

Challenges of legal history perspective into company law

The purpose of a PhD thesis

- Establish certainty where there have been no knowledge or only uncertain knowledge
 - Make it possible to see things in a new way
- Best explained by the twin terms developed by the social historian Reinhart Koselleck:
 - Room of experience and Horizon of expectations
 - A new horizon of expectations
 - A horizon of expectations rely on a room of experience
- But how see things in a new way without major change in the room of experience?
 - A new perspective

Perspectives to achieve analytical distance

- What is a perspective?
 - An instrument to get on a distance to get closer to a subject
 - Contradiction in terms?
- Objectivity as the aim of science
 - Hence, have to strive to achieve an objective perspective
- The perspective then becomes our guide when adding or looking for relevant experiences in the Room of experience
 - And not our subjective and personal opinions and experiences

Examples of different instruments to achieve analytical distance

- Statistics
 - What kind of companies dominate in society?
 - Small, medium or large companies?
 - What is the importance of the different companies?
 - What is their output, how many do they employ, what is the environmental consequences of their activity, etc.?
- Legal history
 - Ancient legal history
 - Sustainability and the regulation of rivers
 - Recent legal history
 - Sustainability in legislation

Legal history used to establish an open mind

- Make the reader as willing as you to look differently at the Room of Experience
 - A part of the introduction or an introduction chapter
 - The history of regulation of rivers or the history of the legal term sustainability
- A perspective that will not reappear in the thesis
 - It has fulfilled its purpose in the introduction

Legal history to find the *longue durée* of the present situation

- Establish a continuation through history that justifies a certain perspective
 - Idea
 - company law are in a period of change
 - Observation:
 - Companies are dependant on communication
 - Internal to run the business
 - External to the company partners
 - Extra external to businesspartners
 - Longue durée
 - When communication possibilities improves, company law changes
 - Conclusion:
 - Company law today are changing with the possibilities for communication
- A perspective to be adressed again in the conclusion

Legal history to identify general values or principles to be observed

- Establish values or principles that run through company law in history, and hence have to be observed today as well
 - Observations 1:
 - Companies are established to raise capital and divide risk
 - Observation 2:
 - With capital and risk comes power to make decisions
 - Conclusion:
 - Changes in company law have to take capital and risk into account, and its relation to decision making power
- A perspective to be addressed throughout the thesis

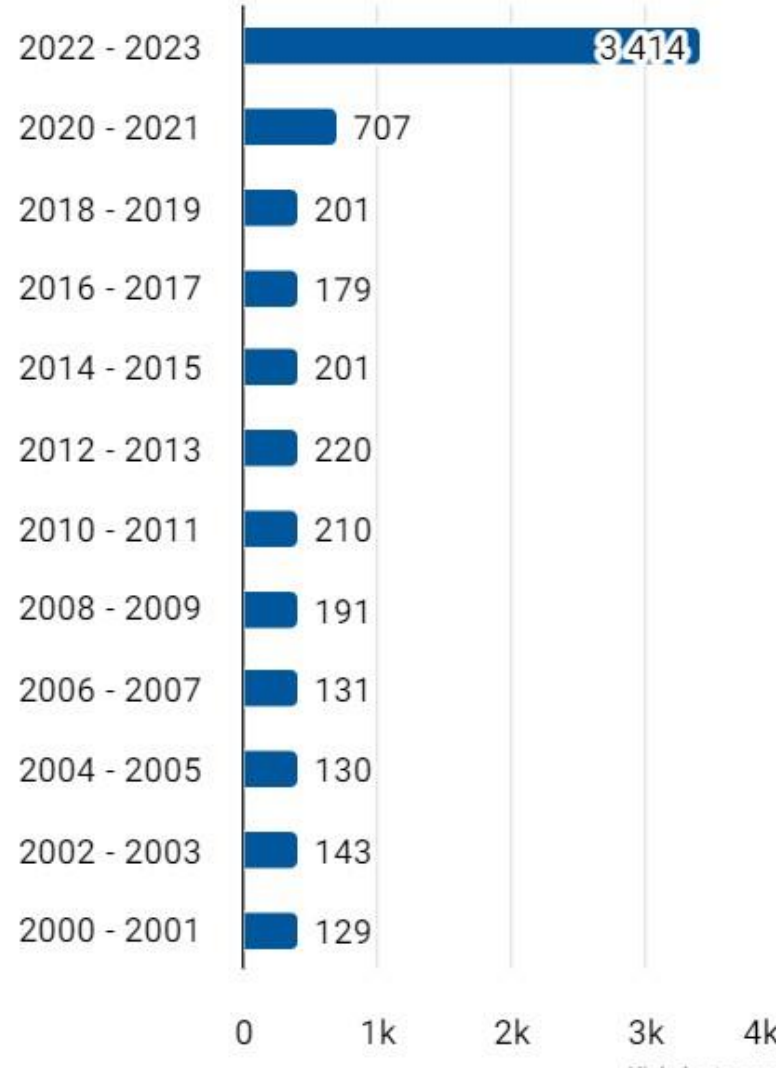
Legal history to establish an direction of change

- Establish a line of change in immediate history to explain the orientation in the thesis
 - Semantic studies in the change in the content of sustainability in legislation
 - Begriffsgeschichte
 - Reinhart Koselleck revisited
 - Identify how the general values are developed into legally applicable rules
 - Identify the system in change
 - To advocate for the next generation sustainability rules
- A perspective to be addressed through out the thesis

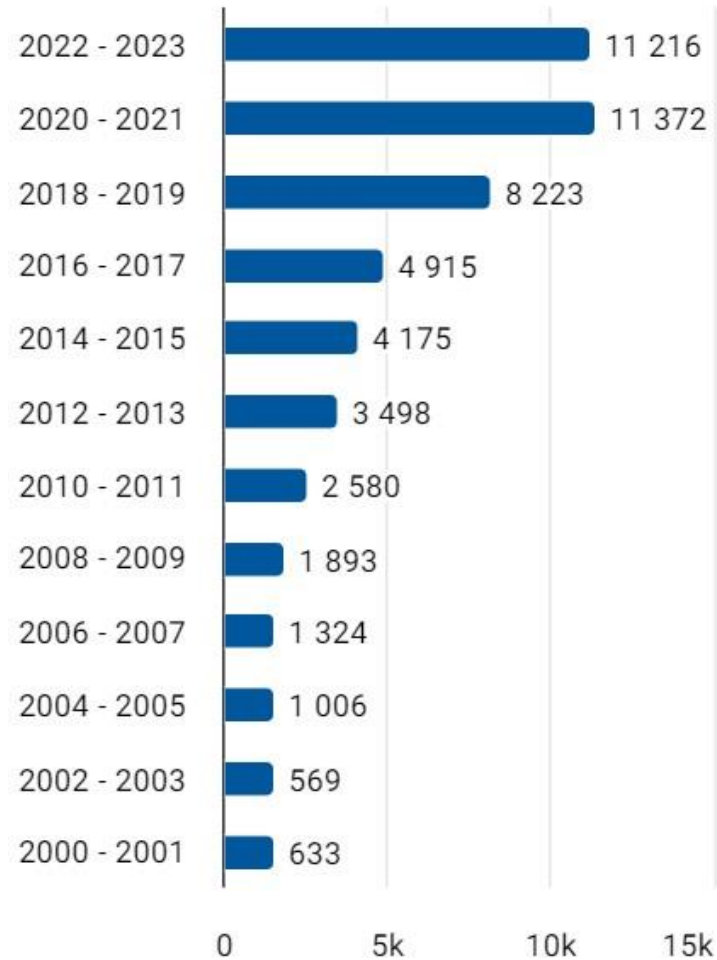
Legal history as the purpose of the thesis

- The history of company law is as old as the history of law
 - However, detaching the historical perspective from present day company law might be a task to pursue
- All law has changed since the 1970s
 - The reconstruction after the second world war over
- All law has changed fast and radically since the 1990s
 - The fall of the Berlin Wall and global trade
 - Peace
 - Computers and internet
 - The role of real estate in raising capital
- Company law is no exception

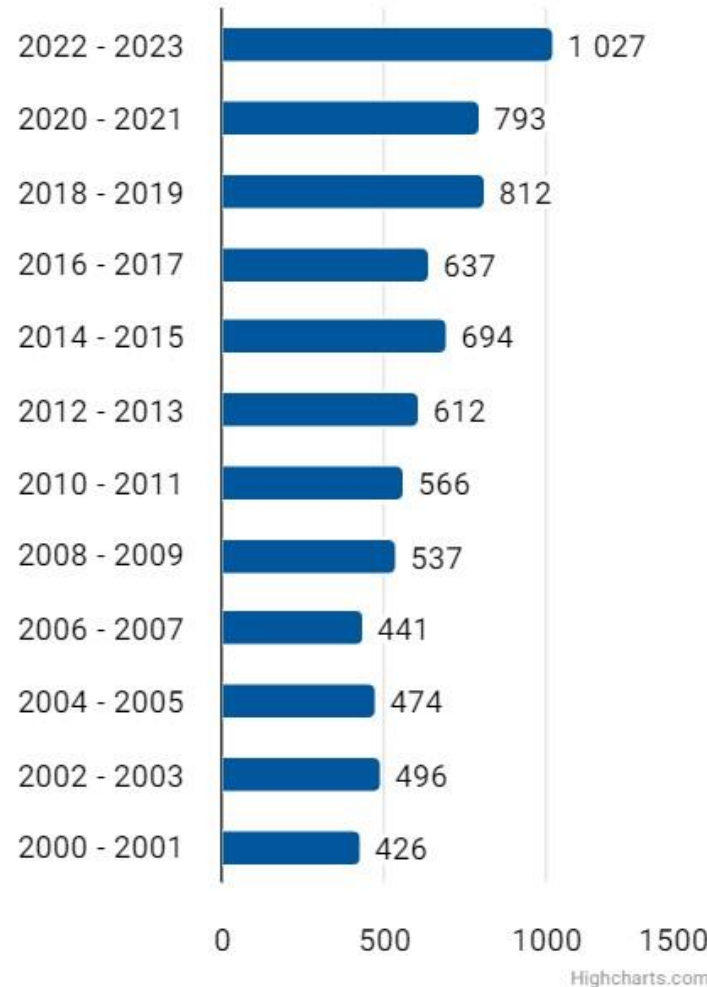
Sustainability has an even more immediate and dramatic history, journals



Sustainability has an even more immediate and dramatic history, newspapers



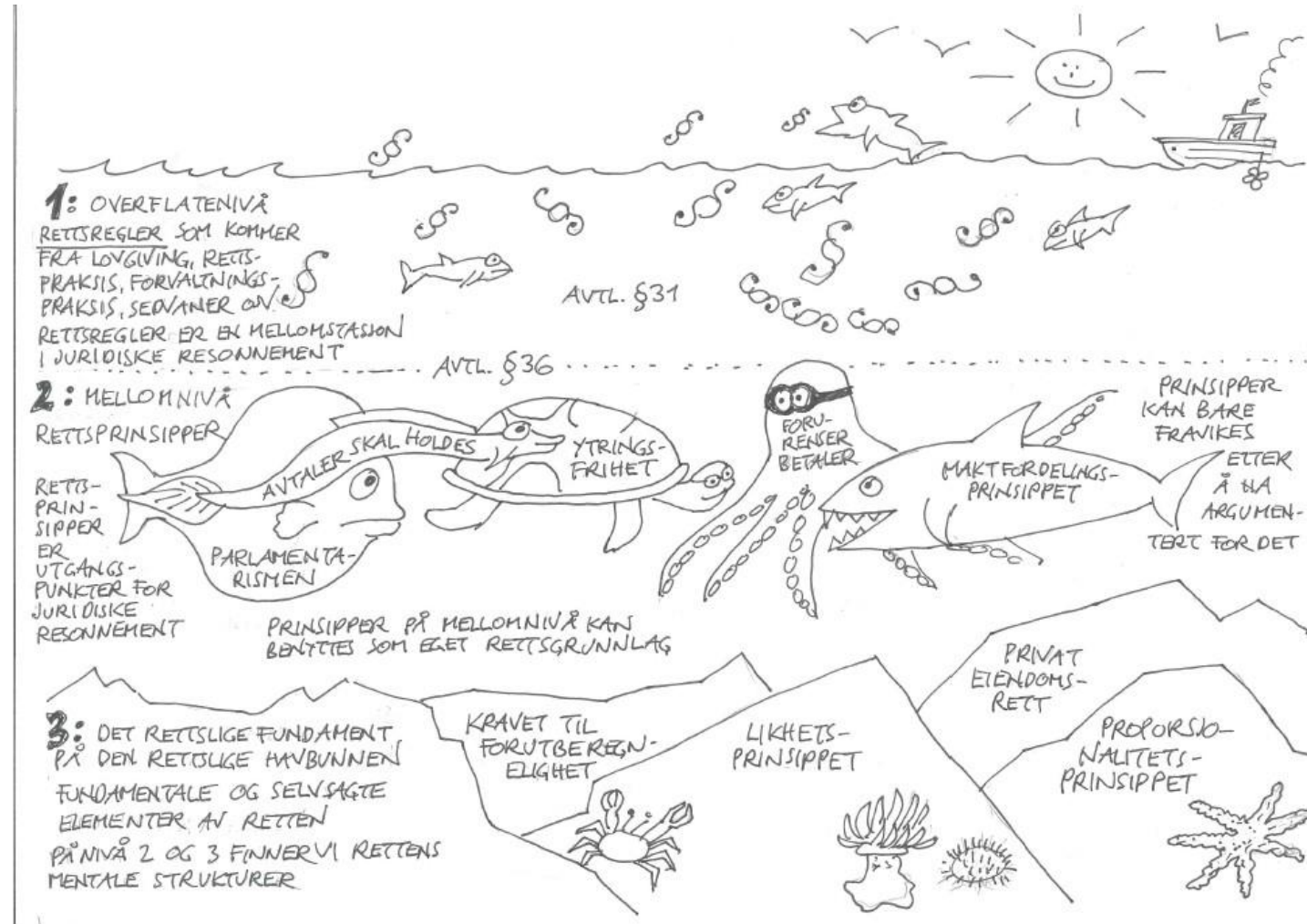
Sustainability has an even more immediate and dramatic history, books



Legal historical sources, past and present

- Legal sources
 - The whole range of sources
 - Legislation, preparatory works, legal practice, legal literature, etc.
 - Accessibility the decisive factor
- Legal sources are always legal historical sources
 - Past legal sources
 - Present legal sources
 - Immediate legal history revisited
 - Sustainability's most dramatic history is maybe since 2010
- Historical sources
 - Often used to contextualize the legal sources

The relationship between legal and historical sources



Legal historical sources, primary and secondary sources

- Primary and secondary legal historical sources are not primary and secondary in quality
- Primary sources are sources from the time of the event or action
 - Has the quality of the immediate
- Secondary sources are later sources on how the event or action was conceived
 - Has the quality of synthesis and analyses

What sources when

- Legal history used to establish an open
 - Primary and secondary sources
- Legal history to find the *longue durée* of the present situation
 - Secondary sources
- Legal history to identify general values or principles to be observed
 - Secondary sources
- Legal history to establish an direction of change
 - Primary and secondary sources
- Legal history as the purpose of the thesis
 - Primary (and secondary) sources

Who's legal history

- Roman law
 - A kind of universal law in European legal history
 - Most relevant for the history of company law,
 - Less for the history of sustainability
- A nation
 - Company law has been national since app. 1800
 - Sustainability has always been more of a international and transnational term, but nationally applied
- An transnational entity
 - In a European context company law is much influences by EU-law
 - Sustainability
- Comparison
 - Between Roman and national, between national laws, between national and transnational law