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## Current Trends in the History of Crime and Criminal Justice: Some Conclusions, with Special Reference to the Swedish Experience

*Jan Sundin\**

Abstract: This essay serves as a kind of conclusion to the present volume on »Quantification and Criminal Justice History in International Perspective.« Also it provides some specific mention of recent and significant Swedish studies on this theme, particularly those of the author and of Eva Österberg. These studies challenge the modernisation thesis« of Norbert Elias and others which posit that over the centuries societies become much less violent and much more theft ridden. Whereas various local studies in Sweden do point to a trend toward decreasing violence since the late middle ages, there was no apparent and sustained rise in theft offences until after the Second World War.

Legal records can be explored for many purposes, as demonstrated by the essays in this volume. Two of the most common ways are either to use them in order to describe the development of crime over time or to study the practise of the legal apparatus. It is difficult to measure the »real« volume of crime, first of all because of the »dark figure«, e.g. the percentage of criminal acts never reported in the sources for one reason or another. For the nineteenth century we have a growing body of criminal statistics collected for different countries in Western Europe and North America, but in other parts of the world the statistics are missing or - as in the Russian empire - incomplete or hard to interpret. When studying the »pre-statistical« period, the task gets worse. The series have to be reconstructed from court records and these sources are more incomplete the further back one goes in time. It is also assumed, probably for good reasons, that justice was more inefficient and more ambiguous during the »ancien regime,« due to the lack of professional police forces and public prosecutors, the use of extra-judicial settlement of criminal cases, etc. The

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longer the time period under study, the greater the risk that the law itself changed, making comparison over time impossible, since the categories are not equal to each other from one year to another. Yet, despite all the problems, researchers are now and then trying to make careful estimations of at least the crime trends.(1)

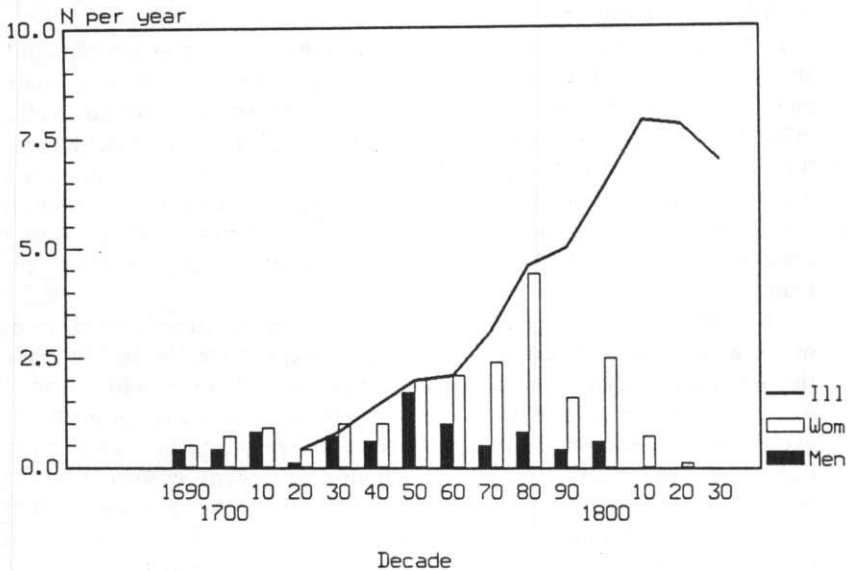
For some scholars it has been more tempting to interpret the changing figures of official crime rates as reflections of the behaviour of the judiciary itself or of changes taking place in the propensity to prosecute, of the efficiency of the legal apparatus, or of the changing norms among those who are appointed to the judiciary.(2) It may sometimes be true that a dramatic change can mainly be attributed to one cause or the other, but it is often dangerous to disregard either a change of criminal behaviour or a change in the ways the law was employed, when looking for causal explanations.

The results used for my arguments in this essay are mainly taken from my own and others' research on the Swedish experience. We seldom have the opportunity to compare the number of prosecuted crimes with the total number of incidents. The case of fornication in Sweden may be a unique exception. Fornication, defined as intercourse resulting in a child born outside of wedlock, was a crime in orthodox, protestant Sweden from the end of the seventeenth century to 1810. Both the father and the mother were liable to punishment. Figure 1 shows the number of men and women punished for that crime in the city of Härnösand in the years between 1690 and 1839, and, for most of the period, the corresponding number of illegitimate births per decade. All three figures should theoretically be of the same size during a particular period, meaning that all acts of fornication resulting in the birth of a child were punished. As the graph demonstrates, that was indeed roughly the case during the beginning of the eighteenth century, except for the fact that a few fathers could never be found or convicted.

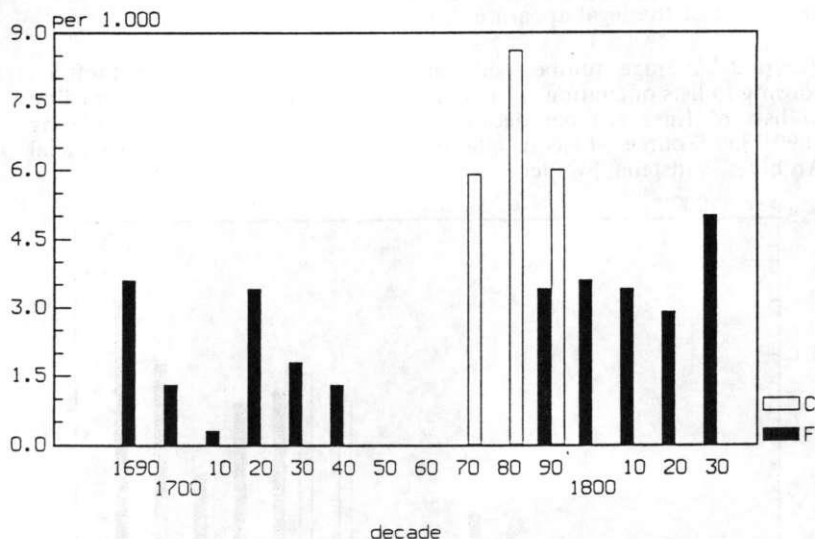
In the 1760's the percentage of convicted men fell drastically. The courts seldom convicted the fathers, although they still tried to. After 1790 the percentage of convicted women dropped too. In this case the conviction could certainly have been accomplished, if the courts had wanted to, since the crime was easy to prove. After 1810 only a few unmarried mothers were convicted, due to the fact that first and second time fornication was decriminalized for women that year. The diagram illustrates how the law worked differently depending on time and gender. In this context I will not try to explain the factors behind the change, I wish only to underline the pedagogical value of the example for those who are claim that the incidence of crime can never be detected in official crime figures or for those who take it for granted that the dark figure is constant over time.(3)

We are seldom in such a lucky position as in the example given above. Usually we face a situation similar to the case of violence (mainly minor

**Figure 1.** Average number per year of illegitimate births (Ill) and men (Men) and women (Wom) convicted of fornication per decade in Härnösand 1690-1839. Sources: Birth registers and lists of fines, The Provincial Archives of Härnösand, Sweden.



**Figure 2.** Average number per year of persons prosecuted for crimes of violence according to lists of citations (C) or convicted of the same crimes according to lists of fines (F) per decade with existing sources in Linköping 1690-1839. Sources: Lists of citations and lists of fines, The Provincial Archives, Vadstena, Sweden.

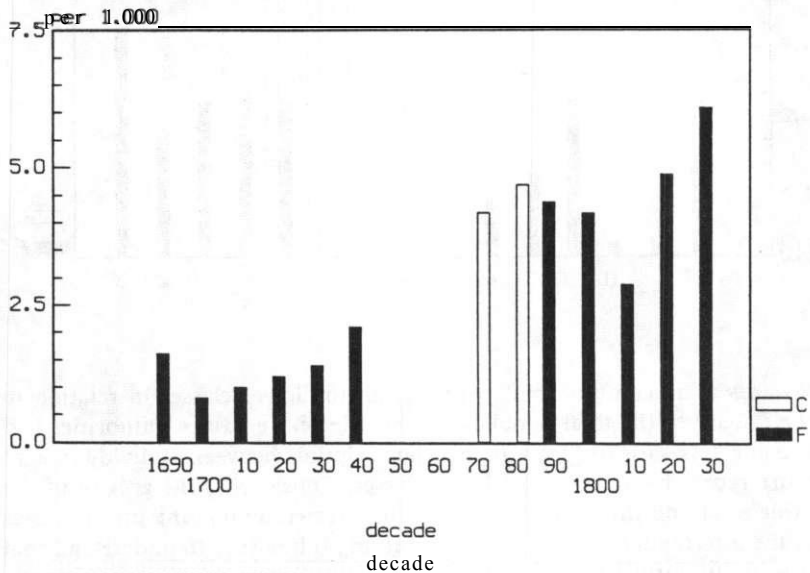


towards a larger number of people from the lower classes in relation to their share of the total population. The role of the justice authorities had become less directed towards conflict solution between individuals and more repressive towards the lower classes. Considering the growth of the proletariat and the documented fear this created among the upper classes in the aftermath of the French Revolution,<sup>(4)</sup> it is easy to understand that the courts were more willing than before to control »the dangerous classes.« It is also quite possible that a more »disciplined« middle class was emerging, reducing its share among those who were fighting in the streets. These decades were also characterized by open protest from the groups that suffered from the rapid economic and social change, for instance showing itself in street riots in 1800. Linköping experienced such a riot by craftsmen and workers, formally directed against rising prices of alcohol but in reality reflecting general dissatisfaction with the economic and social situation.

Surveillance of disorderliness was given high priority during these days. Night watchmen patrolled the streets more often than before, reporting drunkenness and other bad behaviour to the magistrates. The official figures for violence rose partially because of intensified formal surveillance, but probably also because of increased aggressiveness from those who were

pauperized and more controlled than before. One explanation cannot be separated from another in the dialectic process. The rising numbers of thefts in Linköping during the same period (Figure 3) was probably caused both by pauperization and intensified surveillance of the lower classes. We are dealing with potential changes both in the volume of crime and the behaviour of the legal apparatus when interpreting the trends.

**Figure 3.** Average number per year of persons prosecuted for theft according to lists of citations (C) or convicted of the same crime according to lists of fines (F) per decade with existing sources in Linköping 1690-1839. Sources: Lists of citations and lists of fines, The Provincial Archives, Vadstena, Sweden.



Rates of homicide are considered to be the most trustworthy figures for a comparison of real crime over time and space. In England a discussion has been going on between Lawrence Stone and others on the meaning of these rates, the most recent participant being James Cockburn.(5) The opinion that homicide declined from higher to lower figures from the Middle Ages to the nineteenth century is supported by a number of studies, although the exact levels are uncertain. Eva Osterberg, who collected the available Swedish data from her own research and others, confirms the general picture. She also gives some figures for the long term development of registered thefts, arguing that there is no sign of a great increase until after the Second World War.(6) Locally, however, one finds peaks lasting for decades, as in Linköping during the decades around 1800.

Eva Osterberg and I have raised the question whether we can totally accept the model borrowed from Norbert Elias about a disciplining pro-

cess, promoted by the monopolization of power in the hands of the State, as a sufficient initiator of the process from higher to lower rates of violent criminality in Sweden. Among other things, it is doubtful that the absence of the central State automatically meant that violence was frequent in the local society. In my own research I found one court district in seventeenth century Sweden where violence seemed to be relatively unusual, while at the same time that it was quite pronounced in another. These cases were, however, influenced by a strong intervention from two States, Sweden and Denmark, in the form of repeated war campaigns. Certain forms of State policy rather increased than decreased the degree of violence by breaking down the ability of the local society to promote law and order.(7) That does of course not exclude the possibility that the State may have played a more positive role in other circumstances. In short, the explanatory model is probably more complex than a simple theory suggests.

A number of studies demonstrate that the theory of rising crime figures during the period of industrialization and urbanization is essentially wrong. A Swedish contribution is given by Marja TaussiSjöberg, who found that neither theft nor violence increased in the rapidly industrialized sawmill region of Sundsvall between 1860 and 1890.(8) The national rates do not support the theory either.(9) Eric Johnson argues in a recent study of German data, that neither industrialization nor urbanization alone explain the regional variation in crime figures during the nineteenth century. Instead the author emphasizes the impact of poverty and ethnicity, particularity among newly immigrated groups.(10) Rapid change also seems to be important in the case of nineteenth-century New Zealand, described by Haslett and Fairburn in their contribution to this volume. Johnson's German findings and Haslett and Fairburn's New Zealand's findings can be compared with those of Taussi-Sjöberg's from the Sundsvall region in Sweden, where there was an increase of certain crimes during the very first phase of industrialization, when immigration was high and the local society was not accustomed to the new situation. However, this period of crisis only lasted about a decade. Rapid social and/or ethnic change may generally be a potential factor behind rising crime figures, probably depending both on a certain disorderliness in society until things have settled and on intensified formal control directed against arriving new groups.

In this volume David Bodenhammer shows us that the law is a tool that can be interpreted and used differently depending on the local context, but also that there may be ways of understanding local variations. Beata Gruszczynska and Elzbieta Kaczynska describe a Russian penal system that on the surface was different from the one in Western Europe, but its functions may have been very similar, among other things in the way it handled the problems of pauperization and vagrancy. Pieter Spierenburg

presents a picture of Early Modern prisons in the Netherlands and northern Germany, which in his eyes can be more easily understood in the context of the paternalistic ideology of the time than by theories about the impact of capitalistic models or by the »mind-engineering« theory of Michel Foucault.

Herman Diederiks gives us data on crime and social class from pre-industrial Dutch cities. One of his major findings is that class was a distinct variable in the pattern of registered crime, and he claims that the socio-economic situation to a great extent decided this pattern and its long-term change. Barbara Weinberger identifies »crime-ridden« areas in nineteenth-century Birmingham, connecting the results with the public's need for a »negative example,« when the majority of the working class was integrated into the »respectable« middle class society. Finally, S.J. Haslett and Miles Fairburn show how regional variance depended on socio-economic variables as well as on the ways that local control was handled.

The essays confront us with interesting results both concerning the development of crime and the functioning of justice. Their results should not be interpreted exclusively as reflections of particular circumstances in a certain country or a certain region at a certain period of time. There are a number of observations and explanations that ought to be tested in other historical contexts. Let me, just for discussion, put forward a few statements and suggestions.

First of all the law is a tool, developed in a particular economic, social and cultural context, and its formal appearance changes over time. The same written law is interpreted and operated differently by different agents of justice. The legal »machine,« consisting of judges, prosecutors, policemen, prison guards and other officials, is both a product of its context and a factor reshaping the same context. Therefore the court can be described as an arena or a theatre, where acts of substance and symbolism are continuously taking place. When studying this arena in its context, an important mechanism and the intentions behind it is disclosed. One of the most common ideas about the legal system is that it changed from being a tool for the interests of the local society and for private conflict solution in Early Modern Europe to an instrument of repression for the State by the nineteenth century.

It has been argued that this was a result of a more general process of state formation and professionalization. There are many interesting questions to be answered within this framework. What was the State? Which groups in particular influenced the policy of the State? To what extent was State policy a bargaining process between different groups, as I tend to believe was the case most of the time in Sweden, or an execution of the will of a few persons? What was the role of the judiciary itself? Was it just a



collective group of servants of the State or did it constitute a force of its own? It is also questionable if this so called »judicial revolution« was inevitably caused by the growth of State power and professionalization alone. Could the centralization of power in the judicial system have taken place at all, or so easily, without the simultaneously emerging migratory proletariat, hard to control by the local society itself? Which role did ideas about the possibility of social engineering, emerging during the era of Enlightenment, have on the speed of centralization and professionalization of justice and the revolution of the penal system from being predominantly based on fines and compensation to the use of prisons during the nineteenth century? Or was, for instance, imprisonment mainly a substitute and an adjustment, because the growing proletariat was not able to pay fines or give material compensation to the injured party?(11)

Let me briefly give my own picture of the transformation of local justice in Sweden based on a yet unpublished study of two small towns and two countryside court districts in Sweden. Local justice was predominantly directed towards the interests of the local community in the beginning, and most cases were meant to solve conflicts between individuals in that community. Already, however, a certain number of crimes concerned the interests of the State. These cases were of three types. In one type the State's economic aspirations had been challenged and in a second the State's authority was at stake. In the third we find the horrible crimes, cruel murders and other acts considered to be so serious that the king had an obligation to intervene. Different local societies were of course dominated by different groups depending on their socio-economic structure. Repression could also be found before the real judicial revolution. Marginal groups, who were not accepted members of the local society, were treated more harshly than the »insiders«, but the marginals constituted a much smaller part of the population than they did later on.

During the seventeenth and early eighteenth century the State's penetration of justice went hand in hand with the strong influence of the protestant Church.(12) Often these two powers took the same standpoint, but there were also examples of different attitudes. The repression of extra-marital sex was, for instance, a special interest of the Church, notwithstanding the less urgent, but still existing, support of secular agencies. In some areas the interest of the State certainly took over at the expense of the local society, but in others the latter won. The State was never willing to back off on its demand for material support and soldiers, and it was usually willing to use sufficient methods for it. Its wish to monopolize the use of natural resources, for instance the forest, was, however, only partially successful. Laws were made, but they were not always effective because of the passive or active resistance of the farmers. The same thing happened with the attempts to monopolize the production of alcohol during the eigh-

teenth century. Legislation was opposed, sometimes successfully, by a coalition of farmers and priests in the Parliament, and the implementation of the laws was difficult without the cooperation of witnesses and the local constabulary.

When studying the practise of local justice during the first half of the nineteenth century, one finds that the repressive element had become much more accentuated. It was partially a repression by and for the State, but also a repression by and for the majority of established members of the local society directed against a growing migratory proletariat. Common thefts and a lot of disorderliness were not accepted by the majority of the population, nor were they examples of a class war between a middle class minority and a lower class majority. On the contrary, the majority often participated actively in the prosecution as witnesses and in other roles. Justice was not in total opposition to the accepted norms of people in the local society. Nor was justice exclusively repression. Johan Söderberg has argued that the decline of registered violence and insults at courts after year 1600 can to some extent be explained by a more extensive use of civil suits, written contracts, etc. The »disciplination« of aggression described by Norbert Elias also happened »from below,« not only as the work of the State and the upper classes. Civil cases occupied a growing percentage of the agenda of the courts over time.(13) Part of the criminal agenda was still a form of conflict solution between individuals during the first half of the nineteenth century. Allen Steinberg has showed that justice was often used in the same way in nineteenth-century Philadelphia.(14)

Even registered crime as potential evidence of changes of criminal behaviour ought to be discussed more than has been done so far. When studying the period before national or regional statistics was produced by contemporary agencies, we will have to rely on a number of local investigations of court records and similar sources. Taken one by one the results will perhaps be shaky. But looked upon side by side, we may be able to make certain generalizations about common trends. As mentioned before, the theory of a long-term change from more violence to more theft is debatable. A decline of violence is to a certain extent observed in a number of time series studies, although the linearity of the process has often been over-exaggerated. A continuous increase of property crimes, often assumed to have been brought on by capitalism, has been denied. The big leap upwards of the rates of theft in our generation is not a continuation of a long trend. Nor can industrialization and urbanization alone be blamed for automatically increasing crime figures. Other factors, such as social, ethnic and economic heterogeneity, need to be considered as well.

Classical studies of the correlation between theft and economic conditions unambiguously indicate that relative destitution was a factor behind crime fluctuations in previous centuries.(15) We have perhaps been too

preoccupied with more subtle things - which are certainly important - but this may have led us to underestimate the correlation between socio-economic conditions and many types of crime. Sometimes the link is probably direct between class and crime, but more often indirect, caused by discriminatory actions by the controlling agents. The interplay between criminogenic factors and responses by the ruling elite ought to be further explored in studies not only looking at one side of the coin. Registered acts have to be explained as a combination of individual circumstances, collective norms and attitudes and responses of the society as a whole, including the judicial arena.

Scholars from different countries and with different disciplinary background need to discuss these issues more with each other. There is a certain self-sufficiency in the way research is presented in each country, my own not excluded. That may be more easily done in large countries, where the mass of research is relatively large, but it is certainly not enough for small countries. In the end all will benefit from comparison and attempts to generalize. The questions I listed above may not be the most adequate or interesting ones, but they are examples of the levels on which comparisons ought to be made.

Statistical series from the pre-industrial period are often hard to interpret. Therefore, many scholars only present absolute numbers, percentages or simple diagrams, concentrating on the context when trying to explain the results. Consulting the statistical profession will often show that there are ways to define the limits of uncertainty or sometimes even to get more information from the figures. Some statistically sophisticated reports on the nineteenth and twentieth century, on the other hand, over-emphasize the craft of counting and place too little stress on the context and the theoretical implications of the results. On the whole, there is also too much division of labour, or at least too little exchange of views, between those who study separate periods.<sup>(16)</sup> Both groups can learn from each other. Some things were relatively unchanged by time, some new trends started before, some during and some after the early phase of industrialization, etc.

Today there is a welcome trend towards a blend of quantitative and qualitative methods. Some questions are by nature more fitted to one or the other of these two approaches, but we should be open-minded to the use of several methods. Studies of only a few court cases or a few individual life histories of people at court usually give important information, not only to illustrate statistical results but also to understand their meaning. Statistical evidence helps the qualitatively inclined researcher to put the results into a wider context. It is for instance a question of representativity: how often were people prosecuted for a particular crime? Does the person on trial socially represent the majority prosecuted at that particular

time in that court or in other courts at other times? Patterns and time-series can give a wider meaning to single cases. Did, for instance, the court take a firm position in a certain case because it had reason to believe that a crime-wave was on its way?

The history of crime and criminal justice is an exciting field of research, suitable for many different approaches. I have underlined some things that should be given more attention in the future. This volume illustrates the variety of subjects that can be studied, and the results call for a more vivid discussion concerning the theoretical basis of our research in a wide comparative perspective. Still, too much of the discussion is split between sub-areas within the research field and questions of common interest should be discussed more often.

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## Notes

1. See articles by Bruce Lenman and Geoffrey Parker on the preindustrial period and by V.A.C. Gatrell on the nineteenth century in Gatrell-Lenman-Parker 1984.

2. See, for instance, Muchambled 1990.
3. The results of my own project on local justice in Sweden 1600-1850 will be discussed in detail in a forthcoming book. On fornication see Sundin 1988 (unpublished ms.).
4. Petersson 1983.
5. Cockburn 1991.
6. Österberg 1990.
7. Österberg 1983. Sundin 1986.
8. Taussi-Sjöberg 1981.
9. Sundin 1976.
10. Johnson 1990.
11. Sundin 1984.
12. Sundin 1981.
13. Söderberg 1990.
14. Steinberg 1989.
15. Sundin 1976.
16. There are, however, exceptions, for instance Emsley 1987 and Cockburn 1991.