been responsible for the Arbitration Yearbook which has been published in English by the Centre. The Centre has put a significant amount of work into promoting Sweden as an arbitration nation.

6. A specialist library

When the Faculty of Law moved from Norrtullsgatan in central Stockholm to Frescati in 1972, the law library, which was then directly connected to the Faculty, also disappeared. In Frescati, the literature was for many years at first carelessly kept and important parts disappeared. In addition, researchers had to compete with the students, who were writing essays, for access to the books. There was therefore a pressing need, when the Centre came into being, for its premises to be able to house its own specialist library, in other words a reference library. Through acquisitions, donations and a collaboration with Jure AB, the Centre came to possess a significant stock of books and publications which are available to the Centre's researchers. Even if much literature is these days available online, the Centre's library is still an important source for the research there. In addition, the [arrangement] of the library has provided space for tables and chairs which can be used for minor conferences and meetings. This has also permitted researchers more loosely connected to the Centre to be given workspace there.

7. A student scholarship

A working group at the Centre took an early initiative to try to set up a student scholarship to promote interest in commercial law in the broad sense. The working group was able to announce both a larger and a smaller scholarship with support from the Lawyer Friends and from the Foundation. The processes for application have varied over the years but the circle of recipients has been recruited not just from Stockholm University but from other Swedish universities as well. A special jury with extremely prominent lawyers has been responsible for the final selection as well for as choosing the two winners each year. One thought behind the scholarships has been to boost interest in research within area of commercial law. Commercial law has not been favoured by the Faculty when it has come to competition with other areas of law. The topic has probably often been considered to be of lesser importance.

8. The Centre's immediate future

As will have appeared above, the Centre has not infrequently met headwinds. Promoting something so prosaic as commercial law has never been a part of the University's approach. The protection of children, the environment and possibly also the public sector are the subjects for which room has been found in the University's loftier emanations.

The University has never provided any real help to the Centre, except for support in relation to its premises, which was conditioned by the corresponding funding from The Foundation of Marianne and Marcus Wallenberg. Resources made available have instead been used in order to scrutinise and audit the Centre's activities as well as to develop increasingly complicated rules governing how they should be carried out. The University is not, it is true, responsible for certain of these, but the ability to keep bureaucrats busy has always been successful in teasing out new funding for everything other than real activities.

The rules about representation and public procurement belong in this category of things designed to make our activities more difficult. It is an absolute pre-requisite, in order to be able to participate in international cooperation, not just to allow oneself to be invited to conferences abroad but also to be able to invite guests to Stockholm, which in turn means that we have to be able to organise get-togethers under pleasant conditions. This was no problem during the first years of the Centre's activities but, as the University's bureaucracy gradually grew, so did the number of increasingly detailed rules which complicated the arranging of the sorts of gathering that corresponded to what the Centre's researchers encountered when they themselves were guests in other countries. Eventually, with the establishment of a foundation called the Support Foundation and its financing by the Lawyer- and Corporate Friends and certain other private supporters, the organising of international conferences was significantly eased. Only support from external foundations made it possible to offer anything more than "coffee and sandwiches" to our visitors. Our international cooperation is entirely dependent on the financial help that outsiders have offered us and they have long expressed great understanding for the difficulties that we have faced. Without this support, our international collaboration could never take place.

In addition, it was important to be able to offer younger researchers, who had not yet qualified, the possibility of receiving grants from the Edvard Cassels Foundation. It was, among other things, possible to give support

to doctoral candidates and to post doc researchers from the surplus that the book publishing generated. During the Centre's early build-up phase, we had organised conferences more internal in scope for the purposes of exchanging thoughts and ideas, but to organise such meetings became ever more complicated over time because of the formal rules.

Despite this criticism, which I find it hard to refrain from expressing, the Centre's activities have nevertheless been able to continue and have strengthened our international collaboration. We introduced a system of fellowship early on, that is to say a means of tying prominent researchers to the Centre on a more permanent basis. This facilitated recurring research visits as well as active participation in the teaching of students and of doctoral candidates. The building up of international cooperation is always seen as an important component of the University's activities but there has, generally speaking, been a lack of insight as to how this should take place in practice – except for Rector Kåre Bremer's contributions, as described earlier.

I have been asked, in contemplation of the anniversary which is now approaching, to give my view as to whether I consider that our activities have become what I wanted them to be when we started approximately 25 years ago. At that time, as indicated above, we wanted to set up the Centre on three different "legs". The first was to *initiate and support research within the area of commercial law*; the second was to *pursue continuing domestic and international research seminar activities*; and the third was to *publish the results of research and to create a library*.

The myriad of seminars and conferences documented during these 25 years is impressive. When the Centre was started, practising lawyers but also Swedish and Nordic academic colleagues were able to come into contact with our activities in all our different research panels. It was with considerable ease that we were able to recruit members for our panels from among advokater, judges, government officials and in-house lawyers and, not least, Swedish and Nordic colleagues. We could also not have foreseen that many of our seminars almost immediately became fully subscribed and that, in the post-pandemic era, there might be a large number of "visitors" on our website.

Our series of publications have also made significant progress and have, in addition, given us a certain surplus which we have been able to carry over to research, through support for travel and literature. In actual fact the lack of financial support from the University has never resulted in difficulties in developing our activities, since our external support has remained solid during all the years and until today.

The ability to initiate new research is however a more complex question. The most valuable aspect has probably been the possibility of forming reference groups to advise and give guidance to young researchers, where the interaction between older and more experienced academics and younger and more tentative researchers has functioned well. Cross-fertilisation between researchers in different specialisations has probably also had the same effect. It has even been possible, with considerable ease, to organise the sort of research seminars which are an essential element in the education of researchers. Doctoral candidates have always been able to lean on panels of older and more experienced colleagues. The Centre's good reputation abroad has, not least, made it possible to obtain expert foreign help for comparative research.

Something that we tried to get involved in at an early stage was to initiate larger and more ambitious common research projects, with a larger number of younger and more established researchers. This turned out to be significantly more difficult than initiating smaller projects. Despite common meetings and conferences, in most cases these efforts came to nothing. In my opinion, the reason for this was how the academic qualification through research takes place within the world of jurisprudence. Doctoral candidates are fully occupied with their ongoing projects and must then carry out post doc-projects which require the production of individual research results. Collective results are viewed with suspicion when the academic qualifications are to be evaluated. Here, there is a difference between jurisprudential academic qualification and the pattern-setting natural sciences. It is the same for junior Senior Lecturers and Associate Professors who are seeking professorships. They too are expected to present individual research reports in the form of monographs and cannot afford limiting themselves to referring to collectively presented research efforts. Despite ambitious efforts during my time, we were never able to mount a larger common project corresponding to what one can often produce within, for example, the faculties for the natural sciences.

Another problem that has come to the fore during the Centre's existence is the difficulty of obtaining external research grants for so-called doctrinal legal research (Sw: *rättsdogmatisk forskning*). There is a growing failure among the representatives for social sciences research to understand doctrinal legal research, which they do not consider to be sufficiently "scientific". This mistrust, which the Centre has tried to counteract in different ways, has meant that the Centre's researchers themselves have often opted to change over to interdisciplinary research, which it has not always been easy for an older

generation of researchers, schooled in the classical doctrinal legal research tradition, to accept. This seems to be a Nordic trend, and appears not to be reflected in, for example, the rich tradition of doctrinal legal research in Germany. There is a need for some future action to be taken in order to prevent doctrinal legal research from losing its foothold within jurisprudence. In my view, the Centre has an important task in the future in this regard. In order to present a broad scientific front, the Centre has however often taken the initiative to become involved in larger, more theoretical subjects. I would in this respect particularly like to cite the Nordic conference entitled "*Pragmatism vs. Principle*" in the field of Nordic laws of property, which was held just before the pandemic. This conference demonstrated very clearly the right of jurisprudence, and in particular the right of doctrinal legal research, to choose the relevant scientific perspective without having to concern itself over what other areas of science might think in the matter.

Another aspect that in my view must be strengthened is the Centre's earlier, and very successful, Nordic and international series of conferences. In this vein I would very much like to see a repetition of, for example, the conference held in 2017 at Hässelby Castle on the subject of *the Nordic laws of property*, which was so successfully organised by the Centre, or the exciting conference devoted to "*Pragmatism vs. Principle*" in the field of Nordic laws of property, which took place a year or so later. For my own part, I was fully engaged in planning a larger conference on the topic of so-called *Judge made law* when the pandemic broke out and my enforced retirement came before I was able to resume my thoughts along these lines.

Of all the very thought-provoking seminars and conferences that have been held within the Centre, I would like to mention two in particular which in my opinion have been especially exciting. The first was organised by the Centre in cooperation with the Foundation of Marianne and Marcus Wallenberg, a very large international conference entitled "*Risks and liability in the financial markets*". It was held in honour of the 50th anniversary of the Foundation of Marianne and Marcus Wallenberg. The Foundation had, after all, been a prerequisite for the Centre's creation and long-term funding.

The symposium's topic reflected something that had been of particular interest to the Centre's activities and comprised both regulatory issues as well as questions of liability. Thus, it treated legal topics that were relevant to the Foundation. Since the Second World War, the financial markets have gradually undergone major changes as a result of new financial solutions and tools. New financial markets have come into being as well as new finan-

cial actors that have developed concurrently with changes in regulation and supervision. These circumstances have together created new frameworks for the financial services industry. The Centre was able, with extremely generous support from the Foundation, to organise an international conference with some of the world's leading experts in the field.

The other event which I would like to highlight was of a totally different sort, but it too was much to the Centre's credit. A former Italian Professor, Silvana Sciarrà, who had been active at *Università degli Studi di Firenze (UNIFI)*, had spent a longer period of time at the Centre as a visiting fellow. The UNIFI is one of the largest and oldest universities in Italy and consists of twelve faculties with approximately 60,000 registered students. In 2014, she was appointed by the Italian parliament as a judge in the *Corte Costituzionale della Repubblica Italiana*, the Italian constitutional court and she served as the Court's president during her last period in office. During 2017, she made contact with me, amongst others, in order to discuss the possibility of a conference in Rome. Silvana had previously been involved in the Centre's conference in Tuscany and was now suggesting that we should together arrange a conference at the Constitutional Court's magnificent premises in Rome.

The topic would be the respective conditions for the work of the supreme courts in both Sweden and Italy. I therefore made contact with Stefan Lindskog, who had previously been a member of the Centre's board of directors and who was also President of the Swedish Supreme Court. Stefan reacted positively to the suggestion and in turn contacted the President of the Supreme Administrative Court of Sweden, Mats Melin, who also favoured the proposal and the idea that he should be a participant. The conference was held with a specially invited circle of Swedish and Italian lawyers at the Palazzo della Consulta, next to the Quirinale Palace. After Rome became a part of the new Italian State, Crown Prince Umberto I and his wife Margherita of Savoy lived there from 1871 until 1874. Following that, the palace housed the Italian Foreign Ministry until, in 1955, it became the seat of the Constitutional Court. This was in many ways a magnificent conference, in which our Italian hosts took fantastically good care of their guests and we were able to go in detail into the differences in working methods and traditions.

