Summaries

Going to court – the judicial system in the Östgöta Law

Marie Johansson

The formation of the Swedish state was a protracted process that continued for several hundred years. From having been a society in which the clan was the basis for both the social order and the administration of justice, Sweden was transformed into a state with a central royal power; a uniform, controlled religion; and a set of laws that was common to the whole country. A preliminary stage towards this nation-wide law, however, were the provincial laws that applied in the individual jurisdictional districts, which often followed present-day county boundaries. Most of the Swedish county laws are deemed to have been put in writing from the first half of the thirteenth century up until about the year 1350.

The Östgöta Law is considered to be one of Sweden´s foremost county laws. It is preserved in its entirety and is one of the county laws that served as a basis for the compilation of Magnus Eriksson´s national law. It was valid for the jurisdictional district of Östergötland which included present-day Östergötland but also parts of what is now Småland. The Östgöta Law was also implemented by Öland, although this was a separate jurisdictional district with its own judge. The laws were compiled by the judge himself and thus lacked royal sanction, unlike several of the county laws of Svealand.

Two types of judicial proceedings appear in the Östgöta Law: trial using oath-takers and trial by jury. In the former, oaths were used as evidence in order to win a case. The oaths corresponded of a certain number of men, the quantity varying according to what the case was about. These men vouched for the person they defended, but were in no way required to have witnessed the event itself. Oaths were used by both the defendant and the plaintiff. In the simplest form of oath-taker trial swearing an oath meant winning a case. In the jury trial, on the other hand, a jury composed of men from the local community decided who was in the right, after investigating the available facts. The two systems of trial were often interwoven with each other; in cases where one oath contradicted another the jury often stepped in to give the final verdict.

The statistical investigation upon which the essay is based shows clearly that the most common procedure in a trial was to place the burden of proof on the defendant. This meant that he was regarded as guilty until he had proved the contrary with the help of oath-takers.The type of proceedings used depended upon the nature of the case. Considering the state of the legal system at that time, however, it was not necessarily a disadvantage for the defendant to have to prove his own innocence. The alternative was to be tried by a jury whose members had

a vested interest in bringing in a verdict of guilty, since they received a share of the fines that the defendant was sentenced to pay. The higher the fines, the greater the incentive to thwart an acquittal.

Serious breaches of the peace were always tried by a jury and this often applied to cases that lay within the sphere of the church. Here, neither the defendant nor the plaintiff had any possibility of affecting the outcome of the trial by swearing an oath. On the other hand, when the conflict could be designated as a family concern – such as marriage, inheritance and even murder and violence – the jury often had to step down in favour of the sworn-men trial. This didn't necessarily mean, however, that the defendant could free himself simply by an oath. By increasing the number of oath-takers required for an acquittal or by allowing the plaintiff to swear an oath in opposition to the defendant, the latter's situation was made more difficult. When two oaths contradicted each other the jury always had the final say. It was only very rarely that a trial consisted solely of oaths made on behalf of the plaintiff; the contrary, however, did occur in minor cases where the fines were modest.

It is difficult to say which of these systems increased the likelihood of receiving a fair trial. Both had their disadvantages. Gathering the right number of oath-takers could entail great difficulties; in complicated cases there were to up to 42 men on each side. There were indications in the Östgöta Law that it was advantageous for poor people to be tried by jury. This suggests that the oath-taker trial was mainly an advantage for rich and powerful members of society. The jury, however, was not an impartial group since they were entitled to a share of the fines which the defendant had to pay if he were found guilty. It was up to the jury to decide what facts to take into account in order to reach a verdict, which meant that the defendant might have proof of his innocence but be denied the opportunity to put this forward.

In brotherly concordance?
The relationship between Sweden and Finland during the 18th century and Anthony D. Smith's concept of *ethnie*

Jonas Nordin

In recent years the habitual practice of older research to differentiate the two main parts of the Swedish realm – Sweden and Finland – prior to 1809 has been contested. This reevaluation has, among other sources, drawn inspiration from current theories of state formation, that asserts modern nation-states as an unintended consequence or secondary outcome of centralizing strivings of state powers, and theories of nationalism, that holds nationalism as a modern phenomenon and claims that national sentiments has had little or no significance in pre-modern times. Seeking support in the concept of *ethnie* put forward by Anthony D. Smith this article argues for a qualitatively new interpretation of the relationship between Sweden and Finland during the period of joint rule.

Smith has listed six main attributes of ethnie: (1) a collective proper name; (2) a myth of common ancestry; (3) shared historical memories; (4) one or more differentiating elements of common culture; (5) an association with a specific 'homeland'; (6) a sense of solidarity for significant sectors of the population. With references from contemporary sources of political, cultural and scientific nature it is claimed that all six criterias is met in the case of Finland.

In many historical cases the developed ethnie has sought to reach its full realization in becoming a nation. In this it requires a set of legal aspects which not necessarily, however, entail having a state of its own. In general Smith recognizes two paths of progression: on the one hand the small ethnie through a process of regimentation may be absorbed into the surrounding majority culture, on the other hand it can begin a pursuit of independence that in the end breaks down the existing state structures. In the late 18th century tendecies in both directions is discernible in Finland. Signs of the latter is however slightly more evident.

The identification of the Finns as a separate 'ethnic' section of the population brought about consequences in the policy towards the eastern parts of the realm. In recognition of this one is not to confuse the concept of state-formation with that of nation-building. The additative character of the feudal economy gave no reasons for the government to maintain any nationalistic principles. Nor were there in Finland outside a small group of dissenters any opportunities or, for that matter, any strong urge to express separatistic sentiments. Although Finland, unlike the provinces overseas, had the same legal status as the Swedish parts of the realm its interests were nonetheless neglected in benefit of the mother country. Finland was regarded a pawn in the government's effort to restore Sweden's position as a great power. The relation is comparable to the position of the subjects in the traditional society: though rulers always listened favourably to the requests of

the subjects the odds were uneven all the same. There demands were met only as long as they did not intrude upon the privileges of the ruling class or, as in this case, the interests of the mother country.

Crime and immigration – The police and the Swedish immigrants in Copenhagen 1868–1898

Henrik Zip Sane

The Swedish immigrants in Denmark in the last decades of the 19th Century has been studied as an ethnic group more than as immigrants by the pioneer works from the 1970s and 1980s. By seeing them as immigrants seeking labour opportunities in Denmark it is possible to study special conditions in the new society for the immigrants.

In 1900 the Police authorities in Copenhagen reported to the ministry of Justice, that the level of crime among the Swedish immigrants were very high. The reports with all their statistics has been taken for granted in the existing modern studies.

This study shows that the old reports were true in the sense, that the Swedish immigrants in Copenhagen were arrested more often than the Danish inhabitants. Even when the rest of the inhabitants in Copenhagen are divided into groups defined by the birthplace of each individual, there is no question about the especially high level of crime among the Swedish labour immigrants. It is however shown how the Swedish group of criminals has many characteristics in common with foremost the criminals in the Danish capital that were born in the rural areas. In other words the Swedish immigrants were migrants just as other migrants in Copenhagen even though the Swedish had some higher level of crime.

By focusing on the details of the Swedish crime in Copenhagen in the last thirty years of the 19th century we find, that the crime of the Swedes were especially high in terms of vagrancy and the crimes which often followed from this, i.e. begging and prostitution. While the harder crimes as larceny and other offences against property committed by the Swedes during the period were declining to a level close to other groups in the Danish capital, then the figures of Swedes arrested for vagrancy, begging and prostitution stayed high. The figures of arrested shows that while for all other groups the level of male crime superseded the level of female crime, then in the 1880s the level of Swedish female under suspicion grew to a level higher than that of the Swedish men. That was at a time when the Swedish labour immigration to Denmark was at its height. At the same time the level of male Swedes arrested for vagrancy and begging was high.

It is the thesis of this study that the Swedish crime in Copenhagen were only high statistically because the Danish authorities made its conclusions and recommendations to the ministry of Justice regardless of even simple facts about the labour immigrants from southern Sweden.

The Swedish immigrants to Denmark were of cause not representative for the Swedish population as a whole. When the police then made comparisons of the Swedes in Copenhagen and the rest – foremost the native Danish – population in

the capital, the Swedes with certainty would come out as more criminal than others. The fact that the police authorities of Copenhagen made such statistics and the hard implementation of the law about supervision with all strangers in Denmark – i.e. all not intitled to relief – demonstrates some mechanisms of the creation of a national labour force.

Carl Goerdeler's peace overtures via the Wallenberg brothers
New documents from the Second World War

Gert Nylander

Within a year or so after the end of the Second World War it became known that the German member of the resistance Carl Goedeler had tried to bring about peace negotiations with England, using the Wallenberg brothers, Jacob and Marcus, as intermediaries.

Detailed documentation of their actions, however, has hitherto been lacking, despite indications that such existed. During a survey of the premises of the head office of Stockholms Enskilda Bank in 1997 a number of documents were recovered which shed light on this course of events.

The documents, chiefly from the period May – September 1943, begin with a plan drawn up by Goerdeler for the reorganisation of Germany after the overthrow of the Nazi regime and subsequent negotiations for a separate peace with the Western powers. There are letters from Jacob Wallenberg to his brother Marcus in London who had managed to get in touch with Desmond Morton, one of Churchill's personal secretaries. In August – September these contacts continued: between Goerdeler and Jacob Wallenberg, and between Marcus Wallenberg and Charles Hambro, who had now appeared on the English side. In this way a connection between the German resistance movement and the British government was established. This was never made use of, however, since the plan to depose Hitler was unsuccessful. After the abortive assassination attempt on July 20th 1944 a rebellion was no longer possible.

These documents are reproduced in full, as are two letters which Goerdeler wrote in prison in November and December 1944 – both highly personal, moving documents.