This article provides an overview of the judicial and supplication systems in early modern Sweden, explaining how, and to what extent, court records and supplications have been used as historical sources in Swedish historical research. Up to 1809 Finland was part of the Swedish Kingdom and Åbo the second most important town. There were, however, certain differences between the judicial cultures in the Finnish and Swedish parts of the realm which will be treated in a separate article by Anu Koskivirta together with a presentation of the most important trends in Finnish historical research on court records from this period. Apart from these specific differences, the presentations of the principal structures of the judicial and supplication systems are also valid for the Finnish part of the realm. Sections I–IV on court records and the judicial system are written by Jonas Liliequist while the last, on the supplication system, is the work of Martin Almbjär.

I. Laws and the administration of justice in early modern Sweden

The enforcement of law and order in early modern Sweden and Finland was organized in a rather simple way with few judicial instances, clear-cut hierarchies and legal uniformity. This situation was a historical result of the continuing ascendency of royal power over that of the aristocracy and the church.

From provincial laws to the law code of 1734

The earliest Swedish laws consisted of provincial legal codes that had been written down in the thirteenth century. These reflected a highly regionalized administration of justice in which local courts (ting) represented the fundamental unit, presided over by a ‘district judge’ (häradshövding) in the southern and middle parts of Sweden and a ‘lawman’ (lagman) in the northern parts. The oldest provincial laws also contained special paragraphs on ‘the King’s peace’ (edsöre), an early indication of emerging royal power and authority and, in 1350, a first law of the realm was issued by King Magnus Eriksson (Magnus Erikssons Landslag, MELL). This was followed by a municipal law for towns one year later (Magnus Erikssons Stadslag, MESt). The law of the realm was revised in 1442 during the reign of King Kristoffer (Kristoffer’s Landslag, KrLL) and this, together with Magnus Eriksson’s municipal law, was in formal effect up to 1736 albeit with many additions and modifications. In 1736 the medieval laws were formally replaced by the Law Code of 1734 (1734 års lag) which was valid for both towns and countryside throughout the eighteenth century.1

Court system and the administration of justice

The administration of justice in the sixteenth century was still, however, very local with room for extra-judicial settlements outside the courts and commutation of penalties. In 1541 King Gustav Vasa decreed that judges must keep written records and specified lists of sentenced and paid fines (saköreslängder) to be accounted annually before the Royal Chamber. This was a step towards more centralized control but the focus was on fiscal (the King’s share of fines) rather than judicial aspects.3 Gustav Vasa also made a short-lived attempt to establish a royal court but it was not until 1614 that a more lasting central court of justice came into effect. The main task of this Royal Superior Court was to control and safeguard the nationally uniform enforcement of law and justice. This was achieved in four principal ways:

Firstly, the local courts were obliged to judge according to the letter of the law which by now also included ‘God’s law’, a transcript of the Ten Commandments from the Decalogue in the Old Testament which was appended to the first printed edition of kristoffer’s landslag in 1608.5 Secondly, all local courts had to submit fair copies of their records to the Royal Superior Court every year for control. A special official (hovrättsfiskalen) was appointed for the control of the local...
courts. This official was also to make unannounced visits. Thirdly, local courts were obliged to refer all sentences in trials concerning capital crimes to the Royal Superior Court to be scrutinized and resolved in a final judgment. This obligation included all sentences, both acquittals and convictions. Finally, any doubts about application of the law, were to be referred to the superior court before local judges could pass sentence.

Pardoning was an exclusively royal prerogative administered by the King in council or, in the King’s absence, by a special division of the council (Nedre Justitierrevisionen). In practice, however, capital sentences passed by the local courts were often commuted by judges in the superior courts without referral to the King. This, for example, was the case in trials for ‘simple adultery’ (one part married) which was a capital crime according to ‘God’s law’. Nevertheless, death sentences were regularly commuted by the superior court to heavy fines or flogging and in 1653 this judicial practice was formally recognized as binding law by Queen Christina. Such commutations were not seen as pardoning, however, but rather as an aspect of the superior courts’ judgment according to circumstances, proofs and royal precedents.6

From the second part of the seventeenth century onwards the court system was thus organized into a simple hierarchical structure which consisted of three basic tiers for criminal cases. The district court (häradsting) was presided over by the district judge (häradsrätt) or – before 1680 – his deputy the law-reader (lagläsare) in the countryside while the council court (rådstuvurätter) was presided over by the mayor (borgmästare) in towns, assisted by an inferior trial court (kännsvärt) in larger towns. At the second level the Royal Superior Courts, numbering four, covered four provincial districts of the kingdom, including the province of Livonia. The third and highest level was represented by the King sitting in council as supreme court. This hierarchical structure was top-down without any formal right for convicts or plaintiffs to appeal to a higher level. Complaints (besvär) about incorrect procedures (for example, torture or contested witnesses and informants) could, however, be submitted to the Royal Superior Court which could order a retrial in the local court, but the case was not taken up anew by the superior court itself. The situation was very different in civil cases (see below).

The establishment of the Royal Superior Courts was part of a larger reorganization and extension of the state bureaucracy in which the old provinces (landskap) were replaced by counties (län). These counties were administered by royal governors (landshövdingar) who were given executive power and responsibility for the administration of law and order. The county governors, assisted by royal bailiffs (krönofogdar), functioned as an intermediary and executive link between the Royal Superior and local courts. All sentences in capital cases judged by the superior courts passed through the office of the county governor for executive measures. The royal bailiff could also bring cases to the local courts. At the lowest level of this exequitorial hierarchy were local sheriffs (länsmän) and constables (fjärdingsmän) in the countryside and official servants (stadsbetjänster) in the towns.

Legal procedure

Clearing oneself by swearing an oath and the institution of oath helpers (six or twelve men who appeared before the court and swore that they believed the accused to be an honest man) played a dominant role in medieval judicial practice. During the early sixteenth century, oaths were gradually replaced by juries and, in 1695 the institution of oath helpers was finally abolished. This change implied the development of an inquisitorial legal procedure in which the burden of evidential proof lay with the plaintiff or prosecutor. A jury, in rural areas, consisted of twelve honorable men (tolvmän) who were appointed from the local farming population for up to ten years or more. In towns the jury consisted of members of the council appointed from the burgers.

A criminal charge could be brought before the court in two ways. The case could either be instigated as a private suit which meant that the plaintiff, himself, had to call witnesses and prove his case at his own expense, or by a public prosecutor on the grounds of denunciation or public rumour. In this eventuality, witnesses were summoned and cases heard at public expense without the plaintiff necessarily losing his right to compensation or share of fines. This also precluded the plaintiff’s right to sue the opposite party in a following case.7 Private cases could also be taken over by a public prosecutor where a public interest was recognized. District judges, royal bailiffs, county sheriffs, mayors and public prosecutors in towns (stadsfiskaler) could bring cases ex officio. Denunciations were encouraged by religious means as crimes were also deemed to be sins. Not reporting a serious crime, therefore, implicated witnesses in the sinful nature of the act and exposed them to God’s wrath, potentially threatening the whole country. Vicars and priests played a key role in assisting the courts, in both conveying denunciations and public rumours to judges and prosecutors, and admonishing accused persons to confess during trial. A denunciator could not, however, provide testimony in capital cases and the rules for disqualification of suspect witnesses seem to have been followed rather strictly in these instances.8

According to the prevailing theory of regulatory proof (legala bevisteorin), a voluntary confession or the testimony of two concordant witnesses counted as full proof. The confession
was most highly-valued, however, especially in capital cases when the convict’s soul was deemed to be at risk (see below). One witness only constituted half proof and public rumour stood as circumstantial evidence. As an inquisitorial system developed and jurists became more professional, requirements of proof consequently increased. The crime of bestiality provides a good illustration. While a voluntary confession could be sufficient proof in the early seventeenth century this became increasingly unsatisfactory as the sole basis for conviction in the latter part of the century. By the eighteenth century a confession was no longer sufficient without testimony from witnesses together with circumstantial evidence. At the same time it was explicitly stated that one witness and circumstantial evidence together, was not enough for a conviction in capital cases which consolidated the theory of regulatory proof. Difficulties occurred when a person either confessed a capital crime in the absence of further evidence, or denied his or her guilt (effectively withdrawing confession) in spite of strong material and circumstantial proof. Crimes such as murder (killing in secret) and infanticide (giving birth and killing the newborn child in solitude) which were, by definition, unwitnessed, were especially problematic in the last respect.

The implementation of the theory of regulatory proof thus paved the way for various methods of extorting confession. ‘Torture’ was explicitly prohibited in the 1680s but ‘hard imprisonment’ (to be placed or hung up in handcuffs in a cold and dark dungeon) could be used in capital cases when there was ‘more than half proof’. During the seventeenth century the defendant could also be brought to the place of execution, fully expecting an immediate execution as an attempt to provoke ‘a last confession’ before priests. When these physical and spiritual forms of extortion failed, the case could be left ‘to God’s judgment’ in the future which usually meant that the defendant was released. This course of action (absolution ab instantia) could also be taken without any previous measures in cases of self-denunciations when witnesses and material evidence were absent from the outset. To leave the case to God was not a formal acquittal as the inquisition could be re-instigated as soon as fresh evidence arose. From 1756 onwards the defendant could also be detained in custody for some time after the trial. In cases of infanticide the burden of proof reverted to the defendant by the so-called rule of presumption. Given that certain circumstances prevailed, the accused’s only chance to escape conviction was to prove her innocence. An outright denial did not count and confession was not necessary for conviction. Apart from cases of infanticide, persons were seldom convicted to capital punishment against their denial, and after 1736 women were no longer sentenced to death on the rule of presumption. In minor crimes (fornication, for example) half proof could still oblige the accused person to clear himself by oath.

Penalties in codes and practice

Despite the abolition of certain cruel and stigmatizing medieval penalties like burial alive and the infliction of corporal mutilations (amputated ears or nose), the use of flogging and birching seem to have increased during the seventeenth century. In the sixteenth century, fines could be reduced and sometimes even remitted because of poverty. During the seventeenth and eighteenth centuries, however, the general rule was that unpaid fines were immediately converted into flogging (men) and birching (women) according to a fixed punitive scale. Public flogging and birching were also the usual forms of alternative punishment when the death sentence was commuted. New corporal penalties were introduced such as running the gauntlet, imprisonment on bread and water or hard labour in chains at a royal fortress. The second of these punishments should be regarded as a form of corporal punishment rather than a deprivation of liberty. As God’s law was incorporated into Swedish legislation, the number of capital crimes consequently increased during the seventeenth century. Some of these such as sodomy or verbal and physical abuse of one’s parents (contravention of the fourth commandment to honour thy father and mother) were recent innovations. All of these categories, with the exception of sodomy, were included in the national law code of 1734.

Deterrence was the primary aim of public physical punishment. Flogging and birching were not only painful but also stigmatising. The most shameful punishment was to be flogged by the executioner which implied a more or less permanent loss of honour. Executions were a ‘well-deserved punishment’ for the offenders and ‘a horror and warning to others’. The equivocation of sin and crime, however, had particular implications for the legitimizing capital punishment. Firstly, notorious sinners must be punished and executed to avoid God’s revenge from striking the whole country (in line with the policy of deterrence). Secondly, saving the convict’s soul became increasingly important. Even notorious sinners and criminals could save their souls through true repentance and trust in God, but this state of mind must be held until the very moment of death according to Lutheran doctrine. Despair at the last moment could threaten the safe destiny of the convict’s soul. As a consequence, the presence of priests and the convict’s repentance were given more prominent roles in the ritual theatre of execution. Priests were not only commissioned to visit the convict in custody for supervision and preparation, but also to follow him or her out to the place of execution. At the scaffold the priest was, according to the manual, to admonish the convict to ‘think about nothing but Christ who died for our sins’ and assure him or her that ‘this very day shall your soul enter Paradise’. This was, in fact, a more generous prospect than that facing law-abiding people who...
had to wait for Resurrection. This sacralization of capital punishment may, indeed, have counteracted cruel and drawn-out forms of execution which risked putting the convict into a state of despair. A refusal to show repentance and prepare oneself could, on the other hand, delay or even postpone the execution.\textsuperscript{16}

Especially cruel forms of execution were still carried out for political crimes such as high treason. Johann Patkul, for example, was broken on the wheel on 1707. They were also used when all efforts to save the convict's soul were considered to be futile as in some cases of witchcraft or occasional trials for blasphemy. The last suspected witch to be burnt alive was in Stockholm in 1676 and Johan Hendrich Schönheit, a blasphemer convicted in 1706 had his right hand cut off and his tongue was drawn out with a hook and cut off. He was then decapitated and his remaining body parts were burned at the stake with the exception of his tongue which was nailed to the whipping post.\textsuperscript{17} These examples were exceptional but breaking on the wheel was more widespread. This became less frequent during the seventeenth century although it was still prescribed by the Law Code of 1734 for deadly assault on shipwrecked persons.\textsuperscript{18} Cutting off the right hand before decapitation represented the second and most common form of painful execution. It was used for homicide on a family member or a pregnant woman as well as for violating the peace of the household or for disturbing the sanctity of church or interrupting trial. It was also prescribed for arson, treason and robbery committed under certain conditions. Convicts could also be whipped before execution to increase deterrence in very special cases like suicidal murder.

Attempts to deter potential criminals were also central to the post-mortem handling of the convict’s body. There were two general forms that were both preceded by decapitation: burning at the stake and dismemberment of body parts for display on one or several wheels (steläng). The first was prescribed for men and women alike in cases of bestiality, infanticide and witchcraft, for which the last execution was in 1704. The second, considered to be most ignominious, was reserved for men convicted of murder, highway robbery, rape, and in cases of homicide and aggravated assaults on parents, masters and officials. The bodies of female convicts were to be burnt at the stake. If the executioner was sober and steady-handed, a decapitation could be an instant and safe death at the best, but the burning or exposure of the dismembered body on the wheel still worried many in spite of priestly assurances that the soul by then already had left for Paradise. Hanging was, in practice, reserved for male thieves and, together with the exposure of body parts on the wheel, was considered to be the most infamous form of capital punishment as the body was left to rot on the gallows.

II. Ecclesiastical jurisdiction and legislation

There was often fierce rivalry between ecclesiastical and royal claims to jurisdiction during the Middle Ages. This was subject to fundamental change in the course of the Reformation. During the seventeenth and eighteenth centuries there developed a system of collaboration and division of labour in the enforcement of Lutheran moral codes and law and order.

Rivalry and conflicts

The influence of both mosaic and canonical law is evident in the earliest provincial laws. Most of the provincial laws contained special church provisions in which liturgical ceremonies as well as offences against Christian morality were regulated. Adultery, varying degrees of incest, desecration of the church, and breaking of the Sabbath was specified under the jurisdiction of the Bishop. Some laws also contained stipulations about fines to the bishop (biskopssakören) and prescribed church penalties (kyrkoplikt) or public penance (uppenbar skrift) for certain crimes, to be issued by the judge and executed by the church. At the same time, the church also developed its own statutes for repentance and church penalties, both connected to Canon law and papal jurisdiction. The fourteenth century witnessed increasing ecclesiastical demands for independent regulation and jurisdiction. Due to clerical opposition, then, Magnus Eriksson’s national and municipal legal codes did not contain any church provisions. Ecclesiastical jurisdiction was rather limited in medieval Sweden, and jurisdiction over offences like adultery, bigamy and incest in the first degree was already transferred to secular courts during the fifteenth century. Despite this, fines were still to be paid to the bishop.\textsuperscript{19}

Reformation and God’s law

The onset of religious reformation in 1527 put an end to papal jurisdiction and, from this point all fines due to the bishop were to be paid to the Crown. The Swedish reformation, however, was a long and drawn-out process in which certain Catholic offices and rituals were only modified slightly. Medieval church discipline, for example, was not abolished in spite of the Lutheran decree that all outward penalties should be delegated to secular authorities. This was, in fact, recognized in the new Church Ordinance of 1571 but, as the text reads ‘because of the prevailing strong willfulness and self-indulgence of the people and since the sword does not bite efficient enough’, church penalties (kyrkoplikt, kyrkonäpst) could not be dispensed. Such
disciplinary penalties were, however, to be applied without ‘the abuses performed under papal rule’.\(^{20}\) The latter referred to the element of satisfaction associated with the medieval doctrine of penance which invoked the performance of penitential works as a redress for committed sins. Such ‘earned’ absolution could not be accepted by Lutheran doctrine which counted confidence in faith and God’s grace as the only proper grounds for salvation. Repentant sinners were thus to be reminded that penalties were nothing more than an outward punishment which should lead to improvement and reconciliation with their congregations. As a consequence, fasting and other Catholic duties were gradually replaced by regular corporal punishment. This culminated in the general visitation by Archbishop Abraham Angermannus in 1595, during which severe birching was executed on a regular basis by sturdy schoolboys specially appointed for the task.\(^{21}\) In the long term however, shaming was to replace physical punishment as the main feature of church discipline.

At the same time, more frequent references to ‘God’s commandments’ appeared in both judicial practice and regulations and, in 1563, a new statute on serious crime (högmålsbrott) was issued by King Erik XIV stating that breaches of God’s commandments could not be pardoned or atoned for by fines.\(^{22}\) This merging of serious crime with God’s commandments was perpetuated by King Charles IX in an addition to the first printed edition of KrLL published in 1608. This stated that the commandments were ‘to be observed in capital cases and other serious crime’. The addition, usually referred to as ‘God’s Law’, consisted of extracts from the Mosaic Law in the Old Testament structured in accordance with the Ten Commandments. From this point until 1736, secular courts sentenced people to capital punishment according to ‘Sweden’s and God’s Law’. In legal practice references were not only made to the Decalogue but to the whole Bible which made it possible to punish acts, such as cross-dressing and fornication between women, which were not explicitly mentioned in the Mosaic law.

![The repentance stool](Photo: Göteborgs stadsmuseum).  

The reintroduction and integration of ecclesiastical jurisdiction

While God’s Law and the Bible were integrated into secular legislation and judicial practice this way, church discipline developed as a complement to state regulated justice. Firstly, it regulated public penance and absolution in non-capital cases and pardons. Secondly, it took on the punishment of minor moral offences. In the first case, public penance and church penalties merged into the a new concept of ‘public church duty’ (uppenbar kyrkoplikt) which meant that the sinner had to stand or kneel on a special repentance stool in front of the congregation during morning service, confessing her or his guilt before being absolved by the priest.\(^{23}\) Formally, the repentant sinner was reconciled with the congregation but shame and shaming was the obvious message received by the public. Public church duty was imposed by the secular courts to be carried out by priests after implementation of the legal punishment. Thus the traditional order of church penalties imposed by secular courts and executed by the church was to continue.

The second aspect of this development saw a certain reintroduction of an independent ecclesiastical jurisdiction by which the clergy acquired authority to impose fines to the church and sentence offenders to sit in the stock for minor moral offences.\(^{24}\) The basic unit for this form of ecclesiastical justice was the parish. These types of sanctions were mediated through the parish meeting and presided over by the parish priest or, in some dioceses, a church council appointed to assist the priest. Ecclesiastical justice was further supervised and administered by the dean and the bishop on their visitations. This kind of ‘parish justice’ was first developed independently by bishops in diocesan statutes as a continuation of the medieval church discipline. From the second half of the seventeenth century, however, it became regulated by royal statutes and integrated into the state administered justice as a complement and first instance in the enforcement of law and order.
The handling of marital discord provides a good illustration of these processes. According to diocesan statutes from early seventeenth century northern Sweden, wives who “are refractory towards their husbands and by them refuse to be ruled” should be admonished to improvement and, if that did not work to be birched in front of her neighbors and as a last instance, the punishment was to be repeated outside the church door. The same punishment was directed to the husband who exercised rule over his wife with “curses and tyranny” instead of kindness and reason. This was modified in the Church Law of 1684 issued by the King, stating that “when hatred, anger and bitterness arise between husband and wife” the spouses should initially be admonished, warned and enjoined to reconciliation under penalty of a fine by the parish priest. If this did not resolve the situation, the priest was to make a careful examination of the reasons behind the discord and once again remonstrate with the spouses about their sinful life together. If this also failed, the case should be submitted to the Cathedral Chapter for proper examination and questioning. If the spouses still disagreed the case was to be referred to the district court for further measures such as fines, confinement in jail or other ‘appropriate’ punishments. As a last resort the district court could sentence the spouses to a separation from bed and board for shorter or longer time.

The procedure was further developed and integrated into state administration of justice by the Law Code of 1734 and the issuing of royal dispensations. From this point, if priestly warnings failed, the district court was to examine and decide who was responsible for the discord and fine the guilty spouse or both in cases of equal culpability. This was repeated twice (with a doubling of the fines the second time) before a sentence of separation from bed and board could be issued at a third and separate trial. This was no longer the last resort however. From the end of the seventeenth century a violent marriage could already be dissolved by a royal dispensation. In the long term such dispensations became more frequent and, during the eighteenth century, legal grounds for divorce which had been adultery or desertion were gradually extended in practice to include continuous ‘hatred and bitterness between the spouses’. In ‘ordinary’ cases of adultery and desertion a formal letter of divorce (skiljobrev) should still be issued by the bishop but, according to the law of 1734, authority to confirm a divorce was transferred to the secular courts. The cathedral chapters were thus finally reduced from marriage courts to a last resort for warnings and admonitions in cases of marital disputes and applications for divorce.

Secular and ecclesiastical justice in collaboration

A similar procedure of escalating priestly admonitions and warnings, which included fines and sitting in the stock in front of the church on Sunday, was established for such offences as swearing, absence from church, quarrels and disagreement between neighbours and affinities, and godless living and general drunkenness. Offences like Sabbath breaking were fined immediately without preceding warnings, informers being encouraged by the promise of a sixth-part share of the fine. Specially appointed local officials like the ‘sixth men’ (sexmän) assisted the priest in the administration of this parochial justice together with churchwardens and specially appointed village constables (byvaktare, uppsytingsmän) and officers in each neighbourhood of towns (rotemästare). These officials were responsible for watching their neighbours and reporting all cases of immorality. A sinful living was, according to official Lutheran rhetoric, not only an offence to God but also to community, invoking ‘public annoyance’ which was a key concept in the enforcement of this local parish justice. Sanctions were imposed either through the parish meeting or the church council and executed with the assistance of sheriffs and constables from the civil administration. Recidivists were to be turned over to the secular court for harsher punishment and all serious crime and other offences regulated by the law reported to the local sheriff.

In this way a division of labour was established between ecclesiastical and secular jurisdiction in which the priests and officials of the parish justice took measures against minor moral offences. They provided a first instance of examination and discipline in cases of marital discord, and referred more serious crimes to the judges and officials of the secular courts.

Ecclesiastical justice also had a slightly different character, emphasizing reconciliation and reintegration over deterrence and stigmatization. Verbal and physical abuse of parents
is very illustrative here. Instead of repeated admonitions, warnings and attempts at reconciliation, conflicts between adult children and their parents were immediately to be reported to the local sheriff as soon as they concerned curses, disrespectful treatment or minor violence against members of the older generation. There was a moment of reconciliation introduced in the latter cases as well. The convict had to make a public apology to the parents in front of the court, but this was usually preceded by a harsh, stigmatizing corporal punishment although capital punishment prescribed by God’s law was very rarely carried out. While flogging always invoked stigma as a deliberate part of the punishment, sitting in the stock or standing on the repentance stool was not to be a matter of reproach afterwards according to official rhetoric. The ultimate purpose of such punitive shaming rituals was reconciliation between offender and congregation rather than stigmatization. Such distinctions were not easy to uphold, however, even in official doctrine which is nicely illustrated by the fact that the prohibition of reproach was not to be upheld when it concerned ‘convicted thieves’.

The beginning of secularization and penal reforms in the eighteenth century

With the advent of the new Law Code of 1734, people were no longer convicted and punished with reference to God’s law. The new law was, however, little more than a codification of prevailing judicial practice. Most of the regulations based on God’s law were thus included and restated in secular terms. At the same time there was growing criticism of some fundamental features of both judicial systems, ecclesiastical and secular. The public church duty was heavily criticized by both an emergent pietistic movement and jurists for being counterproductive. Instead of inducing people to true repentance, it was claimed that it fostered hypocrisy at the best and stigmatization at the worst. The latter, according to many critics, was a major cause for young unwed women to hide their pregnancy and commit infanticide to avoid the public disgrace of standing on the repentance stool. Consequently, public church duty was abolished for fornication and first time adultery in 1741. Similar criticism was directed against capital punishment. Increasing frequencies of self-denunciations for serious crimes like bestiality, many of which turned out to be false or at least impossible to prove coupled with spectacular cases of suicidal murders, forced the deterrent value of capital punishment into question. These challenges were met with a combination of measures which both attempted to restrict public attention and increase the painful and ignominious character of the penalties imposed. The aim was to prevent people from being inspired rather than deterred. A more radical solution was provided by the new theories of penal law associated with the Enlightenment. According to reformers like Cesare Beccaria and others, the assurance of a threatening life-long imprisonment and hard labour would do more to deter potential offenders than an instant death at the scaffold which could be seen as a quick release from the hardships of this world. This was also the official argument behind the penal reforms proposed by King Gustav III in 1777. Even though the King’s most radical proposition (abolishing the death penalty for infanticide) was not approved by the Diet, the passing of the penal reforms in 1779 was followed by a radical decrease in both the absolute numbers and categories of capital crimes, infanticide included. Many, however, were still flogged and birched for a broad range of crimes throughout the eighteenth century.

Sweden has a rich collection of medieval laws written in vernacular but few records preserved from medieval courts. The situation is totally different for the seventeenth and eighteenth centuries of which very much has been preserved from all levels with some few exceptions. A simple judicial structure and the obligation for district and council courts to report capital cases to the royal superior courts have made it possible to make both extensive quantitative and qualitative studies of serious crime covering a broad range of themes from. So far court records have been used for a broad range of thematic studies from property relations to sexuality and witchcraft.

Archival collections and statistic possibilities

Written minutes from court proceedings were probably kept more extensively already during the late Middle Ages but few have been preserved. A more or less complete series of records (tänkeböcker) from Stockholm dealing with both civil and criminal cases begins in 1474. Records from late medieval time are also preserved from the towns of Jönköping and Arboga. It is however first from the middle of the sixteenth century that the number of preserved records begins to increase which indicates that the royal ordinances from 1541 and 1549 had some effects. An archival survey shows a total sum of more than 25,000 folios of court records preserved from the period before 1615 (the records from Stockholm not included). This is of course still a very small amount compared to the vast number of records preserved from the seventeenth and eighteenth centuries.
Fine rolls are preserved from the sixteenth century to a larger extent than court records. Two copies were submitted, one by the judge and another by the royal bailiff. Court records were also kept in two copies after the establishment of the first royal superior court in 1614, one original deposited in the coffer of the local court, and one fair copy (renoverad) deposited with the royal superior court. This double record-keeping enables us to fill out lacunas in either series, and to cover long periods for at least the seventeenth and early eighteenth century. For later periods, trial records already referred to the royal superior court were not included in the fair copies. The obligation to refer capital cases also offers a short cut to understanding what was considered as serious crime via the diaries and resolutions of the superior courts. That all cases were referred makes these records very fertile ground for statistical analysis. While the archival series covering the south of Sweden (Göta Superior Court) and Livonia (Dorpat Superior Court) are very well preserved, much less material survives from Finland (Åbo Superior Court). The same is true of large parts of the archive of Svea Superior Court (the middle and north of Sweden). These missing archival series, however, are potentially recoverable from copies sent to the county governors deposited in the county secretariats, and from diaries submitted to the Diet during ‘the Age of Liberty’ in the eighteenth century. It is thus possible to establish statistical overviews of capital crimes brought before all Swedish and Finnish courts for two periods, one in the 1660s and the other in the middle of the eighteenth century. The figure below illustrates this through trials concerning verbal and physical abuse of parents.

The map shows that there were marked geographical differences in the frequencies of prosecuted cases during this period which immediately raises questions about variations in social control and conflict resolutions, as well as public attention and the actual frequency of conflicts. Mapping cases in this way could also make it easier to find qualitative patterns by comparing litigation from different areas.

Records and resolutions from the King in council are also rather well preserved and especially valuable since the complete acts from all instances could be filed together with the royal resolution. The military court records have not been preserved to the same extent as the civil (see the article in this volume by Anna Sara Hammar).

Research trends – witchcraft and magic

Up to at least the 1970s early modern court records were mainly used as sources by legal historians for studies of the development of doctrines and the application of law. Bengt Ankarloo’s study of the Swedish Witchcraft Trials (1971) is somewhat of a watershed. While this is still written very much from the perspective of legal history, new questions were asked about mentalities and worldviews. The main focus, however, is to give an explanation for the emergence, extension and ceasing of the great witch trials 1668–1676 from a processual, structural and social perspective. Ankarloo has followed up his study in contributions to the book series Witchcraft and magic in Europe. A broader, but mainly social historical, approach is taken by Per Sörlin in his study of witchcraft and magic trials in Southern Sweden 1635–1754 (1993/1999). Sörlin confronts what he finds to be three principal perspectives in studies of witchcraft and magic: elite-oriented (the acculturation model), the conflict- and crisis-oriented, and the system-oriented perspective. The aim is still very much to explain the dynamics and patterns of accusations and trials. In Linda Oja’s study of
trials for magic during the seventeenth and eighteenth centuries (1999) focus has changed from dynamics of trials to attitudes and meanings. The court records are supplemented by a broader range of sources such as travel accounts and diaries which help to uncover similarities and differences in elite and popular attitudes towards especially benevolent magic. Oja has also contributed to a study of the aftermath of the great witch trials in Dalarna together with Marie Lennersand (2004). This work focuses on psychological and traumatic consequences of the trials, asking how these were experienced by local communities. In a study of blasphemy and diabolical pacts (2007) Soili Maria Olli analyses popular perceptions and gendered strategies in alleged contacts with the devil. The shift in studies of witchcraft and magic towards analyses of symbolic meanings and cultural constructions is made complete in Jacqueline van Gent’s study Magic, body and the self in eighteenth-century Sweden (2009), based on court records from eighteenth century trials in southern Sweden. From a close reading of the sources the author uncovers how a socio-centric concept of the self and a material understanding of emotions enabled people to ‘get under each other’s skin’.

Crime and social control

The ‘history of crime and social control’ can be considered one of the first genres in the upswing of interest for using court records in the late 1970s. These studies generally aim to build a total picture of prosecuted crime and its punishment as a first step to uncovering mechanisms of social control and conflict resolutions. The analytical approach is drawn from social history and criminology with much space devoted to discussions of dark, or obscure, figures, frequencies and types of crime together with changes over time, the social status of prosecutors and defendants, and other information which can be calculated and used as variables in the overall analysis. Eva Österberg’s and Dag Lindström’s study Crime and social control in medieval and early modern Swedish towns (1988) set a trend which was to continue in a larger Nordic research project which culminated in People meet the law: Control and conflict-handling in the courts (2000). It is also important to mention two extensive studies in the same genre based on fine rolls and minutes from parish meetings by Jan Sundin (1992) and Björn Furuhagen (1996).

Subsequently, this genre has developed into special studies of certain crimes. The analytical approach has, at the same time, shifted from analyses of frequencies and social variables towards the study of discourses and historical conceptualizations of crime and gender. Marie Lindstedt Cronberg’s long-term study of litigation over fornication and bastardy (1997) is still very much about social control and quantitative statistics, but her work also concerns itself with gendered notions of honour and shame. A more decisive shift is obvious in Karin Hassan Jansson’s analyses of the gendered notions of violence and sexuality in her study of attitudes towards rape, based on court records from the period 1600–1800 (2002). Analyzing the testimonies and accusations in the court records as narrative accounts reflecting larger social discourses, Jansson explores three contrasting pairs of bad versus good stereotypes of gendered behaviour in situations of rape and sexual violence. Eva Bergenlöv adopts a similar approach of eliciting contrasting stereotypes from accounts in the court records in a study of gendered notions of guilt and innocence in cases of infanticide and smothering 1680–1800 (2004).

Interpersonal violence

Interpersonal violence has been another prominent theme for research. Focus has very much been on explaining the dramatic decrease in frequencies of murder and homicide beginning with very high rates in the seventeenth century and declining to almost modern levels in the latter part of the eighteenth. Inspired by Norbert Elias’s ‘civilizing’ thesis and Habermas’ theory of communicative action, Arne Jarrick and Johan Söderberg formulated a ‘spontaneous process of civilization’ as a first explanation (1993). The decrease, in this account, was due to a secular learning process in which people acquired greater communicative capacity which, combined with entering into wider social and economic networks, privileged adaption instead of aggressive self-assertion. The Elias-inspired presumption that people before the seventeenth century were the victims of their affections and lacked stable self-control is heavily criticized in essays by Dag Lindström (1999) and Jonas Liliequist (1999) based on extensive analyses of court records. The latter essay concludes that what seemed to be spontaneous was very much molded by cultural codes. To respond unhesitatingly to provocation in a spontaneously aggressive manner, in fact constituted a cultural code which required people to muster aggression (sometimes, so it seems, at high emotional cost). Such criticism however still begs the question of long-term change. In an attempt to take the argument further, the decline in frequencies of interpersonal violence has been connected to changing concepts of honour, virtue and manliness in an analysis inspired by social practice theory and Quentin Skinner’s version of conceptual history (2009). The question also arises in Christopher Collstedt’s study of dueling in the late seventeenth and early eighteenth century (2007). According to the author the increasing influence from the not yet explicitly gendered ideals of Christian virtues widened the range of masculine behaviour to include the most peaceful and meek as well as the violent and militant, sowing the seeds of change. Hassan
Jansson also raises important questions about the connection between violence and masculinity in his study of trials for breaking the peace of the household (2009). The historical anthropological ambition to analyze a seemingly strange and opaque phenomenon from ‘the native’s point of view’ is the starting point for the extensive study of trials for bestiality by the present author. Not so much about sexuality per se, the study focuses on the cultural implications of the act in a broad range of contexts from the mixture of human and animal bodily fluids to the commitment of a serious sin. An equally important aim is to analyze judicial incitements to confess and denounce and their unintended consequences and ‘misuses’. This approach is very much inspired by Michel Foucault and could, perhaps, be characterized as ‘a quantification of qualitative aspects’. A close reading of a large number of trial records searches for new pieces of information and side information noted in parallel situations which hopefully illuminate each other, constituting new and unexpected patterns of meanings. This could perhaps be called a ‘sifting-out-of-clues’ paradigm.

A historical anthropological approach has also been carried out in short studies of cross-dressing and stolen identities (the Martin Guerre theme), sexual encounters with demons and spirits, and cat-massacres.

Marriage and sexuality

Up to 1686, the cathedral chapters still held ultimate jurisdiction over matrimonial cases. Malin Lennartsson has conducted an extensive study of betrothal disputes and applications for divorce brought before the cathedral chapter in the diocese of Växjö in southern Sweden during the seventeenth century (1999). The study reveals that the chapter sometimes granted divorces for violence and abuse, even before the politics of royal dispensation and in spite of not being recognized as a legal ground for divorce by the Church ordinance of 1571. What is still missing, however, is an extensive study of early modern cases of marital abuse and discord brought before the secular courts.

Apart from Lennartsson and the aforementioned studies by Marie Lindstedt Cronberg, court records have not been used systematically for studies of heterosexual relations and love. There are some short essays derived from court records about male seducers, tender lovers, their sexual strategies and masculine ideologies (such questions are also discussed in Karin Hassan Jansson’s study), but non-heterosexual relations have, on the whole, attracted much more attention.
The contrast between the intense public attention accorded bestiality and the almost total silence about same-sex relations is the departure of investigation in a more extensive study of all known cases of male ‘sodomy’ from the seventeenth and eighteenth centuries. The study is very much influenced by the debate between ‘essentialists’ and ‘constructivists’ represented by John Boswell and Michel Foucault respectively. It focuses on the emergence of a homosexual identity. While silence was partly created by state policy, there also seems to have been very few incitements to speak about such acts in popular culture, in stark contrast to bestiality. This was perhaps less so in cases of sexual contacts between women. A study of cross-dressing and love between women questions the assumption that female same-sex relations were almost inconceivable due to a dominating phallocentric view of sexuality. Sodomy between women was not mentioned in the Decalogue, but references were made to Paul’s first letter to the Corinthians and the Carolina Code of 1532.

Gender

Although it has not always been a main and significant variable in social historical analyses, gender soon emerged as a strong field of research. Studies of women’s legal capacity, social agency, and rights in the perspective of patriarchal power and female subordination, constitutes a first major theme, represented in several works by Marja Taussi Sjöberg and Åsa Karlsson Sjögren. Questioning a one-sided structural view of gender and power, Gudrun Andersson (1998) shifts the focus to how men and women made use of their possibilities for action and negotiation in legal practice. A much more complex picture of the subordination of women and male domination emerges in this study inspired by Bourdieu’s theory of social practice. The question of women’s rights and legal capacity has been taken further in a recently published and extensive study of married women’s property rights by Maria Ågren (2010). Ågren shows in her study how women’s property rights were not only renegotiated but also re-conceptualized between the seventeenth and nineteenth centuries due to both intentional and unintentional causes.

The introduction of masculinity as a special theme represents a shift of focus towards gender ideologies. The cultural meanings of masculinity when connected with age, has been central to analyses of bestiality trials and has been developed further in the above mentioned study on male sodomy. A close connection between ideals of manliness and notions of honour is a recurrent theme in studies of dueling and fighting. The ideal manliness of the husband and master of the household has been studied most extensively by Andreas Marklund (2004) on the basis of ecclesiastical court records from the turn of the nineteenth century. According to Marklund there was not one uniform ideal, but rather several, sometimes contradictory, contested meanings related to a number of key concepts of which ‘the house’ held the strongest symbolic value as the site of manly authority and patriarchal power. The varieties and occasionally co-existent and contradictory ideals of masculinity held by one and the same person, is further emphasized in studies of male seduction when compared with reciprocal lovemaking.

Femininity has so far not been studied and problematized to the same extent on the basis of court records. Much work remains to be done here. Court records offer great potentiality for close reading and micro-sociological analyses of gender-coded comportment, attributes and statements in different contexts.

IV. The supplication system

Systematic research on the supplication system in Sweden is lacking for higher levels of the system, although several studies have been conducted on supplications submitted to the county governors in the seventeenth and the eighteenth centuries. This section will not resolve the deficit but strives to give a brief overview of the growth of the Swedish supplication system, who utilized it, and what for. Although the term ‘system’ is frequently used in this piece, it is important to note that it refers to a practice that permeated state organization rather than a devise in itself. A system existed in practice, but not in theory. Additionally, the term ‘supplication’ refers to an act which could vary in its content from appeals to requests to standard formal procedures, which will hopefully be illustrated by the text.

Growth and outline of the supplication system

In Sweden the medieval code Magnus Eriksson’s Landslag made the king the protector of the law. Subjects who felt that they had been wronged could turn to their ruler. To quote one juridical historian, it was a customary right ‘without the support of any positive regulations’. Even in the early seventeenth century there are examples of people who waited for the king by the roads hoping for, and sometimes receiving, a favorable verdict.

During the seventeenth century supplications became a formalized practice. Royal administration grew to an unprecedented scale and with this a judicial hierarchy was established. Instead of turning directly to the King, people could supplicate to the newly created Svea Royal Superior Court and, if they were not satisfied, they could then turn
to the Crown. This right, the beneficum revisionis, was modeled on continental tradition and was deemed a very important legal principle by the designer of the early modern Swedish administration, the Chancellor of the realm Axel Oxenstierna. Furthermore, from 1738 and onwards the office of the Justice Chancellor was open to grievances against civil servants. Supplications were also built into the administrative system. They were received by the central administrative organs, the boards, as well as the county governors and the dioceses. Their decisions could then be appealed to the King, who functioned as a hybrid judicial and administrative supreme court and a worldly ruler and legislator. In addition, some matters had to be submitted directly to the King. During the Age of Liberty, 1719–1772, the monarchy was marginalized in favour of the Estates. Following a pattern of governance set by the monarchy, they established themselves as the highest instance of appeal.

I have tried, above, to illustrate the supplication system during the Age of Liberty, after 1738. First there was the local level, the district court (häradsting) or the town magistrate municipal court, followed by the regional level and thereafter the central level, with the boards being immediately below the king in council and the Diet. As shown, the Justice Chancellor was not included in this hierarchy. Theoretically, a person would appeal upwards, towards the Diet. In practice, the illustration being a simplified representation of the possibilities offered by the system, reality was more complicated. Some errands required the treatment of the boards or the royal superior courts directly, there were several specialized courts, people disobeyed the prescribed structures, certain procedures and costs had to be followed and so forth.

Who were the Swedish supplicants and what did they write about?

As previously stated, the central levels of the system have not been scrutinized as thoroughly as the county governors. A study of women who supplicated the king during the mid-seventeenth century suggests it was not uncommon for noble women or widows to servants of the crown to use the channel for pensions, lowering of taxes, or other types of maintenance.

Studies of supplications to the county governors, mainly during the early and mid-eighteenth century, suggest that most of them came from the peasantry, followed by burghers, commoners of rank and servants of the crown. Support was a common theme of these supplications, especially in times of bad harvest, but the county governors also handled many economic disputes.
Subjects could also utilize the channel to submit grievances against the state and its agents. It was not uncommon for parishes to turn to the diocese to complain about their minister. Lastly, the supplications could be standard requests, required by law. For example, if a peasant wanted to cut down an oak, he had to send a request to the county governor, as all oaks were the King’s property.

The curious case of the slaughterer Erik Hultin from Strängnäs

To illustrate how the supplication system worked and how different conflicts were intertwined on several levels, I have chosen the case of the slaughterer Erik Hultin from Strängnäs, a town about 60 kilometers from Stockholm. In 1771, Hultin turned to the diet with his supplication.79

Hultin had been involved in a dispute with the vice district judge (häradsbörding) of Åkers härad, close to Strängnäs. Conflict escalated when Hultin reported the vice district judge Billberg, to Åkers district court meeting (häradsting) for wearing cuffs prohibited for persons of his status. On the 29th of January 1769, Hultin was sentenced to a fine of 48 riksdaler for having wrongfully accused a servant of the crown. The slaughterer immediately turned to Svea Royal Superior court with a so-called reservation, which had been submitted within a certain timeframe after the verdict had been given at the district court. The supplicant was then able to submit documents from the court as grounds for his appeal. In this case though, the district court stalled and before Hultin could plead his case, Svea superior court rejected his appeal on the 15th of March the same year.

This raised the conflict between Hultin and Billberg to a boiling point. While Hultin supplicated to the county governor for help in receiving the documents to prepare his appeal to the King, for some reason the very same county governor ordered one of his bailiffs to impose the sentence. This would normally have been done by the magistrates.

At the end of August 1769, the bailiff entered the town accompanied by Billberg, a sheriff, and some other civil servants, to claim a portion of Hultin’s property. At his house they were met by locked doors as Hultin had sealed himself inside. Several other burghers stood outside with a receipt which confirmed that Hultin had already submitted his fine to the magistrates. The bailiff ignored this and his companions went about their business with axes. They smashed Hultin’s windows while the sheriff started thrashing the door. Hultin ran out and, snatching an axe from the sheriff, started to beat and insult both him and the bailiff who retreated together with their group.

Such an assault on servants of the crown who were conducting their duty was a serious offence. Hultin was sentenced by an extra ordinary town magistrate municipal court to a hefty fine and to lose his honour. He supplicated the Svea superior court unsuccessfully and, after that, made an equally futile appeal to the King. The fact that his supplication was accompanied by a letter signed by 20 burghers that certified his honest character did not aid him. When the Diet opened in 1771, he appealed his verdict and after an investigation the Estates cleared him of almost all charges. He still had to compensate the bailiff and the sheriff for their pain and suffering but such severe mistakes had been made by the county governor, Billberg, and the bailiff, that Hultin could be acquitted.

This case may be atypical but it illustrates the way the supplication as a tool was intertwined with the judicial-administrative system and utilized both as a standard procedure and an extraordinary means. This episode also demonstrates how difficult it can be to distinguish horizontal from vertical conflicts. Finally, the episode illustrates how individual supplications and their micro-conflicts help us to gain access to larger structures, in this case what appears to be a conflict between rural and urban administration.

Annotations


2 Göran Inger: Svensk rättshistoria, Malmö: Liber ekonomi 1997 is the general reference for this and the following subsection on legal procedure, if not otherwise specified.


6  
This practice (leuteration) was formally recognized during most of the seventeenth and eighteenth centuries except for the period 1672–1713 when it was strictly forbidden during the reigns of Charles XI and Charles XII.

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For this development, see Göran Inger: Institutet 'Insättande på bekännelse' i svensk processrättshistoria. Rättshistoriskt bibliotek 25, Stockholm 1976 (German summary).

12  

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14  
For descriptions of different punishments and their symbolic and cultural meanings see Lars Levander: Brottsling och bōdel, Stockholm: Gidlund 1975.

15  
Handbok, ther vti är författad, huruledes gudtsdiensten, med christelige ceremonier och kyrrkoseder, vti våra svenska församlingar skal bliifwa hållen och förhandlad. [av Petrus Kenicius], Stockholm 1693, 'Huru handlas skal med dem som avlivas skola'.

16  
For the sacralization of capital executions and its consequences, see Liliequist 1992, p. 89–99.

17  

18  
Capital punishments in the Law Code of 1734 described and listed in Karl Olivecrona: Om dödsstraffet, Uppsala: W. Schultz 1891.

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21  

22  
Sven Kjöllerström: Guds och Sveriges lag under reformations-tiden, Bibliotheca theologae practicae 6, Lund 1957.

23  

24  
For this development and how the clergy was formally delegated worldly power by the king, see Arthur Thomson: I stocking. Studier i stockstraffets historia, Lund 1972 (English summary).

25  

26  

27  
Nylander ibid, p. 109–158.

28  
For a detailed overview see Manne Langseth: Bidrag till lekmannaversamhetens historia inom svenska kyrkan – uppsyningsmannainstitutionen 1600–1900, Uddevalla 1990.

29  
For comprehensive overviews of the officials and proceedings of parish justice in collaboration with secular courts and civil administration, see Jan Sundin: Control, punishment and reconciliation – A case study of parish justice in Sweden before 1850, in Anders Brändström and Jan Sundin (eds.): Tradition

30 Jonas Liliequist: "The child who strikes his own father or mother shall be put to death": Assault and verbal abuse of parents in Swedish and Finnish counties 1745–1760. in Richard McMahon & Olli Matikainen (eds.): Morals and Institutional Change, Finnish Literature Society, in press.

31 Thomson 1967.


33 Anners 1965, p. 230–231. Anners argues, rightly I think, that the king’s real motives were grounded in humanitarian ideals ibid. p. 264–268.

34 Statistics in Olivecrona, 1891, Table IV.


This section is based on the following studies: Frohnert, Pär. "Administration i Sverige under Frihetstiden.", i Administrasjon i Norden på 1700-talet, red. Yrjö Blomstedt (Oslo, 1985), p. 232, 252.


The description of the events is based on: Justitiedeputationens betänkande i fallet rörande Slaktaren i Strängnäs Erik Hultin, riksdagen 1771–72, R1998, Bondeståndets arkiv, The Swedish National Archive; Skrift nr 333, R3638, Urskillningsdeputationens handlingar 1771–72, Frihetstidens utskottshandlinger, The Swedish National Archive.