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TOWARDS A BIOPOLITICS OF THE VICTIMIZED BODY

Creating assault as a crime against health and life, c. 1945–1965

This article discusses the creation of assault as a crime against health and life as this discursive process is expressed through Swedish laws, legislative discussions, and legal practice from 1945 to 1965. Inspired by Michel Foucault’s theoretical reflections on biopolitics and sociologist Thomas Lemke’s outline to an analytics of biopolitics, the article argues that a most central component in the genealogy of assault as a crime against health and life was a shift in the first post-war decades, from a predominant legal idealistic paradigm within Swedish jurisprudence, by which assault was defined as a crime against bodily integrity, to a legal realistic epistemology, imbued with the scientific knowledge and empirical ‘truth’-producing practices of modern medicine. As an effect, new discourses around the victimized body emerged, through which prevailing knowledges and ‘truths’ around violent crime and its effects were challenged and marginalized. In this discursive process, the 19th-century legal-moral category of violent crimes finally collapsed into the overarching legal category prescribed by Brottsbalken (1965) as ‘crimes against health and life’. Consequently, the victimized body was deprived of all meaning but ‘life’ and thus created as a biopolitical space, available to series of life-governing interventions and regulatory practices.

Keywords body, victims of violence, biopolitics

Introduction

In contemporary Western discourse, relations between violence and health, and more generally life itself, are major issues. It might seem self-evident and even natural that victims of violent crime suffer both physically and mentally from the offences inflicted on them. But how and under what historical and institutional circumstances is this knowledge produced and established as ‘common truth’ in Sweden? And what might its political implications be?
In the decades after the Second World War, this article argues, a discourse around the victimized body was formed, in which the prevailing knowledges and ‘truths’ around violent crime and its effects became unstable, challenged, and (re)negotiated. In this epistemological and discursive process, which I will describe as the collapse of 19th-century juridico-moral category of crimes of violence into the overarching category of ‘Crimes Against Health and Life’, new ways of interpreting, classifying, and dealing with assault were introduced and implemented. When the still-prevailing Swedish penal law, ‘Brottsbalken’, was enacted in 1965, the notion of assault as a crime against health and life was politically established as one of the fundamental ‘truths’ around crimes of violence.

On a general level, the legislative process that resulted in Brottsbalken’s articles on crimes of assault is, of course, well known among scholars of Swedish law, legal history, and criminology. However, the different body-centred discursive and ‘truth’-producing practices through which different crimes of assault were investigated, problematized, and finally categorized as ‘crimes against health and life’ is an unexplored field of inquiry. My aim here is to critically explore some crucial episodes of this both dissolving and formative historical process, and to discuss its political implications against a background consisting of theoretical and methodological reflections around the concept of biopolitics.

Body, knowledge, and power over life: an analytics of biopolitics
In the first volume of The History of Sexuality (1976), Michel Foucault is describing biopolitics as a form of exercising power that is characteristic to modern Western societies. Its emergence in the late 18th century marks a moment at which ‘life’ became not only the main object of political thinking and practice, but its innermost core. This meant a fundamental change in the order of politics. From this historical moment, traditional technologies of power, i.e. the repressive power of the law, symbolizing the sovereign power of death, and the anatomo-political power of the disciplines, were, says Foucault, ‘carefully supplanted by the administration of bodies and the calculated management of life’. This transformation, which meant an extension in both range and depth of power, was closely tied to the emergence of ‘new’ fields of knowledge, such as statistics, demography, epidemiology, biology, and, of course, modern medicine. These scientific disciplines, Foucault stresses:

focused on the species body, the body imbued with the mechanics of life and serving as the basis of the biological processes, propagation, births, mortality, the level of health, life expectancy, with all the conditions that can cause them to vary. Their supervision was effected through an entire series of interventions and regulatory controls: a biopolitics of the population.

In the series of lectures given by Foucault a few years later at the College de France, he began to theoretically revaluate his notion on biopolitics. By that time, it was clear to him that biopolitics not only was a specific modern form of exercising power over life, based on scientific knowledge on the living body, but also inseparable from the moral economy of ‘liberalism’ and its normative assumptions or ‘truths’ about human existence and subjectivity. According to Foucault, it was the rise of liberalism and liberal discourse that made it possible to articulate the problem of ‘how subjects are to be governed if they are both legal persons and living beings’. 
Today, the academic literature inspired by Foucault’s theoretical reflections on biopolitics is extensive. In the last two decades or so, questions regarding biopolitics and the government of living beings has been raised and dealt with by numerous scholars of various disciplines, such as philosophy, sociology, history, legal theory, literary criticism, gender studies, and medicine. The Foucauldian concept of biopolitics has been challenged and theoretically elaborated in many different ways by prominent scholars, such as Giorgio Agamben, Didier Fassin, Anthony Giddens, Michael Hardt, Antonio Negri, Paul Rabinow, and Nikolas Rose. However, as sociologist Thomas Lemke has pointed out, most studies on biopolitics in the wake of Foucault have been focussing on the ‘production of knowledge and forms of subjectivation’. Instead, Lemke suggests, an analytics of biopolitics should ‘investigate the network of relations among power processes, knowledge practices, and modes of subjectivation’.

Following Lemke, this perspective involves (at least) three intertwined dimensions, each of which can be illustrated by a set of analytical questions.

First, an analytics of biopolitics requires a profound understanding of the ‘regime of truth (and its selectivity) that constitutes the background of biopolitical practices’, thus creating ‘biopolitical spaces’ as well as defining ‘both subjects and objects of intervention’. What epistemologies or systems of knowledge are regarded as fundamental to the interpretation of the world? And what other epistemologies are assumed to be invalid and thus marginalized?

Second, the production of knowledge and ‘truths’ in any given society is a question of power and discourse. What groups of experts are considered to tell the ‘truth’ about the human body, health, and life itself? In what vocabulary, linguistic patterns, and narratives are these ‘truths’ articulated and presented? How are bodies described and evaluated in different institutional settings?

Third, an analytics of biopolitics addresses questions regarding processes of subjectivation, i.e. how individuals are brought to controlling, correcting, shaping, and modifying themselves, by adopting and incorporating knowledge about the living body, prescribed as ‘truths’ by the scientific, medical, psychological, religious, and moral authorities of the time. In this article, I will be focussing on the first two set of analytical questions.

In Sweden, crimes of violence became a biopolitical issue at the end of the 19th century as an effect of a multitude of regulatory interventions – criminal statistics, scientific research, penal ideologies, medical reports, criminal policy, administrative visions, laws, and legal practice – that merged into an extensive apparatus of knowledge and power, operating not primarily on the living body, but through it. In the decades around 1900, the biopolitics of violent crime in Sweden were strongly influenced by different medical-biological theories of crime and deviance, inspired by the ideas of Cesare Lombroso and the so-called Positive or Italian school of criminology. As I have discussed elsewhere, the 1920s, 1930s, and early 1940s was a period during which the ‘violent body’ became a main objective of Swedish legislation and criminal policy. Under the influence of medical-biological discourses centred around binary oppositions, such as ‘normal’ and ‘abnormal’/‘degenerate’, ‘healthy’ and ‘sick’, ‘sane’ and ‘insane’, ‘worthy of living’ and ‘not worthy of living’, the violent individual was described by Swedish medical experts, criminologists, politicians, lawyers, novelists, and the daily press as a serious social problem, a threat not
merely to law-abiding citizens, but to the integrity of the social body, i.e. the moral character, health, and life processes of the Swedish population. In the name of protecting the social body from the inner threats of degeneration, and thus preserving (and improving) its moral and biological integrity, the supposedly abnormal and degenerate body of the violent individual became a political priority and a site for a series of truth-producing practices and life-governing technologies: identification, examination, classification, homogenization, hierarchization, exclusion, normalization, and, at the extreme, destruction by sterilization and castration.[14] However, in the decades after the end of the Second World War, the objective of Swedish biopolitics around crimes of assault began to change; from a strict focus on the ‘violent body’ towards the ‘victimized body’.

In 1945, a committee of scholars and practitioners of law was commissioned by the Swedish government to examine and evaluate the penal regulations regarding crimes against the person and to formulate a proposal for a new penal law. The results of the Criminal Justice Committee’s investigation was presented in the 1953 Proposal of a New Penal Code.[15] The proposal was then remitted to external reviewers for official remarks, such as the Swedish Courts of Appeal, the National Board on Health and Welfare, the Swedish Board of Medicine, Administrative County Boards, etc. In 1962, the Swedish government submitted its proposition to the Parliament.[16] Three years later, in 1965, the new Swedish penal code, Brottsbalken, including its regulations on assault as a crime against health and life, was enacted.

In the following pages, I will highlight and critically examine a small, however most important, aspect of the discursive process, which I have called the collapse of the 19th-century legal category of violent crimes into the 20th-century biopolitical category of ‘crimes against health and life’. I do not proceed as if the category of assault as a crime against health and life is a result of a linear, uninterrupted, historical development. Rather, my intention is to approach this discursive process from a genealogical perspective.[17]

To adopt a Foucauldian genealogical approach is not, as has been pointed out by historian Ruth Leys, to deny that there exists certain continuities, i.e. historical regularities and repetitions on a structural level.[18] On the contrary. In this article, my main ambition is to demonstrate how the biopolitical category of assault as a crime against health and life was a product of discourses and truth-producing practices in the first post-war decades, revolving around the problem of the victimized body.

In line with the genealogical approach outlined by Foucault, this article focusses on a series of certain crucial episodes in the various attempts by Swedish experts of law and medicine in the 1940s, 1950s, and early 1960s to define the essential meaning of assault by exploring and classifying its injurious effects on the victim’s body.[19]

In order to highlight the complexity of the discursive process that resulted in Brottsbalken’s articles on assault as crimes against health and life, an in-depth analysis of several different text genres is motivated. First, I focus on the articles on assault in the 1864 Penal Code and Brottsbalken from 1965, with particular attention to the ways in which the spaces of legal knowledge and ‘truths’ surrounding crimes of assault were organized. Second, based on the extensive 1953 Criminal Justice Committee’s proposal for a new penal code, including two preparatory investigations that were central to the work of the Committee, as well
as the official remarks of that same proposal, submitted by different law enforce-
ment agencies and health authorities, the legislative discussions around the victi-
mized body will be scrutinized. Third, based on case summaries around assault
published in Nytt Juridiskt Arkiv (NJA) from 1945 to 1965, the production of
forensic evidence and ‘truths’ around victimized bodies is explored, with a focus
on the knowledge/power of medicine.

The various types of texts analysed in this article can be described as polyphonic,
comprising elements from a multitude of other texts, genres, and discourses.
Furthermore, as the cases that were summarized and published in NJA were
scrutinized and settled in the Supreme Court, they had an indicative function and
meaning for future legislation and legal practice.

As my intention is to explore and problematize the complexity of the discursive
process in which assault was created as a crime against health and life, a closer look
into the legal-philosophical theories and scientific ideas that formed the epistemolo-
gical and ideological backdrop of Swedish jurisprudence and legal discussions in
general in the first post-war decades is needed.

Swedish jurisprudence, the welfare state, and the ideas of 1945: a
time context
Since the beginning of the 19th century, Swedish law and legal culture had been
strongly influenced by German jurisprudence. However, soon after the Second
World War, this intellectual exchange ended. How did Swedish lawyers and scholars
of law relate to the international post-war legal development, in particular to the so-
called ‘renaissance of natural law’ and the awakened international political interest in
human rights?

In the first post-war decade, the moral status and legitimacy of law became a
central political issue in many European countries. To contemporary observers, the
legal development in 1930s and 1940s Nazi Germany was the most obvious example
of the fundamental failure of positive law. The collapse of positive law into the Nazi
state ideology illustrated that its claims to be an objective epistemology and practice,
found on scientific knowledge, and supposedly relentless to all ideological manip-
ulation, had proved to be merely illusions.20

In several European countries, the late 1940s marked a period in which the
experiences of Nazism, the Holocaust, and the crimes against humanity gave rise to a
‘renaissance of natural law’, including a ‘rebirth’ of human rights.21 For instance,
historian Mark Mazower has described the awakened political interest in human rights
in the first post-war years as a need to reassert the sanctity of life and human dignity,
including the inalienable natural rights of the individual against the sovereign power of
the state. Of course, Mazower stresses, these ethical values ‘fitted smoothly into the
liberal political thought and seemed especially urgent to those people who felt the war
had started because of the inherent bellicosity of dictatorship’.22 However, he con-
tinues, ‘an examination of wartime thought would suggest that the emphasis on human
rights and the “claims of the individual” stretched far further across the political
spectrum’.23

In the specific case of West Germany, the awakened political interest in natural
law and human rights not only mirrored a need to find a radical alternative to the
Nazi legal system, it also reflected the dualistic worldview and political culture of the Cold War. Through the affirmation of the sanctity of man and the unalienable nature of rights in the first article of the Bonn constitution, the fundamental distinction between West German law and the ideologically imbued legal system of Soviet-controlled East Germany was defined. In a wider cultural meaning, the ‘rebirth of human rights’ in West Germany represented a growing interest in idealistic, Christian, and conservative traditions in general.\textsuperscript{24}

Unlike West Germany and several other European countries, there was no ‘renaissance of natural law’ or a ‘rebirth of human rights’ in Sweden in the first post-war decades. Here, the epistemological predominant legal realistic paradigm remained unaffected by the idealistic movements within international politics and juridical debates.\textsuperscript{25} How then, can the Swedish legal development in the wake of the Second World War be interpreted?

In Swedish research, Kjell Å. Modeer and Johan Östling have produced important insights into this complex history. They have both discussed the strong resistance against universalistic moral values and ideas such as natural law and human rights in relation to broader ideological, philosophical, and cultural conflicts and processes.

First, the general opinion of Swedish lawyers and jurists was that the legal system in Sweden had resisted successfully all ideological manipulation, precisely because of the orthodoxy of legal realism, both as a philosophical system of knowledge and as scientific practice. ‘In fact’, Östling stresses, ‘the primary effect of Nazism seems to have been self-affirmation’.\textsuperscript{26}

Second, as pointed out by Modéer, the post-war affirmation of legal realism and positivism may be interpreted as a part of an ongoing secularization of Swedish legal culture. At the outbreak of the First World War, Swedish lawyers were still practising their profession within a legal idealistic paradigm, developed by Christopher Jacob Boström (1797–1866) and his students. In this philosophical system of knowledge, Christian religious beliefs in a divine structuring order were intertwined with ideas rooted in the Kantian philosophical tradition. The gradual secularization of Swedish legal culture was, according to Modéer, closely linked to the incorporation of scientific ideas deriving from evolutionary theory, positivism, and the legal realistic paradigm developed by philosopher Axel Hägerström and other scholars working in the tradition of the Uppsala School. In particular the establishment of the latter was the beginning of the end of legal idealism in Sweden.\textsuperscript{27} The radical critique formulated by Hägerström and later incorporated into the juridical debates of the 1940s and 1950s by one of his most devoted followers, professor of law Vilhelm Lundstedt, was based on value nihilism, i.e. a total rejection of the presupposed existence of universal, metaphysical moral values. Of course, this critique also included the idealistic legal theories of natural law and human rights.\textsuperscript{28}

Third, legal realism fitted neatly not only into the normative ideology of the Swedish Welfare State, but also into the wider post-war landscape of ideas. In line with Svante Nordin, Johan Östling has argued that, in the first years after the Second World War, a ‘certain community of opinion’ among leading intellectuals and reformers in Sweden emerged. This set of ideas, defined by Nordin as the ideas of 1945, was a cluster of notions deriving from different traditions.
They [the Swedish post-war intellectuals] were rationalists and modernists, represented the social sciences that were becoming prominent, were strongly oriented towards the U.S.A. in a way that had been rare among older generations of Swedish academics. Culturally they were radical, but they rejected totalitarian ideologies. Their view of politics was pragmatic, they all accepted the construction of the welfare state, though with varying degrees of enthusiasm. They saw themselves as unsentimental realist, opponents of idealistic phraseology, utterly secularized in their view of society.²⁹

The ideas of 1945 were, Östling writes, liberal in their core and humanistic in a wide sense, but also informed by conservative and socialistic ideas. As such, they comprised a most powerful social and cultural vision of the post-war era, with implications for the legal development in Sweden. Informed by these ideas, Swedish lawyers and jurists began to perceive the continental law, based on idealism, metaphysics, and religious sediments, as the antithesis to the modern, post-war Swedish law.³⁰

Against this historical background, my aim in the following sections is to conduct a series of in-depth analysis of the discursive construction of assault as a crime against health and life, paying particular attention to epistemological conflicts, negotiations, and changes.

Swedish legislation on assault and the changing order of knowledge

The 20 years from the end of Second World War in 1945 to the enactment of Brottsbalken in 1965 marked the last phase of the discursive process through which the 19th legal category of assault, as it was prescribed by the 1864 Penal Code, collapsed into the overarching biopolitical category of assault as a crime against health and life.

How then, was the category of assault construed in the 1864 Penal Code and Brottsbalken, respectively? How was the space of legal knowledge and ‘truths’ surrounding crimes of assault organized? What notions of the victimized body were central to the construction of assault as a legal category? What fundamental differences between 19th-century legislation and that of the 20th century can be identified?

In Brottsbalken, the space of penal regulations on assault has been arranged in a totally different way from that systematized in the 1864 Penal Code. In the older Penal Code, we find the articles on assault in chapter 14, On Murder, Manslaughter and Other Assault.³¹ In Brottsbalken, the articles on assault have a much more prominent location, namely in chapter 3, On Crimes Against Health and Life. The spaces in which the articles on assault are organized reveals, I will suggest, the dominant epistemological and ideological backdrop of the production of legal knowledge and discourse around crimes of assault, specific to the 19th and the 20th centuries, respectively.

In the 1864 Penal Code, the pride of place is not, as in Brottsbalken, given to the regulations on violent crimes, but to Crimes of Religion (ch. 7), followed by Crimes of Treason, and Other Crimes Against the Security of the Realm (ch. 8); Crimes Against the Majesty, and Other Crimes Against the Government and the Estates of the Realm (ch. 9); Crimes Against Public Authority (ch. 10); Crimes Against the Peace (ch. 11); Counterfeiting Crimes (ch. 12); and Crimes of Perjury (ch. 13).³²

To put it differently, in the legal order of the 20th century, the health and life of the individual body has been given juridico-political priority. In the 1864 Penal Code,
the pride of place is given to articles on violations against religious ideals, norms, and values such as the sanctity of the Eucharist, i.e., the body of Christ, followed by the crimes against the inviolability of secular institutions and politicized bodies such as the king and the royal family, the realm, the nation, and government officials.

Furthermore, in the 1864 Penal Code and in Brottsbalken, respectively, there are fundamental differences regarding the methods of describing assault and thus defining its essential meaning. In the older law, assault is defined as an act that causes ‘bodily injuries’ such as ‘loss of speech, vision or hearing, physical defects, permanent or fatal illness’. The point of reference to these legal representations of the victimized body is the category of ‘Murder, Manslaughter, and Other Assault’. That assault also might cause severe illness and thus have negative effects on the victim’s health and life is pointed out by the law. However, it is only one of several representations of the victimized body presented by the law, not, as in Brottsbalken, the dominant representation and defining principle of all violent crimes. The links between assault and the victim’s health and life is prescribed by articles 5 and 6.

Any person who causes another person bodily injury, illness or pain or imposes him or her in a state of powerlessness or any other such condition shall be convicted of prison for a period of not more than two years, or, if the offense is minor, to a fine or imprisonment for a maximum of six months […]. If crimes referred to in article 5 are assessed to be severe, the offender shall be sentenced to imprisonment for at least one and not more than six years. In assessing the degree of severity, special attention should be given to whether the offense was fatal, or if the perpetrator has caused severe bodily injury or serious illness or otherwise demonstrated particular ruthlessness and cruelty. If the crime is considered to be particularly severe, the perpetrator should be sentenced to imprisonment for at least four and no more than ten years. When assessing whether the crime is particularly severe, special attention should be paid to whether the bodily injury is permanent, or if has caused particular suffering, or the perpetrator has shown particular ruthlessness.

In Brottsbalken, the legal meaning of assault is defined by its referentiality to the abstract biopolitical categories of ‘health’ and ‘life’. Besides the concepts of ‘bodily injury’ and ‘illness’, which were described as central components in the legal construction of assault also in the 1864 Penal Code, Brottsbalken emphasizes the victim’s ‘pain’ and ‘powerlessness’ as essential. However, as Brottsbalken’s articles clearly illustrate, the victimized body itself was no longer perceived as enough evidence. In order to assess whether an act of assault was to be classified as severe or not, an investigation of the perpetrator’s intent, which included evaluations of his violent actions in terms of ‘ruthlessness’ and ‘cruelty’, was fundamental.

In regard to the crimes of assault, the enactment of Brottsbalken signifies a profound shift in knowledge/power relations. A transition, that is, from an older juridico-moral order formed within a idealistic paradigm in which religious norms and moral values were central, to a bio-politically embedded legal system founded on a realistic epistemology, the scientific, empirical knowledge on the victimized body,
and a pronounced ideological interest in protecting/governing the health and life of the individual.

**Assault as a crime against bodily integrity: signs of legal idealism**

When the Criminal Justice Committee was appointed in 1945, the official evaluation of Swedish penal law had been going on for decades. In 1909, Johan C. W. Thyrén, professor of law at the university of Lund, was commissioned by the Swedish government to outline a preliminary draft of a new penal code. In the following decades until his death in 1933, Thyrén produced a massive work, in which the prevailing meaning of different legal categories of crime, such as assault, was identified and critically examined. Thyrén’s preliminary draft became an important starting point to the Criminal Justice Committee’s investigations in the 1950s and 1960s. This justifies an in-depth analysis of his thoughts on assault as a legal category. What was the nature and essential meaning of assault, according to Thyrén? Through which body-centred discourses is knowledge on assault produced?

Between 1910 and 1914, Thyrén completed a first part of his preliminary draft of a new penal code: the three-volume work *Principles of a Penal Reform*. In one of the volumes, particular attention was payed to crimes of violence. According to Thyrén, the prevailing legal category of assault was obsolete and open for subjective and misleading interpretations. It was necessary, he claimed, to identify the true meaning of assault. Thyrén suggested that assault and other violent crimes were essentially crimes against bodily integrity.\(^35\) Thyrén developed this thought in *Preliminary draft to a Penal Code, Special Part 1* (1917). The term ‘integrity’ was then replaced by the closely related term ‘inviability’. How can Thyrén’s use of these concepts be interpreted?

In current research, legal historian Ruth A. Miller has discussed the meaning and power embedded in the concept of bodily integrity. ‘Basically’, she writes, “integrity” means “honor.” It is also frequently defined as “honesty,” “truth,” “veracity,” and “reliability.” To speak of “bodily integrity,” therefore, is to speak of the honor, veracity, and reliability of the body. An undermining of bodily integrity thus does not refer simply to a violation of the boundary between the supposedly external and the supposedly internal; it also refers to a dishonoring of the body, to rendering it somehow untrue or false, to leaving it unreliable or out of control. The “wholeness” implied by bodily integrity is therefore not just a physical wholeness with borders intact, it is also an existential wholeness, having to do with reality, truth, and agency.\(^36\)

As Miller has argued, the meaning of the concept of bodily integrity is multi-layered. Its close etymological affinity to moral values such as *honour, honesty, reliability*, and *wholeness* has both existential and epistemological implications, comprising perceptions on agency and even truth and reality.

The same existential and epistemological dimensions of meaning are, I will suggest, present in Thyrén’s discussion on assault. The invioliability of the body is, according to Thyrén, a ‘defining principle of the autonomous existence of human beings’.\(^37\) Thyrén’s description is founded on a discourse which defines the human body as an inviolable moral space. The terminology used is not that of modern legal realism, value nihilism,
or positivism. What is at work here is a legal idealistic discourse, through which the integrity of the individual body is identified as an absolute moral value and an inalienable legal principle.

This notion on the human body was central not only to Thyrén in the early 1900s. It seems to have been the epistemological basis common to most European penal regulations regarding violent crime before the Second World War. At least, this was the image produced in an extensive Swedish report on foreign legislation regarding crimes against the person. The report, which was to a great extent based on a compilation done by scholar of law Frans Marcus around 1944 on behalf of the former Criminal Justice Committee, was later included as an appendix in the 1953 proposal for a new Swedish penal law.\(^38\)

The scientific overview included several transnational comparisons. Thus was the Swedish penal regulations on assault scrutinized in relation to a much wider European legal context. A conceptual analysis done by Marcus et al. demonstrated that the Swedish word ‘misshandel’ covered a much wider semantic field than, for example, its German, Austrian, and Swiss counterparts. In Swedish law, the report noted, the word ‘misshandel’ is used as a designation of ‘practically all forms of violations against bodily integrity’.\(^39\)

Although the post-war legislative discussions around assault that merged into Brottsbalken’s articles on crimes against health and life, primarily, as I will discuss later, took form within a legal realistic paradigm, there are some episodes in which we can catch a glimpse of a legal idealistic discourse operating through the concept of ‘integrity’. One of these rare indications can be drawn from a an official remark on the Criminal Committee’s proposal, submitted by the Administrative Board of Malmöhus County. The Board agreed with the Committee that stricter penalties for assault were necessary. However, the motivation for this statement was rather unique. The Board claimed that ‘there was a tendency, clearly indicating that the respect for the personal integrity of the individual was declining’.\(^40\) It was, therefore, the Board stressed, necessary that ‘the society on all fronts intervenes in order to extend the protection of the individual as far as possible’.\(^41\) In classifying crimes of assault as acts that not only lead to bodily injuries but also violates the value of ‘personal integrity’, an idealistic victim-oriented definition of crimes of assault is presented.

Furthermore, judging by a cursory examination of the case summaries around assault that were published in NJA between 1945 and 1965, the explicit use of the concept of ‘bodily integrity’ and other terms deriving from the juridico-moral terminology of legal idealism is strikingly unusual.\(^42\) One important exception is to be found in a summary from 1962 concerning a case of attempted robbery. The Swedish Prosecution Authority claimed that the criminal act in question displayed ‘a profound lack of respect for another person’s right to bodily integrity’. From the perspective of the Prosecution Authority, it was not the bodily injuries inflicted on the victim that primarily motivated a stricter sentence; it was the circumstantial fact that the attempted robbery was committed in the victim’s apartment during night time.\(^43\) Here, the concept of ‘bodily integrity’ was used as a designation of an inviolable moral space within which the individual was supposed to be safe and free.
Victimized bodies in the empirical world: the dominance of legal realism

In the first post-war decades, legal realism was politically established as a ‘regime of truth’. As I have already discussed on a more general level, idealistic theories and notions were gradually marginalized in favour of scientific, i.e. the empirically observable, verifiable, and measurable, facts and knowledge. But what impact did this transformation of knowledge/power constellations have on the legal notions on assault?

In 1953, the Criminal Justice Committee presented its proposal of a new penal code, which included new views and regulations concerning crimes of assault. A fundamental problem in current law and legal praxis around cases of assault, the committee stressed, was that the degree of penal liability was determined in relation to the injurious effects of the act, irrespective of whether the act was intentional or not.

As a consequence, the perpetrator’s punishment was completely dependent on ‘whether the person subjugated to assault dies, gets a serious bodily injury, a minor injury, or suffers no harm at all’. This procedure, the committee continued, ‘may, with regard to the difficulty of proving intent, be natural at a primitive level but is not defensible in a modern civilized society’, in which ‘there is both knowledge and techniques for investigating, assessing and determining the perpetrator’s intent (dolus) in cases of assault as well as distinguishing it from negligence (culpa)’. Using strongly evaluative concepts such as ‘natural’ and ‘primitive’ as opposites to ‘modern’, ‘civilized’, ‘knowledge’, and ‘techniques’, the current penal regulations on assault, construed within an legal idealistic paradigm, were disqualified as invalid.

In order to eliminate the ‘primitive’ elements in the legal process, the Criminal Justice Committee proposed a gradation of crimes of assault into three levels: intermediate and minor cases in 5§ section 1 and 2, respectively, and severe cases in 6§. This new classification, the committee claimed, ‘was not, as in the prevailing law, a gradation of the harm done, but, similar to theft and many other crimes, a gradation based on a consideration of all intentional circumstances around the crime committed’.

In order to assess whether the assault was severe or not, the court of law should take into account, in particular, ‘whether the offense was manifestly fatal or provoked by particular deceit or cruelty or if the offender intentionally inflicted severe bodily injury or serious illness’. Regarding the current penalties for assault, the Criminal Court stressed that, ‘insofar as they did not cause death or severe bodily harm, the assessment tended to be too mild, especially in comparison with economic crimes’. From this perspective, the committee continued, the proposed gradation of the legal category of assault into three levels ‘opened up for stricter interventions against violent offenders’.

The meaning and function of the proposed penal regulation regarding crimes of assault is thus clear. Based on the knowledge and advanced ‘truth’-producing techniques associated with the ‘modern’ and ‘civilized’ post-war society, legal investigations should not be limited to an inspection and assessment of bodily injuries. The seemingly self-evident physical traces of violence left on the victim’s body as such were no longer considered to be entirely reliable as evidence. Law and legal practice should also focus on the question of intent by empirically investigating and assessing all the objective facts and circumstances in each case. To put it differently. Rather than seeing the victimized body as a inviolable moral space isolated from the physical world of causes and effects...
outside itself, it should be investigated and assessed as a fully integrated part of a wider, empirically observable, and putatively objective reality.

Against this background, the Criminal Justice Committee continued to critically problematize the current law and legal practice around assault. For instance, a distinction was construed between acts that lead to ‘bodily injury, illness and physical pain’, which should be interpreted as crimes of assault, and acts that ‘only leads to psychological suffering’, which were supposed to be something essentially different. However, according to the committee, such a distinction between physical and psychological suffering was not unproblematic.

The category of assault, the Criminal Justice Committee claimed, had to be developed, with particular attention to the meaning of the concepts of bodily injury, illness, and pain. The committee elaborated:

According to 5§ [in the committee’s proposal], such acts that leads to bodily injury, sickness or pain should be regarded as assault. Bodily injury is not only to be understood as a designation of typical injuries such as wounds, distensions, bone fractures or joint injuries, but also as different types of functional disabilities, such as paralysis or vision and hearing injuries. As bodily injury should also be considered, for example, the act of shaving the hair of a woman. Sickness include mental illness and mental disorder as well as such mental suffering that has medically provable effects, for example mental shock.

Bodily injury or illness could be an effect of assault without causing any pain. Pain refers to physical suffering which is not negligible. Causing a minor bodily discomfort, for example by interfering noise, may not be considered as assault.

In the quoted passage, the epistemological basis of the Criminal Justice Committee’s view on assault is revealed. According to the committee, assault is essentially a category of acts that leaves empirically observable signs on the victim’s body: wounds, distensions, fractures, etc. Thus, the legal investigation and assessment of assault required a close reading and interpretation of these, to put it in Foucauldian terms, signs of truth.

In the process of defining the essential meaning of assault as a distinct and homogenous legal category, certain discursive overlaps and ambiguities had to be eliminated. According to the Criminal Justice Committee, it was essential to make a clear distinction between the category of assault and other crimes against the person, such as unlawful bodily restraints, insult, and molestation.

Bodily offences that not involve bodily injury, illness or pain, for example pushing someone into a trench or pouring a bucket of water over someone are as a rule not to be considered as assault. Instead, such acts may be punishable in accordance with 2 chapter, 7§ [in the committee’s proposal] on molestation. This applies also to mental effects caused by psychological offenses, for example certain forms of intimidation. Types of insult, such as spitting at another person, may be regarded as bodily offences. However, if the bodily offence is insignificant, the act should exclusively be assessed as molestation or insult.
However, there were some exceptions, the Criminal Justice Committee added. Acts that cause ‘incapacity or other similar condition[s]’ should be considered as assault. This meant, the Committee continued, that acts which caused ‘total or partial paralysis or bodily unconsciousness’, should be included in the legal category of assault. Furthermore, there could be reason to consider ‘poisoning and certain forms of negligence, for example total omission of giving children medical care, or intimidating acts that causes illness etc’, as assault.

As has been mentioned above, the victimized body as such was no longer considered strong enough empirical evidence to make a legal judgement. Based on a close examination of the signs on the victimized body in relation to all objective facts and circumstances, the degree of severity in each case should be assessed. The committee proposed a gradation of crimes of assault into three levels: minor acts, intermediate acts, and serious acts. In the proposal, a more in-depth analysis was especially devoted to the definition of the last degree. According to the committee, an act of assault should be assessed and classified as serious if ‘it proved to be particularly cunning or cruel’, if ‘the act was an obvious danger to life’, or if ‘the injury or illness caused was severe’. The use of lethal weapons, the Committee continued, should be regarded as an aggravating circumstance and thus a legal ground for classifying a case of assault as severe.

As a whole, the Criminal Justice Committee’s proposal was approved by the different external reviewers. However, some objections regarding specific formulations were submitted. For example, the National Board on Health and Welfare (NBHW) claimed that the Committee’s statement that acts which ‘only induced psychological suffering’ should not to be considered as crimes of assault was problematic. The NBHW argued that the new regulations should cover cases in which the person subjected to ‘psychological assault’ is in some way ‘dependent on the perpetrator’. An illustrative example, NBHW continued, would be the ‘mental terror directed by an alcoholic to a close relative’.

Basing the argument on what seems to be common knowledge about human psychology, NBHW stated that such acts ‘may cause the victim a suffering both deeper, persistent and serious, than physical abuse’. The NBHW did not elaborate on this issue any further. However, the critical intervention as such is interesting. It indicates that psychological effects of ‘mental terror’ were considered to be relevant to the construction of assault as legal category.

Also, the Swedish Board of Medicine (SBM) was critical to some formulations in the Committee’s proposal. Regarding the regulations around serious crimes of assault, SBM claimed that the Committee’s interpretation and use of the word ‘lethal’ was questionable. From a medical perspective, it was obvious that, ‘depending on various circumstances, one and the same injury could mean completely different risks’. SBM elaborates:

A person bleeding severely as a consequence of assault, may be quickly taken care of and receive a blood transfusion whereby the condition within one or a couple of hours hardly can be considered alarming. Nevertheless, the assessment must be that there had been an obvious danger to life. A blow to the head, resulting in a fracture of the skull base, inclusive of, for example, a bone fracture located at
the inner ear, must be assessed likewise, even though no alarming symptoms are observable.

The Committee’s use of the word ‘lethal’ in a definition of crimes of assault was rejected as unscientific and thus unreliable as an objective crime description. In this critique, an epistemological controversy between law and medicine appears. According to SMB, investigating and establishing the truths of the victimized body was the prerogative of modern medicine.

In the following section, the intention is to highlight and problematize the epistemological relationship between Swedish law grounded on legal realism and medicine a bit further, with particular focus on the medical production of knowledge and ‘truths’ around the victimized body, i.e. the power of forensic evidence.

Medical inscriptions of the victimized body: the power of forensic evidence
In the 19th century and the first half of the 20th century, the use of expert witnesses in legal practice became a recurrent issue in the internal juridical debates, as well as in wider political discourse. A law that specifically regulated the use of expert witnesses in legal practice was first enacted in 1935. In 1963, the general instruction for medical practitioners made it practically mandatory for all doctors employed by the state or the county to assist the courts of law in criminal cases that required specific medical knowledge on the human body.

For centuries, the epistemological foundation of medical discourse and ‘truth’-producing practices was the perception of the body as a semiotic system of signs which referred to an overarching divine and/or moral order. In around 1900, the epistemological backdrop had changed. Medicine had become a completely secular and empirical science, heavily resting on biological determinism. However, interpreting the (ab)normal signs on the human body was, still, in the post-war decades, fundamental to the medical examination and diagnosis of patients’ health, life, and death. But, as has been pointed out by historian of ideas Karin Johannisson, by the end of the Second World War, biological-deterministic notions of the human body had lost its power and former moral implications.

Previous research indicates that the first post-war decades seem to have marked an epistemological shift also in medical discourse and practice, i.e. a transition from a biologically deterministic worldview in which the bodily sign systems were scientifically and politically prescribed and morally evaluated in terms of ‘race’, ‘nationality’, ‘sexuality’, ‘gender’, etc. to a realistic worldview, scientifically more open to material changes and, consequently, to creating new ways of inscribing the ‘truths’ of the empirical world on the human body.

Based on two rather extensive and discursively representative case summaries on assault that were published in NJA in the post-war decades, the purpose of this last section is to provide an in-depth analysis of the production of forensic evidence. Focussing on two forms of truth-producing practices centred around the victimized body – the medical examination of the living body and the autopsy – I will highlight and problematize how the victim’s bodily injuries, health, and death were related to the
act of assault, i.e. how chains of causality could be construed and described by the medical expertise and how these forensic ‘facts’ could be evaluated and used by lawyers and jurists as evidence.

As an expert witness in the late 1940s, 1950s, and early 1960s, the doctor’s task was to conduct medical examinations and autopsies of victimized bodies in order to produce forensic evidence and then relate the medical facts to the abstract legal-moral articles on assault of the still-prevailing 1864 Penal Code. However, as has been illustrated by the analysis of the post-war legislative discussions, the relationship between the legal-moral representations of victimized bodies and those based on the ‘new’ empirical knowledge and truth-producing practices of medicine had become deeply problematic.

A brief examination of the case summaries regarding crimes of assault that were published in NJA between 1945 and 1965 shows that forensic evidence played a central role in cases that, from a strict legal point of view, were perceived as particularly complicated and ambiguous. An illustrative example can be drawn from an NJA case summary published in 1945. In September 1944, tenant A. E. H. was prosecuted for having attacked tenant J. S. L., and caused him two wounds in the forehead. A. E. H. admitted to the crime just partly, telling that he had thrown a stone at J. S. L., which had hit him in the forehead. However, he claimed, the act could not in any case be assigned to chapter 14, §12, i.e. ‘On minor deformations or bodily defects, or minor illness’. The prosecutor had a different opinion. Referring to the ‘two identical cuts’ on J. S. L.’s forehead, he argued that A. H. E. had evidently used ‘a kind of boxing glove made of iron and knives’, not a stone or his fist, as A. H. E. had stated in the preliminary interrogation. According to the case summary, the prosecutor’s argument was, to a great extent, based on two medical certificates, of which one was largely quoted. In the medical examination of J. S. L.’s body, the following ‘signs of violence’ were found:

On the forehead, a bit left to the centerline and close to the hairline, a peculiar looking wound is located. Three lines are radiating from the center of the wound; one is radiating upwards to the right; a second upwards to the left; and the third, obliquely downwards. The length of the lines are approximately 1.5 cm. At the center, as well as in those parts of the lines that are closest to the center, the skin is perforated down to the subcutaneous tissue, and the edges of the wound are rather sharp. In those parts of the lines, which are located farthest from the center, the dermis is not entirely perforated. Inside of the hairline, 6 cm upwards and left from the previous wound, another wound is located, identical to the first described, however not as deep, and with significantly shorter radiating lines. According to the statements given by J.S.L, both wounds were the effect of one single blow. Due to the wounds’ mutual location and appearance, their occurrence by a blow of a fist or by a stone is completely precluded. There are, however, much that speaks for the wounds’ occurrence by the use of some special form of weapon, for example a homemade boxing glove. Any risks of permanent injuries caused by the violence do not exist.

As a genre, medical examination protocols are, as a rule, extremely rich in detail. The protocol quoted above is no exception. Every bodily abnormality in the area of the ‘peculiar looking’ wound is described in great detail with respect to its location,
appearance, form, length, depth, etc. and interpreted as true signs of armed violence. In his position as an expert witness, the doctor was expected to evaluate the reliability of the statements given by J. S. L. and to provide the court with an authoritative long-term prognosis on what physical implications and risks the violent act would have on the affected person. To a great extent based on the medical protocol, the court decided to designate the act of assault to §12, not to §18. In this sense, the forensic evidence, produced and described in detail by an expert on the human body, had performative effects on the legal discussions.

In the post-war decades, several summaries in NJA dealt with the problem of uncertain deaths in connection with acts of violence. In such cases, autopsies of the dead body were of central importance to legal practice. A summary published 1959 in NJA might serve as an example. Bo N. was prosecuted for assault and suspected for having caused N. R. S.’s death. According to the preliminary investigation protocol and eyewitness accounts, Bo N. had found N. R. S. lying on the ground, heavily drunk. In order to wake him up, Bo H. had hit him on the chin and boxed him on the ear. To the interrogating officer, Bo H. admitted that he had hit N. R. S. in the face, who fell to the ground and then remained lying on his back. Later, the preliminary investigation states, N. R. S.’s dead body was found in a pit, some 10 meters away from to the suspected crime scene.

At the hearing in the Court of Appeal, Bo N. disputed the accuracy of his own accounts, claiming that he, at the time of the preliminary investigation, was feeling deeply depressed and that he, in order to be quickly released from custody, had left a false statement. Although several witness confirmed the suspicion that Bo N.’s violent actions had caused N. R. S.’s death, the court did not find these accounts sufficient. After considering the forensic evidence produced by expert witness S. O. Lidholm, assistant at the State Forensic Station in Stockholm, the court found it ‘precluded’ that N. R. S. had received the head injuries before Bo H. hit him.

Regarding the causality between the head injuries and the assault, Lidholm had stated ‘the injuries most likely were caused by a fall backwards against a hard ground […] or occurred from a blow with a blunt instrument against the head’. Actually, he added, ‘injuries like these could also be caused by a fall on a stone or on a sharp edge. But in that case, superficial crush injuries would have occurred’. Such injuries were, however, not found. ‘Without any form of push or blow’, the doctor elaborated, ‘the fall would not have caused such severe injuries like those on N.R.S’s head’. From a medical point of view’, he concluded, ‘the injuries are “most likely” caused by a blow of a fist’.

The autopsy confirmed this assumption, showing that ‘N. R. S.’s dead body displayed both swellings and facial tarnish, which indicated that he had been hit at least 3 times in the face’. ‘The punch’, Lidholm continued, ‘that hit him on the left side of the chin, suggested that it was a hard fist blow, which caused a haemorrhage moving deep into the bone’. On the question of how it was possible that N. R. S.’s dead body was found about 10 meters away from the suspected crime scene, the doctor gave the following explanation:

Even with such head injuries, N.R.S. would have been able to move, perhaps as far as hundred meters. On N.R.S’s dead body, the blood consistency between the cerebral membranes and under the soft cerebral membrane, including the fact that the blood
had not coagulated in, for instance the cardiac chambers, showed that the time of death occurred shortly after the trauma; a few hours at the most.\textsuperscript{84}

Successively, the doctor closes the gaps in the legal investigation by providing explanations on causes and effects based on the facts produced by autopsy. Thus, a coherent, scientifically informed narrative of what ‘really’ happened was created. Against this background, the Court of Appeal decided that the causality between N. R. S.’s death and the violent acts was ‘proven with reliability’. The Court of Appeal found that Bo H. was guilty of causing the death of N. R. S. and thus liable to chapter 14, article 5, subsection 2 in the Penal Code, and sentenced him to two years’ penal labour, minus the days spent in custody.\textsuperscript{85}

The Supreme Court, however, had a different opinion. Referring to a written statement by the Swedish Board of Medicine, in which the forensic evidence produced by Lidholm concerning the cause of death was found uncertain. It could ‘not be precluded’, the Board of Medicine had stated, that ‘the head injuries, which had caused N.R.S’s death, were inflicted on him otherwise than by assault’.\textsuperscript{86} Therefore, the Supreme Court declared, Bo H. could not be liable to the beforementioned article in the Penal Code. Consequently, Bo H.’s penalty was changed to three years imprisonment.\textsuperscript{87}

As illustrated above, the production of forensic evidence was of central importance to post-war legal practice, and, if the cases were summarized and published in NJA, to the legislative discussions. As an expert witness, the doctor was expected to move beyond the seemingly self-evident explanations, i.e. to interpreting the ambiguous signs on the victimized body in order to uncover the ‘real’ causalities and ‘truths’ in each case. In a sense, forensic evidence was performative. It could both create and undermine social realities. However, the power of forensic evidence was not, as the analysis of the latter case shows, absolute.

Conclusions

In Sweden, the health and lives of victims of violence became a central legal-political issue in the first post-war decades; a time period that coincided with the era of the Welfare State. The period also marked the last phase in a legislative process which resulted in the enactment of Brottsbalken and the ‘new’ legal definition of assault as a crime against health and life. A fundamentally important aspect of this historical-epistemological process was the emergence and formation of ‘new’ discourses revolving around the problem of the victimized body. Through these discourses, new ways of organizing knowledges and ‘truths’ obtained from the victimized body were prescribed. At the same time, old, putatively indisputable, and universal knowledges and ‘truths’ around violent crime and its effects became unstable, challenged, and marginalized.

In this article, I have discussed a few most important aspects of this discursive process, with special attention paid to the role played by Swedish law and medicine, including the relation between these fields of knowledge. Inspired by Michel Foucault’s theory of biopolitics and sociologist Michael Lemke’s outline to an analytics of biopolitics, I have particularly pointed to the discursive impact on the legal discussions on
assault of (1) the epistemological and ideological reorientation that characterized Swedish legal culture at large, and (2) the role of forensic medicine.

As has been illustrated on a more general level by scholars such as Kjell Å. Modéer and Johan Östling, the post-war decades marked the final phase in a historical transition from a predominant legal idealistic paradigm, imbued with both Christian ethics and the moral imperatives of late 18th and 19th centuries continental philosophy, towards an epistemology based on legal realism and positivism, which fitted neatly into the rational ideology of the Swedish Welfare State.

Unlike the political and juridical debates in several other countries in Western Europe, the Swedish legal discussions after the Second World War were not characterized by a ‘renaissance of natural law’ or a ‘rebirth of human rights’. To most Swedish lawyers and jurists, informed by the highly rationalistic ‘ideas of 1945’, legal idealistic theories, such as natural law and human rights, appeared as unworldly and anti-materialistic, and thus as the antithesis to the modern, post-war, Swedish law. Against this historical background, the article highlights and problematizes the impact of epistemological conflicts between legal idealism and legal realism on the legislative discussions around assault in the first post-war decades. In order to explore the complexity of this historical process, different text genres are used, representing three interrelated discursive levels. First, the laws from 1864 and 1965. Second, the 1953 Criminal Justice Committee’s proposal for a new penal code, including two preparatory investigations that were central to the work of the Committee, as well as the official remarks of that same proposal submitted by different law enforcement agencies and health authorities. Third, case summaries around assault published in Nytt Juridiskt Arkiv (NJA) from 1945 to 1965.

The comparative analysis of the penal articles of assault presented in the 1864 Penal Code and those of Brottsbalken from 1965 illustrates how the space of legal knowledge and ‘truths’ surrounding crimes of assault were fundamentally reorganized when Brottsbalken was enacted. During the time period from the mid-19th century to the mid-20th century, the older legal-moral category of assault, formed within a legal idealistic culture imbued by religious norms and moral values, collapsed into a legal system founded on a realistic epistemology in which assault was classified as a crime against health and life. In the law, pride of place was no longer given to the articles on religious crimes or crimes against the king or even the state, but to crimes against health and life. The pronounced interest in protecting/governing the health and life of the individual, expressed by Brottsbalken’s categorization of violent crimes, clearly illustrates that the victimized body had become an object of biopolitics.

Similar epistemological conflicts between legal idealism and legal realism are distinctly represented in the post-war legislative discussions that resulted in Brottsbalken’s articles on assault. In these discussions, the victimized body appears as a privileged site for the production of knowledge and discourse around assault. The analysis of the 1953 Criminal Committee’s proposal and the official remarks shows that explicit references to the 19th- and early 20th-century legal idealistic notion of assault as a crime against ‘bodily integrity’ was highly unusual. A cursory examination of the case summaries on assault that were published in NJA from 1945 to 1965 reveals the same discursive regularity. In post-war legislative discussions, idealistic thoughts on the human body as an inviolable moral space could no longer be
articulated and used as common ‘truths’. Consequently, the victimized body had been deprived of its former referentiality to a metaphysical, moral order and, instead, inscribed into the physical world of causes and effects through the scientific language of legal realism and, not least, medicine.

Within the legal realistic paradigm, which gained hegemonic status in the first post-war decades, the putatively objective facts of forensic medicine were central to legal discussions regarding crimes of assault. In order to highlight and problematize the role of medicine, an in-depth analysis of two case summaries that were published in NJA in 1945 and 1959, respectively, was conducted. The analysis shows that the ‘truth’-producing practices such as medical examinations and autopsies of victimized bodies, conducted by doctors, had strong performative effects on the legal discussions in the Court of Appeal and in the Supreme Court. It could both create and undermine social realities. The performative power of forensic evidence was closely linked to the doctor’s position as an expert witness, endowed with the special knowledge, experience, and skill to interpret and organize bodily signs of assault in the scientific language of medicine.

Finally, this article has illustrated that the creation of assault as a crime against health and life in the first post-war decades was not an effect of an idealistic turn within Swedish law and legal practice, i.e. a ‘renaissance of natural law’ or a ‘rebirth of human rights’, which was the case in several other European countries. It also was not a result of a pure compassion for the health and lives of crime victims. It was, rather, a manifestation of a new political rationality, epistemologically based on legal realism and medicine and ideologically infused by the ideals of the Welfare State. The victimized body had been deprived of any other meaning but ‘life’, and thus reformulated and established as a biopolitical space. In the same historical moment, it became an available object of life-governing interventions and regulatory practices.

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Notes

1. This has been illustrated by a vast number of political debates, scientific reports, humanitarian projects, etc. Recently the physical and psychological effects of different forms of violence are politically acknowledged to be a problem of global dimensions, cf. WHO, *World Report on Violence and Health*; WHO, *Global Status Report on Violence Prevention*.


22. Mazower, ‘*The Strange Triumpf of Human Rights*’, 386.


28. For an analysis of the critical attitudes towards legal idealism, natural law, and human rights in the first post-war years, see Östling, *Nazismens sensmoral*, 181–203; cf. Modéer, *Juristernas nära förflutna*, 305, 311–12. The philosophy of Axel Hägerström, inclusive of his views on value nihilism and legal realism, has been
discussed by several Swedish scholars. Cf. Nordin, Från Hägerström till Hedenius; Källström, Den gode nihilisten; Sigurdsson, Den lyckliga filosofin. For a discussion specifically on Hägerström’s critical views on human rights, cf. Sigurdsson, Den lyckliga filosofin, 60–1, 64.


30. Östling, Nazismens sensmoral, 203.


32. SFS, No. 11, 1864, ch. 7–14.

33. SFS, No. 11, 1864. §10.


35. Thyrén, Principerna för en strafflagreform, 3.

36. Miller, The Limits of Bodily Integrity, 84.

37. Thyrén, Förberedande utkast till strafflag, 8.


43. NJA 1962:98.

44. SOU 1953:14, Förslag till Brottsbalk, 104.

45. SOU 1953:14, Förslag till Brottsbalk, 104.

46. SOU 1953:14, Förslag till Brottsbalk, 104.

47. SOU 1953:14, Förslag till Brottsbalk, 134.

48. SOU 1953:14, Förslag till Brottsbalk, 104.

49. SOU 1953:14, Förslag till Brottsbalk, 105.

50. SOU 1953:14, Förslag till Brottsbalk, 105.

51. SOU 1953:14, Förslag till Brottsbalk, 105.


55. SOU 1953:14, Förslag till Brottsbalk, 135.

56. SOU 1953:14, Förslag till Brottsbalk, 135.

57. SOU 1953:14, Förslag till Brottsbalk, 135.


65. Edelstam, Sakkunnigbeviset, 47–72.


71. NJA 1945:126.

72. NJA 1945:126.

73. NJA 1945:126.

74. NJA 1945:126.

75. NJA 1945:126.


78. NJA 1959 B 22.

79. NJA 1959 B 22.

80. NJA 1959 B 22.

81. NJA 1959 B 22.

82. NJA 1959 B 22.

83. NJA 1959 B 22.

84. NJA 1959 B 22.

85. NJA 1959 B 22.

86. NJA 1959 B 22.


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