

# Default and Imprisonment for Debt in Sweden: From the Lost Chances of a Ruined Life to the Lost Capital of a Bankrupt Company\*

*Karl Gratzner*

Although borrowing and lending have been important themes in Swedish economic history research, the special subject of the insolvent debtor has received no systematic attention. The history of credit is as long as human history and predates the use of money. It has been argued that money was introduced because of the need to measure and pay debts (Kilpi 1998). The word credit itself is derived from the Latin word *credere*, to believe, to put confidence in someone, to trust someone. Credit stands for a person's ability (the trust one person possesses) to sell a promise to repay in the future so that he or she can make purchases in the present. To give credit means to transfer the property rights to a given object (e.g., an amount of money) in exchange for a claim on specified objects (e.g., certain sums of money) at specified points in time in the future. To take credit, to become a debtor, is the other side of the coin (Conant 1899, Baltensperger 1987).

When a person applies for credit, lends money, etc., he or she enters into some form of contractual arrangement.<sup>1</sup> These contracts can be verbal or written. All credit transactions involve the risk that the debtor may fail to honor his or her financial obligation. If the repayment is not made, the debtor is declared to be in default. By not delivering those property rights as promised, the debtor violates one of the most fundamental contracts of the economy (Stiefel 2005).

It should be observed that there is a difference between default and the more modern terms *insolvency* and *bankruptcy*. Default essentially means that a debtor has not paid his debt. Default may occur if the debtor is either unwilling or unable to pay a debt. Insolvency is (today) a legal term meaning that a debtor is unable to pay his debts. The debtor is in financial difficulties when his or her total assets are less than his or her total liabilities, or when

---

\* The author wishes to express his gratitude to the Bank of Sweden Tercentenary Foundation for financial support and to Rolf Adamson, Rolf G.H. Henriksson, Matias Appelberg and Eva Eriksson for valuable comments on the manuscript.

<sup>1</sup> Loan contracts are agreements that are voluntarily established between lenders and borrowers. One party (person) promises or agrees to perform certain acts while the other party (person) agrees to pay in return for the performance of the contract.

he or she is unable to pay debts for other reasons as they become due<sup>2</sup>. Bankruptcy is a legal finding that imposes court supervision over the financial affairs of those who are insolvent or in default. In modern legislation, insolvency is often a necessary but not sufficient condition for bankruptcy. For the latter to exist, one needs a bankruptcy law. Insolvency and bankruptcy laws can be seen as part of an authority's determination to protect property rights. A basic problem to be solved is "how shall the losses be distributed?"

The development of the legislation can be described using at least two perspectives as the starting point: one targeting creditors and one targeting debtors. The perspective targeting creditors means that the focus is on the constitutional procedure and that creditors are to be paid on as equal terms as possible. The perspective targeting debtors aims at making it easier for the debtor to carry on his business with the creditor's confidence and be able to come back after insolvency. Legislation dealing with debtors who could not or would not meet their obligations dates back to ancient times (Mathews 1994). During long periods in history, there was no working bankruptcy system. Such a system does not emerge until trade and credit are developed. Debtors who had neglected their payments were dealt with by common law or by such legislation as medieval constitutional law, executive regulations and enforcement orders, i.e. regulations that were outside the bankruptcy legislation. The bankruptcy system developed relatively late and in a rather tentative way. Its main aim was to achieve equality among creditors, i.e. equality as concerns loss when the debtor became insolvent. This can only happen through general agreement. If there were no bankruptcy system but only regulations on distraint, every possibility of obtaining payment upon debtor's insolvency would be entirely dependent on who first required the distraint. Upon a threat of insolvency, there would be a race between creditors about the debtor's assets.

Thus, one distinguishes between two kinds of execution claims: *body execution* and *general execution*. Body execution takes place through distraint, imports and sequestration. General execution takes place through bankruptcy. In principle, body execution only takes place if it is in the interest of the person requiring the execution. Upon bankruptcy, however, all creditors can register and are paid a share to the extent that this is possible. Bankruptcy covers all assets of the debtor, whereas body execution only covers single, special objects (Olivecrona 1964). The general use of the bankruptcy system is when there are several creditors and the debtor is insolvent. The bankruptcy system played a considerable role for the trading cities in Europe. Debtors who lacked sufficient property to secure their debt could be killed, tortured, sold as slaves or imprisoned. An imprisoned debtor's hope of release lay in meeting the creditors' demand. The debt collecting system

---

<sup>2</sup> For reasons of readability I will from now on use the term "he" as a synonym for the "he or she"-form, "his or hers"-form etc.

of imprisonment in Sweden can be traced back to the thirteenth century. It continued alongside a developing bankruptcy system up to 1879. A bankruptcy system first tentatively emerges in Sweden during the era of mercantilism when trade and credit are developed in the seventeenth and eighteenth centuries and a more modern bankruptcy legislation was implemented after the breakthrough of liberalism in the nineteenth century (Brommé 1888, Inger 1977, Thuula 2001).

Any credit transaction is characterized as an insecure situation, i.e. of high uncertainty under imperfect information. One main problem in the estimation of credit risks is information. The borrower has better information about his economic circumstances than the lender. Therefore, there have always been many opportunities for fraud, deceit and misjudgment (Berghoff 2005). This might be an explanation for why many cultures already at an early stage introduced drastic measures with the aim of protecting credit and private property. This appears from regulations for dealing with insolvency and bankruptcy as well as with fraud connected with these situations (e.g., Hunter 2000). For long periods, debtors unable to pay their debts were subjected to severe treatment. Default, insolvency and bankruptcy were often equaled to theft or robbery from the creditors, who usually had the right to the debtor's property and body. The death penalty, servitude, stigmatizing penalties involving shame and debtors' prison were still in existence well after the Middle Ages.

A question in this study is: How do institutions such as the bankruptcy system and debtors' prison emerge and why do they change? Debtors' prison can be traced back to Roman law. Individuals who had run into debt and who could not or did not want to repay loans were placed in custody and the creditor paid a minor sum for their subsistence. The period in prison was not limited in time and went on either until the debt had been paid or as long as the creditor was prepared to pay subsistence money for his prisoner. In Sweden, the system of debtors' prison is mentioned as early as in the thirteenth century. The system of debtors' prison was not limited to Sweden but was widespread (Harold 1983).<sup>3</sup> In 1834, a British parliamentary commission reported that imprisonment for debt existed in every country in Europe, except Portugal (Ford 1926). There are several important foreign studies on debtors' prison (Lester 1995, Bressler 2004, Feer 1961, Brown 1996, Randall 1952, Ford 1926).

In Sweden, the medieval system of debtors' prison coexisted with a slowly emerging bankruptcy system for a long time up until 1879. The question of how institutional change took place could be illustrated by surveying the views of the legislator of a debtor who had not paid his debt and what

---

<sup>3</sup> The English practice of imprisonment for debt, which started during the time of Henry III, was used by barons as a threat to encourage their debtors to repay debts, so that the barons could themselves honor their obligations to the crown. Williams.

penalty measures were proposed at different points in time. The period of investigation covers many centuries. Looking over a long period is an effective way to see variations in what we today take for granted. It is also a way of seeing processes when the discursive frames are produced, such as when a stigma for debt begins, is added or disappears. Unfortunately, there is insufficient information for creating a complete and satisfactory picture. Besides certain methodological difficulties in following a bankruptcy system over many centuries and several different legal cultures, there is no sufficiently stable basis of sources on which such a project could build (Friedman 1969).<sup>4</sup> During long periods, the basis of the study is limited to dips into legal texts and decrees that have been preserved. Laws can be considered as an agreement between different parties or as a way of institutionalizing the division of power. Laws and decrees constitute normative source material that can provide us with interpretations of what was considered right and wrong in a society. They can be interpreted as relics from a bygone time (Sjöholm 1988, Larsen 1994, Hedenborg 1997). Credit grantors are protected by the legal system in different ways and by studying both legislation and practice, we can get an insight into the relations between different groups of people. As mentioned above, for a long time in history default was punished as being equal to theft. But the meting out of punishment as it is expressed in legal practice can often be something different than what is stated in the legal texts. In certain areas in which the legislation is incomplete, practice might be the major legal source (Söderberg 2000). There is only scarce information in Swedish archives about the legal practice that was used when punishing an insolvent debtor and about the principles and solutions that were stated in the decisions of courts and other authorities. In the following, a few examples of this development will be described. I will also try to make the presentation more colorful by using quotes and descriptions of particular cases in order to create a sense of being close to history. Previously, Swedish historians and economic historians have made no such research on this issue. They have often used these sources for economic judgements and not for examining the juridical system as such. German and Swedish legal historians have studied insolvency legislation, but usually without any contact with other subjects. Unfortunately, there is no theory (a merger of legal science and economic historical anthropology), which is the reason why the presentation is relatively narrative and sometimes divided. The problem of how to deal with those who have failed in their promises has been solved in different ways at different points in time and in individual areas. The Roman center transferred its solutions to the periphery where they were locally adapted.

---

<sup>4</sup> The concept of legal culture has been defined by Lawrence M. Friedman as the values and attitudes of people in relation to legislation and the legal system. What do people think about the legislation? How prone are different parts of the population to obtain their rights through the legal system? Whether the legislation and the authorities are respected are some of the questions on which there is a focus in this theoretical perspective.

Christianity and trade constituted a channel for transmissions towards the north.

After this introduction, I will provide a survey of the early Swedish regulations on default, insolvency and bankruptcy.<sup>5</sup> That section describes the Swedish development from the time of the law-rolls of the Swedish provinces until the introduction of a modern bankruptcy law during the second half of the nineteenth century. The presentation focuses on how an insolvent debtor should be treated according to these regulations and it is mainly based on information from the Royal Statutes, Ordinances, Bills and Decrees, all of which can be found in the Royal Library in Stockholm (Uncatalogued Printed Material Section).

Using various sources, ranging from published statistics and political pamphlets to prison records from Stockholm and Gothenburg and from court depositions to parliamentary diaries, I will try to give a quantitative picture of the use of debtors' prison. Next, there is a section dealing with how, when and why the institution of debtors' prison disappeared in Sweden and what happened after that. The reason for the emphasis on this aspect appears to be the fact that this was the last formal institution in Sweden to stigmatize the debtor. The study then concludes with a summary.

The present Swedish legislation on insolvency and bankruptcy has its roots in Roman, German and Italian law (Olivecrona 1862, Tuula 2001).<sup>6</sup> Thus, a retrospect of history might be appropriate here.

## Default debtor in Roman law

The term Roman law today often refers to more than the laws of Roman society. The legal institutions developed by the Romans influenced the laws of other people long after the disappearance of the Roman Empire and in countries that were never subject to Roman rule.<sup>7</sup>

---

<sup>5</sup> This part of the study is partly based on earlier studies in legal history. Studies on how Roman and Medieval European law regulated the treatment of the insolvent debtor have been carried out by, among others, Beyer (1850), Löning (1876), von Hoiningen (1878) and Kaser (1955). The history of Swedish insolvency laws has been written by Bergström (1771), Olivecrona (1862), Lantmanson (1866), Broomé (1888), Agge (1934), Olivecrona (1964) and Tuula (2001). Studies of how the laws on criminal offences against bankruptcies developed have been carried out by Rydin (1888), Neumeyer (1891), Bergendahl (1933) and Löfmarck (1982, 1991).

<sup>6</sup> In Sweden, the legislation on insolvency was not collected in one single law. The regulations about how an insolvent debtor was to be dealt with were mainly to be found in old national and general urban law codes, commercial codes, enforcement codes and the bankruptcy law.

<sup>7</sup> To take the most striking example, in a large part of Germany Roman law was in force as "subsidiary law" until the adoption of a common code for the whole empire in 1900, i.e. it was applied unless superseded by contradictory local provisions. However, this law, which was in force in parts of Europe long after the fall of the Roman Empire, was not Roman law in its original form.

Long before the time of the Roman emperors, a legal procedure emerged regulating the relationship between creditors and insolvent debtors. A basic feature of this regulatory system was that the life and property of an insolvent debtor accrued to his creditors. The debtor as a person was the main target of the distraint. This execution of the person necessarily came to develop so that the debtor's property (the execution of the tangible assets) became the main objective of the distraint. This shift in the emphasis from an execution of the person to an execution of the tangible assets went on for several hundred years and at least two phases can be distinguished: (1) the proceedings in the older Roman law according to the Twelve Tables and (2) a weakening of the creditors' power through *lex Poetelia* and *lex Julia*.

In the early legislative period (the Twelve Tables 451 B.C.), it was customary for a person wanting to get credit to commit himself, his family and his property to the creditor as a pledge. If the debtor could not fulfill his payment obligations, he became the creditor's slave and the latter even had the right to kill him. If there were several creditors, the Twelve Tables gave them the right to dismember the debtor's body (Alexander 1892, Lantman-son 1866, Erler, 1978). It is unclear to what extent this law was exercised, but an insolvent debtor always ended up in servitude; he and his family could be sold as slaves.

The next step in the development towards a bankruptcy system was taken when creditors were given instant access to the debtor's property. Through *lex Poetelia* (326 B.C.), omitting to fulfill a debtor's contract became a criminal offence. At the same time, the creditor's unlimited rights to the life, property and family of the debtor were restricted. Among other things, this law abolished the right to ill-treat, kill or sell the debtor and his family as slaves. The debtor was still forced to stay in the creditor's private prison in a kind of debtor's servitude, but he regained his freedom if the debt was settled. Only if the debtor was suspected of trying to escape, was the creditor allowed to put him in chains. A debtor who kept in hiding could be subjected to a kind of bankruptcy process (*missio in bona*). This meant that the creditor received a letter of attorney (*missio*) from the receiver (*praetor*) to dispose of the debtor's property (*bona*). An insolvent debtor still also lost his civil rights (*infamia*). No consideration was taken of whether he had become insolvent by accident or whether he was responsible for the situation himself. A temporary inability to pay a due debt thus led to the destruction of the debtor's entire existence.

A *lex Julia*, attributed to Caesar by some and to Augustus by others, removed the creditor's power one step further from the debtor as an individual and towards his property. This innovation in the legal system was called *cessio bonorum*. The debtor now had the possibility of avoiding the disgraceful consequences of *missio in bona* because he was given the chance of declaring his insolvency and voluntarily surrendering (*cedere*) his property (*bona*) to his creditors. Roman law had now separated the debtor as a person from

his property and had introduced the principle of equality between creditors in losses that were due to the debtor being insolvent. The main objective of the execution, i.e. distraint, was no longer the debtor as a person and his body, but his property. This must be considered as a very important innovation.

In principle, all insolvent debtors could ask to be allowed to voluntarily surrender their property (*cessio bonorum*), which exempted them from disgrace. Thus, the door was now open to abusing the new system. When a careless debtor no longer had any assets, he could declare to his creditors that he had become insolvent and wished to surrender his property without losing his citizen's rights. To prevent further abuse, this exemption was restricted to those cases in which the debtor was found not to have caused his insolvency himself. Only those who could show that they had become bankrupt because of external circumstances (such as fire, shipwreck and attacks from robbers) were exempt from disgraceful treatment. In those cases in which the debtor himself was considered to have caused his insolvency, *cessio bonorum* still meant infamy and severe treatment. At the same time, the punitive measures against a debtor who had been careless or fraudulent towards his creditors by withholding assets before or after the default became more severe. He was sentenced to prison (*carcer*) and debtor's servitude (Beyer 1850, Hoiningen 1878, Kaser 1955, Olivecrona 1964, Löfmark 1986, Neumeyer 1891). By this legal usage, Roman law had introduced the important difference between *honest* and *dishonest* debtors.

## Default debtor in Germanic legislation

The Roman Empire collapsed during the flood of the Great Migration and many of the systems developed by the Empire eroded or disappeared. This was a degenerative process for legislation. The migrating Germanic peoples brought their own legislation into the previously Roman areas in Gaul, Italy and Spain where they lived according to their own laws along with the Romanized population and its laws. Germanic law characterized European society in the Middle Ages and together with Roman law, it still constitutes one of the bases for European legal culture.

Germanic law is originally a common law, i.e. a product of people's customs, which, for a long time, were only retained in the oral tradition in the minds of those learned in the law (cf jurisdictional district). Not until the late Middle Ages was a consciously innovative legislation introduced, often produced by the emerging royal power and the church (Amira 1913).

According to old Germanic law, an insolvent debtor was subjected to just as severe a treatment as in old Rome. Default was in itself seen as a crime. A freeman could be exiled or sentenced to become a slave for debt not properly paid. Slavery for debt seems to have been the more common of the two. Slavery began when the creditor could not satisfy his claim in the debtor's

property and no third person came to the debtor's rescue. The German view that the inability to pay a debt equaled theft from the creditor thus played an important role. If the debtor had no assets, he would be sentenced to become the creditor's bondsman (Wergeland 1902). Prison and even torture were used as means of extracting property. Surrendering one's property was often followed by degrading ceremonies, where the debtor wore a special gown, was forced to walk barefoot, and so on (Amira 1913).<sup>8</sup>

In contrast to Roman law, older Germanic law did not distinguish between *honest* and *dishonest* debtors. The distraint was first aimed at the debtor's fortune, but if this was not sufficient, he was handed over to the creditor as a bondsman and could be sold or killed. In Norwegian legislation (leyfingsbalken kap. 15), it is stated that a creditor can bring a debtor to court. If no one ransoms him, the creditor can cut off upper and lower parts of the debtor (Grimm 1881).

Besides debtor's servitude, the debtor could also be subject to a feud or become an outlaw. Debtor's servitude was not limited in time or defined as to its contents. The debtor's responsibility could also be regulated in a contract of responsibility. Pledges and hostages also appear in these contracts. If a hostage was held as a pledge, the personal responsibility for the debt was taken over by a third party. Like other material pledges, hostages were handed over to the creditor who was to keep the hostages in custody. If the debtor did not satisfy the creditor in time, the hostage became the creditor's property. The hostage then lost his freedom. The collective responsibility of the family required its members to become hostages for the sake of a family member in need. Debtors could put up even wives and children as hostages.

Not until the era of the Franks (Prinz 1985) were creditors' initiatives superseded by the state.<sup>9</sup> Judges would hand over an insolvent debtor to his creditor, who could then freely dispose of him. If the creditor's claims were satisfied, he was to give the debtor his freedom back. The debtor was considered as a compensation or substitute for a pledge.

During the period of the Franks, a debtor could voluntarily enter into servitude, a proceeding reminding us of Roman law. The ongoing development is parallel to the direction earlier taken by Roman law. An insolvent debtor is no longer killed or sold but is put to hard labor for the creditor. At the same time, the servitude was allayed because the debtor was given the right to

---

<sup>8</sup> A visible sign of slavery was shaved hair and in certain parts of medieval Europe easily identifiable clothes.

<sup>9</sup> The realm of the Franks (Regnum Francorum, ca 600 - 900) is by many people considered the starting point of the institutions and cultures of the medieval European forms of government (in particular, for France and Germany). Remnants of the antique culture were retained and changed, which constituted a first stabilizing factor during the confusion of the Great Migration. This stabilization was achieved by creating a closer relation between Roman and German people. The center for political processes was moved from the Mediterranean towards the northwest of Europe.

work off his debt. Sources from the Carolingian monarchy (approx. 800 – 1000) confirm the beginning of a transition from life-long to limited servitude (Erlar 1978a). In German cities, creditors could still take debtors into custody without the intervention of a court and at their own initiative. Outlawry developed into a procedure for arresting escaped debtors. This procedure of taking people into custody was also used for insolvent debtors at a later stage. It was first used in cities against foreigners who were reluctant to pay (*Schuldturm*).

A developed bankruptcy system did not exist in German law before the mid-sixteenth century. The main principle of German law was the creditor's focus on the debtor as a person. This might be one of the reasons why the severity against the debtor was maintained for such a long time. A default debtor should, after the application from a creditor, "according to old customs", first be clapped in irons and after 3 days be transferred to a debtors' prison where he was to be kept until he had paid his due (Oetker 1847).

Some time between the end of the fifteenth and the beginning of the sixteenth century, the Roman system *cessio bonorum* was incorporated into German law in a reform of criminal law (Conrad 1966).<sup>10</sup> The possibility to surrender one's property voluntarily was immediately seized by debtors to avoid debtors' prison. At the same time, the door became wide open to fraudulent proceedings towards creditors. Debtors lacking the funds to satisfy their creditors or who did not wish to do so could, however, escape from the severe consequences of insolvency by surrendering their assets. This led to an abuse that made legislators return to a more severe treatment of irre-

---

<sup>10</sup> The reform of medieval bankruptcy legislation started in Germany with the Lindau parliament 1496/97. The reason for this was complaints from the general public that had been submitted to a higher court. They were accused of having judged and executed a large number of innocent people. The following parliament at Freiburg 1497/98 thus decided to implement a general reform on law in the country. In 1500, the parliament at Augsburg decreed that such a reform was to be implemented. The reform proposal was implemented in 1532 after many revisions. More than 30 years passed before the new legislation had been adopted under the name of *Constitutio Criminalis Carolina*. In the new legislation, domestic German ideas were adapted and connected to foreign ideas, often borrowed from Italian criminal doctrine. Carolina constituted a turning point in the development of German criminal law. It interconnected the German legal views with the ideas on Italian criminal law without unilaterally copying the original. Carolina replaced the traditional, general descriptions of a crime with a clearly defined deed. The law now distinguishes between deliberately committed crimes and crimes that have been committed under emotional stress. The murderer and the killer are now punished differently. The intention of the legislator was that the perpetrator can only be punished if guilt can be proved, which was an important innovation. The new law also considers the perpetrator's responsibility for his actions (e.g., young people and those who are mentally deranged). The Carolinian penal system still shows the harshness of medieval law with many corporal and maiming punishments.

sponsible or dishonest debtors. The extensive "Reichs-Polizei-Ordnung" from 1548 is the first law to regulate penalties for dishonest debtors in Germany and the final traces of debtor's servitude did not disappear until the eighteenth century in that country. The procedure with a voluntary surrender of property and the ensuing abuse of the new system that leads to the creation of special laws against dishonest creditors is similar to Roman law (Conrad 1966). The first relatively complete bankruptcy procedure is to be found around 1610 according to Oetker (1847:14)<sup>11</sup>.

## Default debtor in Italian legislation

A legal system that included bankruptcy proceedings emerged in the Italian city-states from the twelfth century and onwards, but it only applied to merchants.<sup>12</sup> Debtors were subjected to very severe treatment, including a very strange and humiliating ceremony, even for honest debtors. Torture was permitted in order to extract hidden assets (Uhlenbruck 1977). The following statement by Baldus, a Roman learned in law, could be copied as a suitable motto for the older Italian bankruptcy law: *fallitus, ergo fraudator* (insolvent, thus a swindler). It is unclear to what extent there was empirical support for these severe judgments but obviously fraud (*fraus*) was suspected in each case of insolvency and thus an additional statement was made: *falliti sunt infames* (insolvency means disgrace). The thirteenth century was an intense century for legislation in an international perspective. In that century, Roman law had a strong influence all over Europe (Inger 1980). The treatment of people in debtor's servitude was naturally influenced by these views. Only a debtor who could prove that he had become insolvent by accident could escape prison. The penalty for fraudulent debtors varied among cities and the circumstances of the crime. Withholding property and escape could incur a penalty ranging from the loss of rights to death. In many cities, a voluntary surrender of property (*cessio bonorum*) was completely excluded (Rydin 1888). The administration of justice was still focusing on the consequences of criminal law and public moral stigmatization. A developed bankruptcy system was a prerequisite for the economic boom in the north of Italy in the later Middle Ages. For members of merchant networks at that point in time, bankruptcy of an individual member constituted a disadvantage for everyone. Thus, public stigmatization by pillorying a person is as important as the distribution of the debtor's assets among the creditors. Because international trade was spreading, the basic characteristics of the Italian bankruptcy system also became a successful export good (Gessmer 1978). The

---

<sup>11</sup> Württembergisches Landrecht from 1610.

<sup>12</sup> Important bankruptcy statutes were created in Venice (years 1244, 1395 and 1415), Milan (year 1341), Florence (1415); see Alexander (1892).

view that behind each debtor there was a swindler who should be severely dealt with was spread to, above all, France, Spain, England and Germany by Italian merchants (Hunt & Murray 2000).<sup>13</sup>

## Default debtor in Swedish legislation

Not until the year 1000 can we talk about a joint Swedish kingdom. The structure of this kingdom was fairly loose, however. This agrarian society did have a common king, but it was still dominated by families that had constituted the basis of society for a long time.

Within the Swedish kingdom, the different provinces constituted independent units in many different senses. The larger ones had their own laws called law-rolls of the Swedish provinces. Knowledge of the law was inherited among district judges through oral tradition. As the laws developed, it became increasingly difficult for each citizen to know all their details. Probably under the influence of church law, one law-roll of the Swedish provinces after another started to be put into writing from the thirteenth century and onwards. Ever since the beginning of the fourteenth century, the old legal differences between the Swedish provinces began to disappear quickly. The provinces that had already previously been unified into a political entity also started to merge as concerns legal aspects. In the mid-fourteenth century, several royal regulations were issued<sup>14</sup>, which can be seen as premonitions of or even preparatory work for a uniform national law code. This national legislation came to apply for a long time in the Swedish countryside (Abrahamsson 1726)<sup>15</sup>. As in other Germanic countries in the Middle Ages, the Swedish national legislation had a general urban law code that only applied to cities. The emergence of the general urban law codes was due to the special economic requirements of cities and their independent administration of justice. The oldest remaining general urban law code in Sweden is Bjärköarätten. The name Bjärköarätten comes from the Icelandic word Bjaerk or Bjark (Bjarkeyaretter), which means trade and that was a general

---

<sup>13</sup> A law that was introduced in 1321 in Barcelona can be mentioned as an example of this. This law prescribed that private bankers who had gone bankrupt would be imprisoned for a year on water and bread until they had paid all their debts. If they did not succeed, the consequences were drastic. An example of this legal practice might be the fate of the banker Francesco Castello. He was beheaded in a public place outside his bank in 1360.

<sup>14</sup> King Magnus Eriksson was to implement this innovative project around 1350. A common law for the entire kingdom was drawn up in the form of Magnus Eriksson's national law code and Magnus Eriksson's general urban law codes.

<sup>15</sup> See Schlyter *Sveriges gamla lagar "Sveriges rikjes landslag"*, published by S. Abrahamsson 1726.

name for general urban law codes.<sup>16</sup> In the Middle Ages, these laws regulated life in society in the Nordic countries and at trading places.<sup>17</sup> Just like the national law code, the general urban code remained valid until it was replaced by the Statute Book of Sweden from 1734.

## From debtor's servitude to debtors' prison

At the time of the law-rolls of the Swedish provinces, the barter economy was the predominant system and the credit system was poorly developed in the countryside. According to most of the law-rolls of the Swedish provinces, a debtor might be taken into servitude if a procedure of distraint (*maet*) was without result. Both *maet* and debtor's servitude were decreed in the case when a creditor required payment. These laws contained no bankruptcy procedure for living debtors (Lantmanson 1866, Löfmark 1987, Tuula 2001). In the twelfth century, Swedish law began to use imprisonment as a means of coercing borrowers into paying their debts. In the law-rolls of the Swedish provinces, the right to revenge had not yet been abolished but was subjected to certain limits. The oldest court procedure depended on the injured party finding out who was the criminal. Then, he would take him to court or to the judge where he would complete his claim. Instead of public custody, private housing was used for a long period. The oldest Swedish laws do mention "fängsel" (fettors) and their use but not "fängelse" (prison).<sup>18</sup> The medieval view of punishment as a kind of redress for the injured party is, according to Munktell (1943), based on primitive feelings of revenge. As an example, the execution of corporal punishment was originally entrusted to the prosecutor and, at times, he had the right to choose whether he wanted a death penalty to be enforced or whether he would accept a fine from the criminal.

Prison was still compulsory for all debtors and various kinds of disgraceful punishments were added to the punishment of being deprived of one's freedom (Schulte 1861). The debtor was reduced to the state of a slave: his hair

---

<sup>16</sup> There has also been an attempt at deriving the origins of the word from the word *birk* 'secluded area', 'trading place', and from the name *Biærkø*, referring to Björkö in lake Mälaren, where the city of Birka was located.

<sup>17</sup> The Norwegian *bjærkøarätterna* from the twelfth and thirteenth centuries are considered the oldest ones; they were intended for the cities of Nidaros and Bergen. A Swedish *bjærkøarätt* remains, which is dated no earlier than 1345. It has been used in Lödöse in the province of Västergötland but was probably originally intended for Stockholm. Besides this copy, only a few fragments remain from no earlier than the mid fourteenth century. *Bjærkøarätten* was published in writing by J. Hadorph 1687, C.J. Schlyter 1844 and Å. Holmbäck and E. Wessén 1946.

<sup>18</sup> In Östgöta lagen (The Östgöta law), to legally take someone into custody was stated to mean to fetter or shackle the feet and tie the arms of the criminal, lock him into a house and guard the house (Thaet aer lagha haefte fjaetra ok aerma binda ok hus ivir hanum lykkja ok ivir husi varp halda.).

was cut and a strap or collar was passed around his neck. The debtor was also stigmatized by having to walk at the very end at weddings or in funeral processions or by having to sit with the women in church. Debtors' children who were born after a bankruptcy were not allowed to wear jewelry, a rapier or a dagger (Conrad 1966). Debtors' prison is mentioned as early as in the oldest general Swedish urban law code, the Bjärköarätten:

A man now arrives in the city who is involved in debt, notwithstanding if he is indebted to a man in the city or to someone else; the bailiff, the district court judge or two men of the city or the swains of the bailiff and the city are informed. The man or his property shall be taken into custody and he pays the debt he acknowledges. If he does not have enough money, he sets a bail to the person who requires the payment of the debt that satisfies the latter. If he wishes to deny the debt, [he does so] with the oath of three men, if it amounts to less than six marks [if it amounts to six marks] or more, he defends himself with six men. Now he leaves custody and does not pay his way; then he pays a fine of three marks and the debt, notwithstanding if he is a courtier, priest, farm-bailiff or a peasant. A peasant can be taken to debtors' prison and his property be seized but not his wife. If a widow with property in the city arrives and is in debt, she can be put in debtors' prison according to the laws of the city.<sup>19</sup>

As appears from the quote, the creditor could, with the aid of the bailiff, have the debtor put in debtors' prison. The debtor could deny the debt with the aid of three or six sworn witnesses. We can also see that in Bjärköarätten the debtor's property and person can be sequestered. He himself is deprived of his freedom due to his debt. In both cases, the Swedish verb "bysätta" is used. This double meaning of "bysätta" continued to exist in legal language for a long time.<sup>20</sup> The Swedish town Visby was a flourishing commercial Nordic center with relations with countries and cities where Roman law was known or applied. Visby Stadslag (the general urban law code of Visby), which was written in the fifteenth century, contained regulations for taking debtors into custody instead of making them subject to debtor's servitude. In the law code of Visby (II: 30), the term "*besetten*" was used in the sense of sequestering goods because of debt.

The transit from debtor's servitude at the creditor's to custody in the city jail started in the twelfth century in England and Germany, but did not become more common practice in small cities until the 16th century (Löning 1876, Erler 1978a, Bressler 2004). The transition from servitude to debtors' prison would start by the creditor applying to the magistrate for disposing a room in one of the city buildings for keeping a debtor in custody. Gradually, this service came to be considered as a matter of course by the public. Cus-

---

<sup>19</sup> Chapter 40 from the translation into modern Swedish by Holmbäck and Wessén (1946).

<sup>20</sup> In the law of 1734, the Enforcement Code chapter 8 is "About distraint and debtors' prison". The former means that a debtor's property is secured so that it can be used to pay the debt; the latter means that he is deprived of his freedom because of his debt.

tody for debt became a substitute for serfdom for debt (Hoiningen 1878, Bressler 2004).<sup>21</sup>

## An emerging bankruptcy system

Traces of a bankruptcy procedure are probably first found in *Upplandslagen* (a law-roll from a Swedish province from the end of the thirteenth century), and only in those cases where the debtor had passed away.<sup>22</sup> An adequate pledge was required from living debtors and the rest of the claim was extracted by enforced work or by exercising pressure through debtors' prison. A somewhat more elaborate view on bankruptcy can be found in the general urban law codes. In the cities where credits were of importance for the growing business life, the circumstances were somewhat different. An example of such a tentative development of a bankruptcy system in Sweden can be seen in Visby stadslag from the end of the fifteenth century.<sup>23</sup> Visby stadslag was the first in Sweden to consider a kind of bankruptcy proceeding for living people.<sup>24</sup> Furthermore, there were regulations stating that debtors having escaped with property face a lifetime sentence. Visby stadslag does not make any explicit statement about the possibility of surrendering one's property as a key to freedom for an insolvent debtor voluntarily surrendering his assets. But there are signs of a familiarity with the doctrine of Roman law of a *beneficium cessionis bonorum*. It was considered that a debtor could, in some cases, free himself from his obligations by surrendering his fortune (Olivecrona 1866).

Regulations on the voluntary surrender of assets (*cessio bonorum*) existed as early as in Magnus Eriksson's National Law Code and in Carl IX's Privilegier för Göteborg av 1607 (The Privileges of Carl IX for Gothenburg of 1607). Surrendering one's property probably gave the debtor all the advan-

---

<sup>21</sup> This also explains the then common statute that the *gäldstugan* (debtors' prison) that had been established at that time must not be "unpleasant" (thus not be situated below ground) and the creditor was to cover a minimum of the debtor's subsistency. With the aim of making hidden assets emerge, the stay in debtors' prison was made as difficult as possible. The only meal often consisted of bread and water. It was not uncommon to put the debtor in the stocks or in heavy shackles.

<sup>22</sup> It is here decreed that, upon a lack of funds in the estate of a deceased debtor, deductions should be made from the creditors' claims in proportion to the size of their claims, i.e. a kind bankruptcy of the estate.

<sup>23</sup> The history of the Swedish commercial town of Visby goes back at least as far as the twelfth century. Visby was part of the powerful German Hanseatic League and quickly developed into one of the largest cities in Northern Europe and one of the main cities of the Hanseatic League.

<sup>24</sup> Here, a new reason for opening a bankruptcy procedure is first mentioned, i.e. if a debtor, with several creditors, had escaped. The creditors created an interest group for taking care of the debtor's property and a scheme of arrangements is mentioned. Only a handwritten document in German from about 1340 still exists. The contents of Visby stadslag are in many parts similar to Bjärköarätten.

tages of this system (Lantmanson 1866, Löfmark 1987). The principle was that in case of an accident in which the debtor was not at fault (war, damage at sea, piracy, fire and the failure of others), the debtor was offered to make a compound, whereas a fraudulent debtor was severely treated. If the debtor lacked the appropriate means, he was sentenced to pay off his debt by work. Fraudulent debtors were put in custody until they had satisfied their creditors (Olivecrona 1862).

A legal commission submitted a legal proposal in 1643 containing the first Swedish attempt at creating bankruptcy legislation. The proposal clearly distinguishes between debtors whose insolvency is due to an accident and those responsible for their insolvency themselves. The former became free men as soon as they had voluntarily surrendered their assets to their creditors. An extensive legislation on insolvent debtors began to take shape at the end of the seventeenth century.<sup>25</sup>

The development of Swedish legislation in the sixteenth and seventeenth centuries is characterized by a considerable influence from foreign law (Inger 1997). Rules and views from Roman, Germanic and Italian law were often echoed in Swedish regulations. The conventional wisdom in Italian law at the time was that man failed because he deserved to fail – because of personal deficiencies. Failure to pay one's debt was often ascribed to a couple of personal sins: speculation and wastefulness. It seems to me that these views had a strong influence even on the Swedish conception of economic failure until the nineteenth century.

A Royal Decree in 1673 extended the possibility to surrender goods to apply to the entire country. A person who had voluntarily entered into bankruptcy and proved the bankruptcy to be due to an accident that he had not caused himself not only became a free person but was also – which was an important innovation – liberated from any future claims from his creditors. In that way, the stipulations in Roman law about *cessio bonorum* lessened the effects of a severe Swedish executionary procedure. This relief particularly applied to honest debtors. In 1694, there was a proposal on how insolvency was to be dealt with in litigation proceedings and the concept of *Concurs* is introduced as terminology for the first time in 1695. The proposal is considered as the first attempt at real bankruptcy legislation (Agge 1934, Tuula 2001, Welamson 1961).

Speculation and extravagance were also considered the most important reasons for bankruptcy in the written Swedish debate in the eighteenth cen-

---

<sup>25</sup> For example, the Royal Statute of July 10, 1669; the Royal Resolution and Declaration of the delegates' appeal for all Estates, given on October 3, 1675; the Royal Resolution from November 9, 1685; the Royal Resolution and Declaration of May 28, 1687; The Royal Reply to Svea Hovrätt on October 7, 1687; The Royal Resolution on executions, etc., on November 29, 1688; The Royal Resolution on N.N. Suppliquer on May 16, 1689; Royal Letter on October 14, 1689; The Royal Bill and Decree of March 14, 1699, to mention a few.

ture.<sup>26</sup> Consequently, the suggested penalties were harsh. A person who could not pay his debts was always to be punished in proportion to the lacking sum. If two thirds of the debt were lacking, the debtor could be imprisoned for a maximum of 7 years, with certain periods on only bread and water. If the sum exceeded 2000 silver coins, the debtor was first to be subjected to flogging<sup>27</sup> and then to serve life-long imprisonment.<sup>28</sup>

In the seventeenth century, it was up to the Swedish authorities to decide whether the debtor should be allowed to surrender his property. This required that the insolvency was due to an accident (piracy, fire, etc.). If this was the case, the debtor was exempt from enforced work and prison as well as from disgrace and future responsibility for the debt. If it could be proved that the debtor had intentionally taken measures to reduce the creditors' rights, or if he had been guilty of leniency and carelessness as concerns their interests, there were no valid reasons for using these special provisions. In 1734, new regulations on bankruptcy (within the commercial code) replaced a number of medieval decrees and bankruptcy regulations in general urban law codes and provincial laws. In the following century, three more laws were introduced (1798, 1818 and 1830), which, in turn, were replaced by a more modern bankruptcy law in 1862. The French system, which was regulated in Napoleon's Code de Commerce from the year 1808, and the Prussian Bankruptcy Code from 1855 constituted a model for the bankruptcy law of 1862 (Bromé 1888, Inger 1997).

The possibility of voluntarily surrendering one's property in exchange for freedom from future responsibility for the debt disappeared completely in the bankruptcy law of 1818. Even a debtor who had become insolvent by accident remained responsible to pay the debt with any possible assets acquired in the future. In return, the penalty regulations became more detailed in this law. Carelessness was punished and fixed time spans were stipulated for the different crimes.<sup>29</sup> In contrast to older bankruptcy statutes, the bankruptcy

---

<sup>26</sup> See, for example, *Orsaken til närwarande talrika bankerotter och medlen att förekomma dem*. Öfwerlämnad Patrioternas granskning av en Weldsmedborgare. Printed by Kongl. AM:ts Boktryckeri, Carlskrona, 1799. Otto Fredrik Pålman. *Anförande hos riddarehuset och adeln*, April 13 1815, Royal Library Stockholm.

<sup>27</sup> Flogging with a stick was a common form of punishment in older times. The flogging was carried out using two sticks at a time. Men were punished with a maximum of 40 pairs of flogging and women with 30 pairs on their bare skin (thus, the expression flogging). The punishment was carried out by the executioner at the pillory or at the entrance of the town hall. Flogging as a general means of punishment was abolished in Sweden in 1855. However, flogging still existed as a disciplinary punishment in prison or institutions of forced labor until 1938.

<sup>28</sup> *Öfögräplige och wördsammaste Påminnelser wid det Project til en ny Kongl. Förordning angående Cessions, Concurs, Boskillnads och Urarvamål, som av 8 högt lagfarne och wärdige Herrar och Mån blivwit författadt samt i trycket utgivit*. 1772, Stockholm, printed by Henrik Foug. Royal Library Stockholm.

<sup>29</sup> See the regulations on carelessness and fraud in bankruptcy, 3 chap. 4 and 5§§, Bankruptcy law in: *Brottsbalken den 21 december 1962 samt översikt över ändringar i strafflagen under*

law of 1818 was characterized by clearly limited regulations on, among other things, the responsibility of careless and fraudulent debtors (Löfmark 1986).<sup>30</sup> French law received a great deal of attention in Sweden. The severe judgment of bankrupt debtors stated in Code de Commerce, which was a moral condemnation of insolvency, once more became predominant.<sup>31</sup> A new bankruptcy law was implemented in 1830. As concerns the issue dealt with here, it was an identical repetition of the law of 1818. The final difference between honest and dishonest debtors disappeared in the bankruptcy law of 1862.

## Regulations against dishonest debtors

The possibility for a debtor of escaping disgraceful treatment by voluntarily surrendering his possessions had been abused in the Roman Empire and in German territories. This abuse had brought on special criminal laws for dishonest and careless debtors. The Swedish trend seems to have been similar. In the privilege given to Gothenburg by Gustavus Adolphus II in 1621, the fundamental principle that “Falsantes et Bankarupti” (falsifiers and bankrupts) should be sentenced to serious penalties was sanctioned. However, there are indications that these decrees were not always applied in the courts to the desired extent. In 1664, the Royal Councils complained about the fact that executions of debtors were dealt with

---

*åren 1865-1960 jämte hänvisningar till Nytt Juridisk Arkiv.* P.A. Nordstedt & Söners förlag, Stockholm 1963.

<sup>30</sup> Carelessness from the debtor in a bankruptcy case was a known concept for the legislators of 1734 and was mentioned in contrast to fraud, on the one hand, and bankruptcy that was not due to the debtor himself, on the other. The bankruptcy legislations contained certain regulations on the consequences of such carelessness (imprisonment, prohibition against entering the stock exchange or against having any general occupation). Penalty for careless debtor was first introduced in the bankruptcy law of 1818. In the bankruptcy law of 1862, a new class of bankruptcy crimes (referred to as dishonesty) was created.

<sup>31</sup> An example of this view: “One has seen businessmen without books, books without any order and context and fairly often books, where the illusory correctness during the last year has been nothing but fraud, a collection of writings created in order to hide the treachery from the creditors, and the crime from justice”. ...“Bankruptcies, far from being the tools of shame, have become the means of obtaining a fortune, the source of which one hardly tries to conceal; and even if all these bankruptcies were not always the result of crime, they were at least the result of insufficient knowledge, while the whole world wanted to do business without knowing, what was required.”...“Also, disregarding the harshness of the law against criminal bankrupts, nothing has been more rare than its application; and nothing has so encouraged these crimes as this absence of punishment.” Corps de Droit Commercial Francais. Paris 1841, pp. 208-09, in *Underdånigt Betänkande till Kongl. Maj:t, angående Kreditförhållandenes och Låne-anstalternes ordnande avgivet den 8 april 1853 af särskildt i Nåder utsedde Comiterade.* Nordstedt & Söner, Stockholm, 1853.

feebly and carelessly both in the country and in the cities” and that the current legislation in the area was “without force.”<sup>32</sup>

The legal regulations on insolvency were of importance, for they constituted the key to maintaining the faith in the credit system. A Royal Decree on executions dated July 10, 1669<sup>33</sup> (which only applied to knights and noblemen) is, to my knowledge, the first time a more detailed distinction is made between various reasons for insolvency, although from a moral perspective. Paragraph 15 decrees that the court shall determine how debt and poverty have come about. If the court found that the debtor had become insolvent because of an accident where he was without any guilt, he should become a free man but should repay the debt if his financial circumstances improved. If the debtor has contributed to the insolvency himself by “an extravagant and non-virtuous life”, he will receive no compassion leading to a more lenient treatment. He shall then be severely punished with debtors’ prison or custody. § 23 decrees that an insolvent, common person must “pay with his body”, i.e. “work for his freedom or be imprisoned, and can receive no bail”.<sup>34</sup>

These were harsh times for the indebted person, who usually was imprisoned. If the person lacked the means of paying for his subsistence in prison, the creditor was obliged to contribute three öre a day in advance.

That a person who had become insolvent “through extravagance and carelessness” was the same as a swindler and should be “punished and chastised bodily and by work” was clarified anew in a Royal Resolution of 1675.<sup>35</sup> Debtors who delayed the investigation or escaped were considered swindlers. It was considered more “difficult to protect oneself against [them] than against thieves and obvious robbers”. Thus, they were not only condemned to serve their entire debt in prison but were also exposed to shaming penalties: to be “put on a pillar in a square or a public venue to be publicly disgraced for two hours and also be sentenced to prison on bread and water or to work in any of the king’s fortresses”.<sup>36</sup> The prescribed penalties for debtors with self-inflicted insolvency were further reinforced towards the end of the century. The background to this was that the authorities had, “with the largest dissatisfaction”, observed for a long period an increase in the number of fraudulent bankruptcies that were equaled to serious theft. These swindlers and bankrupt individuals should be “pointed out and be labeled

---

<sup>32</sup> Statutes, Decrees, Letters and Resolutions. Stockholm 1696. The Royal Library, Uncatalogued Printed Material Section.

<sup>33</sup> *Kongl. Mayst:s Stadga, Öfwer alla Executioner i gemen*. Printed by Niclas Wankijst, Kongl. Booktryckeriet, Stockholm 1669. The Royal Library, Uncatalogued Printed Material Section.

<sup>34</sup> For more information, see 15 chap Rådstugu Balken St. L.

<sup>35</sup> Royal Resolution and Declaration of the delegates’ appeal for all Estates, October 3 1675, § 20. The Royal Library, Uncatalogued Printed Material Section.

<sup>36</sup> XVI. Cap. 4. § Commercial Code, Royal Decree 1687. Art II. §.1.

with general infamy” before they were punished with forced labor. The explicit aim of these harsh punishments was to maintain and reinforce the confidence in given promises and in the credit between trading people.<sup>37</sup>

It is unclear whether the increase in the number of fraudulent bankruptcies was real or supposed. However, this change in attitudes resulted in the development of a special regulation on bankruptcy crimes. Penalties for bankruptcy crimes were mentioned or assumed in certain older legal works. The first real penal legislation in this area, which concerned fraudulent bankruptcy and escape from bankruptcy, is presumably the Royal Decree of 1699. Here, it is established that a debtor who did not come to the trial, or who had run away, was to be known as wanted immediately and drumming was to take place in all public places. On Sundays and holidays, it should be announced from the church pulpits that the person was wanted. An escaped debtor was declared an outlaw and pursued by the law accordingly.<sup>38</sup>

If a debtor escapes from debt [...] he will never find peace within the borders of the country and will in his absence be condemned as a swindler and his name will be posted on a pillar, and he will be condemned as a swindler in all commercial cities.<sup>39</sup>

An escaped debtor was sentenced as a swindler in his absence and his name was to be posted on a special notice board for bankrupt people and swindlers in each trading city. The creditors were given the right of disposal of the property of the escaped person, which they could later sell at an auction.<sup>40</sup> These penal regulations for deliberate crimes were transmitted to the law of 1734.<sup>41</sup>

---

<sup>37</sup> Royal Bill and Decree on intentional bankruptcies and their ensuing punishment. Stockholm March 14 1699.

<sup>38</sup> Outlawry meant being excluded from the peace that the legal system guarantees its members. The outlaw lost his legal rights but was also obliged to escape from peace and quiet and become an exile. He was given a short period of respite to put himself in safety. Then, anyone could kill or molest him without penalty. As far as we know, there is no known example of such a treatment. Being an outlaw also had certain repercussions on the relationship with those covered by the legal system. Everyone was thus forbidden to house, feed or even socialize with the outlaw. In time, the consequences of being an outlaw were reduced so that the criminal could no longer be killed but only imprisoned.

<sup>39</sup> The Statute Book of Sweden. Approved and Accepted in Parliament in the year 1734. Her. Foug, Stockholm, 1870. Commercial Code XVI. Chap. Huru gäldenär må gods sitt ti these borgenärer på en gang afstå; så ock om them, som för gäld rymma: 5§

<sup>40</sup> See Royal Resolution and Declaration May 28, 1687 and the Statute of March 14, 1699 in Modee R G, Extracts from Publique Handlingar, Placater, Förordningar, resolutioner och Publicationer, Som Rikens Styrelse samt inwärtens Hushållning och Färfattningar i gemen, jämväl Stockholms Stad i synnerhet angå. Second part Year 1740. Stockholm 1746.

<sup>41</sup> See 16 ch 4 and 5 §§ Commercial Code.

## Legal regulations of debtors' prison 1734 – 1879

The next major law, the law of 1734, contained nine codes with concrete regulations applied to both the countryside and the city.<sup>42</sup> They replaced the medieval laws, Kristofers landslag (Kristofer's provincial law) och the general urban law code. The law built on older practice in courts and was very conservative. The regulations for bankruptcy that were introduced were very brief. Chapter 8 of the Debt Enforcement Law deals with "On sequestration and debtors' prison".<sup>43</sup> The former means that a debtor's property is put up as security so that it can be used to pay a debt, whereas the latter means that the debtor is deprived of his freedom because of his debt. According to the Trade Code Chapter XVI of the same law, the default debtor shall be imprisoned and pay his debt by enforced labor, if it is found that his "poverty is due to wastefulness, gambling, idleness or carelessness".<sup>44</sup> Debtors' prison, which had previously been a safety measure against the debtor being able to escape his liability to pay by escaping, was in the new law to an increasing extent used for people with an unsettled bill debt and overdue promissory notes. Debtors' prison could be used as soon as the debtor had failed in his obligation to pay. The creditor could apply to the city magistrate for permission to put a late, insolvent or reluctant debtor in debtors' prison.

An example from Gothenburg can serve as an illustration: The shopkeeper Carl Odén had drawn a bill (on Mr N.C. Friedlander to pay 73 Riksdaler on June 15, 1830 at the very latest) that had become due. Jonsson and Andersson, who were servants of the city, certified that a creditors' meeting had been properly announced. The shopkeeper Odén did not come to the creditors' meeting and was not available at the distraint. The magistrate thus decided that Odén be put in debtors' prison. He was further sentenced to pay the debt of 73 Riksdaler at the prescribed rate of 6% from the due date and two Riksdaler to cover the costs of the distraint. The decision could be appealed against by anyone disapproving within 30 days.<sup>45</sup>

For other debts than bill debts, the debtor could be put in debtors' prison when the debtor had been found to lack the means of paying the debt during attempts at making a distraint. The fact that debtors' prison continued to work as a remnant of medieval penalties for insolvency is clear. This penalty was in some respects harsher than those to which other criminals with penalties that were limited in time were subjected. The latter, e.g., could ask the

---

<sup>42</sup> For a more detailed discussion, see Agge (1934) and Tuula (2001).

<sup>43</sup> The Statute Book of Sweden. Approved and Accepted in Parliament in the year 1734. Her. Foug, Stockholm, 1870.

<sup>44</sup> The Statute Book of Sweden. Approved and Accepted in Parliament in the year 1734. Her. Foug, Stockholm, 1870. Commercial Code XVI. Cap. Huru gälldenär må gods sitt ti thes borgenärer på en gang afstå; så ock om them, som för gäld rymma.

<sup>45</sup> Göteborgs landsarkiv, Överskultens i Göteborgs arkiv, E II:11, extract from the protocol with the creditors of Carl Odenius in the town hall of Gothenburg on February 19 in the year 1830.

king for mercy, a possibility that did not exist for the prisoner in debtors' prison. An individual could be kept in debtors' prison until he consented to confess. Neither a criminal act nor a suspicion about such an act was required. If the debtor could not find the money, he or she was completely at the mercy of a possibly vindictive creditor's discretion. There was still no stipulated limit to the period a debtor could be kept in debtors' prison, which was thus dependent on the creditors' willingness to pay.

The Roman view of *fallitus ergo fraudator* (insolvent thus a swindler) also characterizes legislation well into the nineteenth century. The rule that the default debtor should be put on a pillar still existed in the laws of 1734, 1818 and 1830. In those cases when the debtor has behaved fraudulently or tried to escape or hide property, or used treachery and tricks towards his creditors, then "such a swindler shall be put on a pillar equipped with an iron collar, in a square or a public venue, to be put to shame for two hours, and also be sentenced to prison on bread and water<sup>46</sup> or to work in one of the king's fortresses<sup>47</sup> between two and five years".<sup>48</sup>

These were difficult times for an insolvent debtor and many were forced to escape when they could not satisfy their creditors. We will never be able to determine how many they were. In the second part of the seventeenth century, the number of debtors that escaped probably grew in such a way that the legislation started to be implemented. The first decree that equals flight with theft existed as early as in Visby's stadslag. Thus, one had provided a basis for future revenge using criminal law. Running away from your debtors was still punished in the nineteenth century according to the harsh statutes of 1675 and 1699, which further stigmatized the offending party.

The bankruptcy of Carl Wilhelm Hammarsköld can serve as an example of even upper-class people being stigmatized by insolvency (Andersson and

---

<sup>46</sup> In a Stockholm paper from 1820, there is a description of the harsh consequences that a penalty increase to bread and water might have: Almost as unfortunate, but less terrible (than the flogging) is the penalty with prison on bread and water. The prisoner then receives 420 grams of bread and as much water as he or she can or wants to drink. The penalty was considered connected with the largest health dangers: "Only prisoners who have previously been toughened by previous, long-term prison terms have been able to receive such punishment without interruption. For many prisoners, this punishment had to be interrupted and they were transferred to the cottage hospital. Other prisoners have, after experiencing the punishment, succumbed to its consequences or have suffered from the after-effects for the rest of their lives. Many of those who did not show any sufferings or symptoms during the term of punishment have later caught dropsy and died." "En blick på Stockholms fångelser", *Allmänna Journalen* No. 289, 1820-12-12.

<sup>47</sup> The prisoners were sent to Carlsten's fortress in the city of Marstrand in the archipelago of Bohuslän, north of Gothenburg. There, they were usually obliged to carry out work on the fortress from 0600 in the morning to 1900 in the evening. If they became jaded, they were sent to the fortress of Elfsborg, which at that time was the place where jaded prisoners from Carlsten were dumped (Svenson 1904).

<sup>48</sup> The Statute Book of Sweden. Approved and Accepted in Parliament in 1734. Her. Fougé, Stockholm, 1870. Commercial Code XVI. Cap. 4§. The Royal Library. Also the bankruptcy law of 1818 3 chap. 5§ and the bankruptcy law of 1830 3 chap. 43§.

Gratzer 2002). Hammarsköld was captain of the hussars and director of the largest brass factory in Sweden at that time (Skultuna bruk). He was the descendant of a noble family, dating back to the early seventeenth century. As a friend of King Oscar I of Sweden, he speculated a bit in royal lands in the northern parts of the country with great findings of iron ore. But Carl Wilhelm Hammarsköld had other kinds of business with worldwide connections that removed his attention from his regular business. According to the family chronicles, his business became increasingly reckless and daring towards the end of the 1840s. Despite the fact that the name of Hammarsköld was given unlimited credit, the business was not going too well and he had to consider the possibility of signing for bankruptcy in December 1849. Hammarsköld left for America before the bankruptcy was proclaimed by mid-January 1850 (Hammarsköld 1915).<sup>49</sup> Hammarsköld's actions indicate that the stigma of bankruptcy was still severe. The crime for which he was sentenced – running away – was not committed until after the bankruptcy in 1850.<sup>50</sup>

Debtors from lower social classes also took flight when faced with the threat of debtors' prison but they did not have as good possibilities of leaving the country. Once more, an example can serve as an illustration: The restaurateur Bardelius had become bankrupt in Stockholm in 1827. The trustees in the bankruptcy suspected him of treacherousness and fraudulent behavior and Bardelius escaped. He was wanted in the entire country and was caught and returned to Stockholm where he was first arrested and then later moved to debtors' prison. It is noteworthy that the court took this decision against the will of all creditors. The creditors had – with the aim that the bankrupt's estate should not be saddled with the subsistence costs in debtors' prison – requested that Bardelius be liberated.<sup>51</sup>

The issue of debtors' prison continued to be of importance. A list of decrees follows upon the law of 1734. In particular, regulations on sentencing insolvent debtors to debtors' prisons were very common.<sup>52</sup> In summary, ac-

---

<sup>49</sup> Exactly what triggered Hammarsköld's bankruptcy is not known. The verdict from Svea Hovrätt consists of about 500 pages. 611 creditors are named and listed, and the claims of each are examined and treated with care. Many are simple people holding minor assignments while several have larger sums. The king himself, as a private person, claimed the largest sum. Hammarsköld owed him 535 000 Riksdaler (a very large sum) for lands in northern Sweden. *Minutes of Svea Hovrätt, criminal cases, 15/12 1853*. National Archives, Stockholm.

<sup>50</sup> Nyberg (2006) gives another example of a prominent person from a higher social class that escaped from the country. In 1821, the mercantile world of Stockholm was shaken by a scandal. Colonel Ernst Fredrik von Willebrand escaped from the country after considerable fraudulent financial transactions.

<sup>51</sup> Till Kongl. Maj:ts och rikets Högloflige Svea Hov-Rätt: Anförande i Källarmästaren J.A. Badelii Concurs-sak, ingifvet den 5 Maj 1827 af Häradshövding Bellander. Stockholm, tryckt hos Olof Grahn, 1827. Stadsmuseet Biblioteket, Småtryck, Polisväsende.

<sup>52</sup> 1739 05 29 Manufaktur – Privilegierna, §.21; 1750 10 19 Royal Declaration on Uts. B on V Cap Uts.B; 1756 05 19. Royal Ordinance; 1757 10 12. Royal Declaration; 1757 12 20. Letter from Svea Hovrätt; 1756 May 19. Royal Ordinance; 1799 Jan 29. Royal Letter; 1757 Dec 20.

ording to the law of 1734 and the decrees issued later on, a debtor could be put in debtors' prison for bills of exchange and promissory notes as soon as he had failed in his obligation to pay and for other debts when he had been found to lack the means of payment after a distraint. In a Royal Decree on bankruptcy dated 1770, an idea was presented that is once more on the agenda in the modern debate:<sup>53</sup> An honorable debtor who has become insolvent shall be given a new chance:

An unfortunate debtor, who thus honorably renounces his property, and thus gets rid of his debt, can thus get a better credit again, if he is economical, works hard and is happy.<sup>54</sup>

A suggestion for a general criminal law made by the legislative committee contained new regulations on bankruptcy crimes.<sup>55</sup> Fraud was divided into two types, a more serious and a lesser one. The proposal tried to define this criminal area in a comprehensive way that would satisfy the new legal principle of "no punishment without law" (*nulla poena sine lege*). After some changes, the proposal was included in a new proposed bill in 1844. This proposal was not implemented either, but the regulation on bankruptcy crimes was included in the bankruptcy law of 1862.<sup>56</sup> In this law, dishonesty was entered as a particular crime. Thus, there was a division into three kinds of crimes: fraud, dishonesty and carelessness. In the penal law of 1864, these penalty regulations were included in chapter 23 under the heading "on a fraudulent, dishonest or careless debtor in bankruptcy".<sup>57</sup>

---

Letter from Svea Hovrätt; 1770 02 22. Royal Statement; 1787 02 26. "Universal" from Göta Hovrätt; 1770 03 02. Krigskollegii Circular; 1799 01 29 Gracious Royal Letter. 1802 11 22. "Universal" from Göta Hovrätt; 1802 11 23. "Universal" from Svea Hovrätt; 1810 02 01. Royal Ordinance; 1822 05 31. Circular from Göta Hovrätt; 1830 03 12. Royal Ordinance; 1835 03 07. Royal Proclamation; 1841 06 10. Royal Ordinance; 1842 10 29. Royal Letter to Svea hovrätt; 1843 04 26. The Board of Prisons and Work Establishments; 1845 05 19. Royal Ordinance.

<sup>53</sup> There is an intensive debate on the extent to which the bankruptcy legislation is to be changed so that entrepreneurs that become insolvent are to have a chance of recovering after a bankruptcy. See, e.g., Gratzner (2001) and Ayotte (2007).

<sup>54</sup> "Förklaring om Fallisseman" den 23 Martii 1770. §.3.

<sup>55</sup> 25 chap. under the heading "Om bedrägligt eller vårdslös gäldenär i konkurs" ("On Fraudulent or Careless Debtor in Bankruptcy").

<sup>56</sup> Competition Law, 8 chap.: Om ansvar i konkurs för bedrägligt förhållande, annan oredlighet och vårdslöshet" ("On Responsibility in Bankruptcy for Fraudulent Circumstances, Other Dishonesty and Negligence").

<sup>57</sup> According to the original regulations in the criminal code, the injured party could only charge dishonesty against creditors, escape because of debt and carelessness. In a law of October 14, 1892, dishonesty and escape were turned into crimes of denunciation and in 1921, both these crimes were put under public prosecution without the requirement of denunciation from the injured party (Ministry of Justice 1975). With some changes, this division of the crimes into three categories was kept until the legal reform in 1942. In the latest reform, all debtors' crimes were placed under public prosecution, without any requirement for a statement from the prosecutor (Löfmark 1986).

## Debtors' prison

In this section, a quantitative description will be given of the extent of the use of debtors' prison, the prisoners, the length of the period of confinement and the reasons for release.

Finally, I will try to answer the question of whether the institution of debtors' prison was efficient, given the aim of squeezing out hidden assets from the debtor, his family or friends.

How widespread, then, was custody for debt? Unfortunately, there exists very little statistical information on this issue before 1835. One reason for this is that there are no collected statistics before 1835. Debtors' prisons were spread geographically and often only existed as subunits of other institutions. There existed only few special debtors' prisons and jails as in Stockholm (Elers 1801 and Tjerneld 1949).<sup>58</sup> But prisoners were often kept in special areas in town halls or in special units in other prisons. Thus, e.g., in the 1790s, the prison in Gothenburg was first located in the cellar and then on the upper floor of the city hall. The debtors' jail or debtors' prison was also part of this prison, the "tjuvakistan" (thieves' coffin) and a unit for people who had been sentenced to prison on bread and water.<sup>59</sup> In the city of Kristianstad in southern Sweden, prisoners in debtors' prison and prisoners on water and bread were often kept in a room on the upper floor of the town hall while other prisoners were kept four floors below ground.<sup>60</sup>

Based on the existing statistics, figure 1 depicts an approximate picture of how many men and women were sentenced to debtors' prison in the period 1835-1878.<sup>61</sup> We can interpret the quantitative picture as consisting of three levels: a relatively high level before 1841, a middle level in the period 1841-1867 and a relatively low level during the final phase of this legal system.

The number of people in debtors' prison, which might have amounted to between five and six hundred a year between 1835 and 1840, decreased considerably in the two following decades. On average, there were about 380 imprisoned debtors per year in 1841 – 1867. Between 1868 and 1878, only about 30 people were put in debtors' prison every year. The share of women was fairly constant and amounted to an average of about 3.5% in the period 1835 – 1878.

---

<sup>58</sup> In Stockholm, there was a debtors' prison in Gamla Stan (the Old Town) in the eighteenth century. It was moved to Hornsgatan in 1781. Moreover, there was also a jail for noble people at Stockholm Castle. Finally, the court for industry and trade ("hallrätten") in Stockholm had had an institution for workers in debt.

<sup>59</sup> Landsarkivet i Göteborg, Göteborgs stadsfångelses arkiv, GLA/11576

<sup>60</sup> Landsarkivet i Lund, Kristianstads stadshäktes arkiv, 11046

<sup>61</sup> Unfortunately, there are no data for the years 1854-56. Missing data for 1854-56 were computed (median of nearby points, span of nearby points = 2).

Figure 1. The number of persons in debtors' prison (Sweden 1835 – 1878)



Source: Contribution to the official Swedish statistics B, Juridical system (Rättsväsendet, Överståthållarens underdåniga berättelse), 1837-77.

The difference between the levels covaries with the legislative changes, which all decreased the creditors' power over the debtor. In 1841, there was a decree abolishing the creditor's right to use debtors' prison after distraint.<sup>62</sup> Through a decree from 1868 debtors' prison could only be used if it had been discovered during the distraint that the debtor's assets were insufficient to cover the debt and if the debtor refused to take an oath on there being other means than those that had been stated.<sup>63</sup> Debtors who refused to take such an oath could be put in debtors' prison. After having been put in debtors' prison, the debtor could take an oath in jail in order to be liberated. Moreover, the time in jail was limited to a maximum period of 6 weeks. The consequences of these legislative changes were that the number of prisoners in debtors' prison, which, on average, amounted to 361 in the period 1860-1868, fell markedly in the period 1869-77 to an average of 29 per year. In the new debt enforcement law of 1877, enforcement of debtors' prison is not mentioned and as of January 1, 1879 when the above-mentioned law came into force, the last person in debtors' prison disappeared from Swedish prisons.

<sup>62</sup> The Swedish Code of Statutes 1842 No 39.

<sup>63</sup> The Swedish Code of Statutes 1868 No 24.

A cross-sectional study can give an indication of the background of the people in debtors' prison. The number of individuals in debtors' prison in 1860 was 371, 97% of whom were men. Amongst these, only one prisoner had his origins in the nobility, 67% came from the commoner estates (mainly craftsmen and merchants), 17% were peasants and 4% were servants. Twelve percent derived from the working class. 32% of the prisoners were below 30 years of age and 57% were between 30 and 50 years old. Only 11% had reached an age above 50 years.

The size of the debts was quite small. One percent was arrested for a sum not exceeding five Riksdaler, 53% were arrested for sums between 5 and 100 Riksdaler and 43% for sums between 100 and 1000 Riksdaler. Only 2% of the prisoners were arrested for sums exceeding 1000 Riksdaler. An interesting question is how long these prisoners were kept in jail. Thirty-five percent were kept in prison between 1 and 7 days, 36% between 7 and 30 days, 14% between 1 and 3 months and 5% between 3 and 12 months. Only one person spent longer than 1 year in debtors' prison.<sup>64</sup>

Given the aim of securing hidden assets, was the use of debtors' prison efficient? We might get some clues by interpreting the information on why those in debtors' prison were released. The number of debtors released for paying their debt might be an indicator of the efficiency of the system. Six reasons were mainly stated as the grounds for being released from debtors' prison: (1) payment (payment fulfilled), (2) an exemption warrant or an agreement with the creditor (a compound), (3) creditors' neglect to pay for the debtors' living costs in debtors' prison (4) swearing "the poor man's oath", (5) cession<sup>65</sup> and (6) other reasons (those who were released due to illness, madness, death and transfers to other kinds of custody are included in this group).

As shown in Table 1, in the years 1857-59 and 1866-67, only an average of 16 of the total number of convicted were released because they could satisfy their creditors with the whole sum of the debt. The group who transferred their property to the creditors' collective (cession) constituted the largest share, 38%. Thus, the use of debtors' prison appears to have been a reason of some importance in cases of bankruptcy. The second largest group was released because they made agreements or compound with their creditors. Their share in the corresponding period amounted to 37%.

In about 90% of all observations, the release usually took place because the person in debtors' prison paid his debt, declared himself to be bankrupt or made some kind of informal agreement. For that reason, the system of debtors' prison was quite efficient. The rest of the prisoners were released

---

<sup>64</sup> SOS, B *Rättsväsendet, Arbetsredogörelser samt särskilda uppgifter angående in-teckning och lagfart, utskökningsmål 1861*. (Statistics Sweden. Series B. Juridical system 1861)

<sup>65</sup> The debtor declared himself bankrupt by renouncing all his property to the collective of creditors.

because the creditor grew tired of paying for the upkeep of his prisoner. The main use of the system of debtors' prisons in this period was thus to force the individual to surrender his property to the creditors. After 1868, swearing the oath was the most common reason for releasing debtors from custody.

Table 1. *Reasons for releasing people in debtors' prison*

Year	Payment	Exemption warrant from creditors	Creditors' neglect to pay for debtor	Swearing <sup>66</sup>	Cession <sup>67</sup>	Other reasons
1857	50	86	20	0	94	8
1858	49	97	19	0	81	15
1859	49	134	22	0	121	9
*	*	*	*	*	*	*
1866	49	130	29	0	145	2
1867	48	124	37	0	142	1
1868	17	100	42	0	108	14
1869	5	14	2	36	4	7
1870	6	11	1	24	3	2
1871	2	7	4	4	3	3
1872	5	1	2	12	1	0
1873	3	1	1	5	2	0
1874	2	2	0	7	0	0
1875	2	1	1	13	0	1
1876	2	1	0	1	0	8
1877	0	0	0	0	0	0
1878	1	3	3	25	3	0

\*Data not available between 1860 and 1865.

Source: Contribution to the official Swedish statistics B, Juridical system (Rättsväsendet, Överståthållarens underdåniga berättelse), 1837-77.

## Why did debtors' prison disappear?

Trends in political culture, legal development and practice and changes in economic life are of importance for understanding why debtors' prison ceased to exist.

One reason is that the treatment of criminals changed because of the emergence of a more human view of one's fellow-beings, which is related to the Enlightenment. It took a long time before the view that a crime does not only concern the victim but also the general public to at least the same extent gained any ground. Slowly, the view that the punishment partly constitutes a private settlement disappeared into the background. As shown by Andersson (1998), Söderberg (1993), Jarrick and Söderberg (1994) and Söderberg (2000), the methods for punishing crime became more civilized in Sweden in the sixteenth century. Courts started making sentences more humane at their

<sup>66</sup> From 1868, a creditor was released from prison if taking an oath.

<sup>67</sup> By renouncing all his property to the collective of creditors, the debtor declared himself bankrupt.

own initiative. A death penalty for theft was considered reasonable in the late Middle Ages and many people were executed for theft. Two hundred years later, legal practice was much more lenient. Brutal corporal punishments were gradually abolished. The practice of burying people alive disappeared in the sixteenth century. No one had his right hand cut-off for a crime after 1620 and somewhat later the custom to cut the ears off criminals disappeared. In the latter half of the seventeenth century, people were no longer branded with red iron and tongues were no longer cut out for blasphemy. These reforms were implemented in Sweden already in the century before the Enlightenment. Particularly the early nineteenth century was a period of intense debate on the causes of and remedies for criminal offenses in Sweden. The problem of how to reform institutions and the criminals themselves came into focus (Söderberg 2000).

A second reason is that the conventional idea at that time that people failed because they deserve to fail because of personal deficiencies began to erode in the middle of the nineteenth century. The views on default and insolvency seem to have become more ambiguous. Through the development of the market economy, bankruptcy probably increasingly seemed to be the result of impersonal and less easily influenced forces. The culpa perspective (it is mainly the debtor's actions that create insolvency) was beginning to be crowded out by the casus perspective (insolvency occurs when the debtor has made an erroneous prediction about the future, but has not taken any incorrect action in the legal or moral sense) when joint-stock companies and insights into international business cycle fluctuations were introduced.<sup>68</sup>

A third reason is the international trend in this legislative area. The Swedish legal system was now even more clearly being phased into a European context. The first steps towards abolishing debtors' prisons were taken in France where the possibility to use debtors' prisons was abolished in 1867. The French reform had then more or less been implemented by the North German Confederation (1868), Austria (1868), Belgium (1871), Denmark (1872) and Switzerland and Norway (1874). Also in England – perhaps the country where the use of debtors' prison was most common – “The Debtors Act” in 1869 considerably reduced this use. Sweden followed in 1879 and in Finland, debtors' prisons were abolished in 1895.

A fourth reason can also be mentioned, namely the then widespread view that the system of debtors' prisons had outlived its time. The first criticism, to my knowledge, appeared already in 1767 (Wennberg 1776).<sup>69</sup> The subject

---

<sup>68</sup> For a discussion of the terms, see Martinsson (1999).

<sup>69</sup> “According to the latest Royal Declaration, as of the year 1768, a Creditor, even if he only has the smallest and most insignificant claim, alone has the complete liberty and right to dispose of the Debtor's freedom. This is not only harmful for the Debtor but also for other creditors because a greedy and mean person thus has the right to, at the disadvantage and increased sufferings for the others, exhort his entire sum [...] when a debtor is weak enough to unlaw-

was frequently discussed in the Swedish Parliament. The discussion was particularly intensive in the years 1847-48, 1859-60, 1862/ and 1868-69. The system of debtors' prisons was, above all, criticized for sentencing people on basis of confessions, at times without any trace of a crime, and that the period in debtors' prison might be subject to the discretion of a creditor out for revenge.<sup>70</sup> The system was criticized for being a dated remnant of the methods of torture in the Middle Ages.<sup>71</sup>

## From the lost chances of a ruined life to the lost capital of a bankrupt company

A businessman who failed in the early nineteenth century faced inadequate bankruptcy laws, vengeful creditors and idleness in debtors' prison. Relief actions and legal reforms had made debtors' prison less important after 1840 but the stigmatizing effect remained. Institutional and economic changes were to lead to a decreased stigmatization of an insolvent debtor. Among the economic reasons can be mentioned the emergence and spreading of joint stock companies, changes in the credit market and knowledge about the existence of international business cycle fluctuations. Altogether, these changes had made debtors' prison an obsolete institution and had made the pictures of why people fail economically more varied. Changes in views eventually resulted in new legislation.

At the end of the eighteenth century, the Western world needed institutions in which large business groups could become organized to devote themselves to economic activities and still be relatively free from economic government control. Despite the fact that such a prominent author as Adam Smith wanted to deny any usefulness of joint stock companies, it would be the main response of the Western world to this need (Rosenberg and Birdzell 1991). Upon the creation of the law of 1734, private businessmen owned and ran the major part of the commercial businesses in Sweden. The major part of the businessmen consisted of craftsmen and merchants in the city. Legal corporate forms did not exist in the way they do today. The line of demarcation between the finances of the entrepreneur and the finances of the firm had not been drawn up. As a consequence, to fulfill the creditors' requirements no distinction was made between the assets of the household and those of the firms. All assets were to be part of the bankrupt's estate and be at the disposal for payment of due debts (Albinsson-Bruhner, 2004). Bankruptcy

---

fully give a tyrant full compensation at the expense of the other creditors" [own translation from Wennberg]

<sup>70</sup> See, for example, the Report of the Standing Committee of Civil Law Legislation 1859/60, No. 41.

<sup>71</sup> The protocol of the parliament from the ordinary session of the Riksdag in 1868. First chamber, first volume, Friday March 6, p. 538.

did not mean that the debtor became free from debt. The debt did not disappear until the death of the debtor and if the estate relinquished the inheritance.

By the nineteenth century a clearer distinction between natural persons (sole traders), limited partnerships and other limited companies began to emerge. In particular, trading companies and partnerships were considered personal corporations. Capital corporations usually existed under the name of joint stock companies. The latter corporate form was also most successful in Sweden. This new kind of corporation constituted an organizational innovation, the importance of which can most likely not be overestimated. The growth of joint stock companies was a condition for the development of the financial markets that took place in the eighteenth and nineteenth centuries (Broberg 2006).<sup>72</sup> The new form of associations made it possible to finance more long-term, larger projects as well as a greater number of projects by spreading the risk among a larger number of people and limiting it to the invested capital.

For an insolvent debtor, the corporate form meant many important changes. The private fortune was no longer part of the estate and the risk was limited to the capital invested in the firm. Moreover, a joint stock company was liquidated in a bankruptcy so that the debts disappeared with the firm. A bankruptcy in a joint stock company was very likely less stigmatizing for the businessman. For long periods, there had been a widespread view that insolvencies were caused by less desirable characteristics such as arrogance, vanity, a tendency to speculate or insufficient knowledge.<sup>73</sup> The joint stock company now distinguished between an increasingly substitutable individual and the firm, i.e. the organization that, in principle, had been given eternal life. Nineteenth century Sweden witnessed a redefinition from sin to risk, from moral failure to economic failure (Mann 2002).

During the periods that were covered by older Swedish legislation, credit was probably given against pledge.<sup>74</sup> Economic historians and other people

---

<sup>72</sup> Like in the rest of Europe, the origins of joint stock companies in Sweden can also be said to go back to the trading companies of the seventeenth and eighteenth centuries. But it was not until the Companies Act in 1848 that this new type of company was regulated by law. A new Companies Act from 1895 marked the transition towards a more modern legislation in which the state formally waived the rights to control individual company formations. The breakthrough of joint stock companies in Sweden was a slow process, taking at least 80 years, where the real period of breakthrough has been dated to the period between 1895 and 1920.

<sup>73</sup> See, e.g., *Orsaken til närvarande talrika bankerotter och medlen att förekomma dem. Öfverlämnad Patrioternas granskning av en Weldsmedborgare*. Printed at Kongl. Maj:ts Boktryckeri, Carlskrona, 1799. Royal Library, Stockholm.

<sup>74</sup> The informal credit market in seventeenth century Stockholm has been described by Söderberg. There were a considerable number of claim cases in the courts. As an example of the approximate minimum lower value limit for what was dealt with in court, Söderberg mentions a dispute about an apron. Maria Olofsdotter against the butcher's maid Kerstin Jönsdotter. Maria has pledged an apron with Kerstin and for this she has obtained bread amounting to the value of six öre. The maid does not deny this. The problem is that Kerstin does not want to

have shown that the cash poor economy of Sweden was predicated upon a web of debt and credit from the Middle Ages to the nineteenth century. Goods, promissory notes and services were continuously exchanged within that web (Adamson 1963, Franzén 2006, Jarrick and Söderberg 1998, Myrdal and Söderberg 1991, Müller 1998, Nyberg 2006, Perlinge 2005, Sundin 1992, Ögren 2003, Ågren 1988). These credit networks constituted a central and essential part of early modern trade and an essential part of the basic conditions for the development of pre-industrial business (Hoppit 1987, Safley 2000, Lester 1995). The networks built on personal knowledge and trust, which decreased the risk of credit transactions and made the future more predictable. Being creditworthy meant that other people had confidence in you as a person. Then, there was the economic side with good solvency and business credit (Nyberg 2005, Nyberg 2006). The development of industrialism and the market economy led to relations that are more anonymous, increasingly complicated business transactions and larger geographical distances. The possibility of personal trust developing between individuals decreased with the increasing number of agents and the geographical expansion of the market. This can be assumed to have devaluated the importance and possibilities of the personal networks, but at the same time increased the needs for dealing with risk and uncertainty.<sup>75</sup>

## Death or rebirth of the businessman?

The fundamental dilemma of insolvency laws has always been whether they are about death or rebirth. Was it a system for picking a debtor's bones in a more orderly fashion or was it a system that allowed the debtor's return to the world? In an in-depth study of business failures in Stockholm 1815-1818 (Adamson 1996), the answer to the long-term question if bankruptcies have been a smart expedience for merchants to escape from debts and then start anew is "No". According to Adamson's study, it was still impossible to use the bankruptcy system as a clever device for avoiding debt at the beginning of the nineteenth century and it was still very difficult for entrepreneurs to get back into business after a bankruptcy. A study of the burghers and merchants of Gothenburg (Simonsson 2001) supports Adamson's findings. Those merchants were forced to resign their membership in the Masonic lodge when

---

return the apron. She is sentenced to do this; otherwise, she will have to pay three Riksdaler to Maria. Maria has been obliged to pledge her apron in order to be able to buy bread on credit. Jarrick Arne & Söderberg Johan, 1998, *Odygd och vanära. Folk och brott i gamla Stockholm*. Raben Prisma, Stockholm.

<sup>75</sup> Lacking formal means of payment and credits (the Swedish banking system began to develop in a tentative way only in the nineteenth century), personal promissory notes and bills were used to a large extent. Bill-broking, which was the most common form of financing of trade at the beginning of the nineteenth century, decreased in importance after the middle of the century with the development of a formal credit market (see Andersson 1996).

filing for bankruptcy. Simonsson's findings are contradicted by the results of a study of merchants in Gothenburg 1619-1820 (Andersson 1977, 1996). According to Andersson, bankruptcy was often the final way out of a severe financial crisis. The result was often the termination of the firm and personal bankruptcy followed by debtors' prison. As a rule, bankruptcy was the end of the row for businessmen. But Andersson found important exceptions to this rule already between 1815 and 1819. In this period, 139 single traders signed for bankruptcy in Gothenburg; 71 or half as much of these started anew with a firm after bankruptcy.<sup>76</sup>

There are several indications of there being a paradigm shift in the view of the default debtor in the mid-nineteenth century. The public discussion of the increased existence of "false bankruptcies" might be an indication of this.<sup>77</sup> A Swedish investigation on credit market conditions from 1853 called attention to a common nation-wide complaint about a lack of trust and an unreliability regarding credit contracts.<sup>78</sup> This has caused credit crunches and common insecurities for those who are running a business. Furthermore, it threatens all fundamental property rights for business activities (p 48)<sup>79</sup>. The investigation maintains that the situation in Sweden is similar to that in France.<sup>80</sup> Far from being an object of shame, bankruptcies have become a tool for capturing property whose origins one barely cares to hide. Even though the bankruptcy law is harsh against the fraudulent debtor, nothing has

---

<sup>76</sup> The tradesmen A. Barclay, R. and J. Dickson, M. E. Delbanco and others are given as examples of good representatives of people who have developed an extensive trading business that survived crises and bankruptcies. They could return after the bankruptcy and further develop their firms. Andersson also gives an example of the fact that the business itself could be rescued from difficulties and crises, even if the individuals in the business did not survive financially. Thus, the tradesman A. Lorent who had moved from Hamburg in 1808 established a factory for refining sugar and producing porter. The works eventually developed into one of the largest industrial works in Gothenburg. When the firm entered into a financial crisis, his brother P. E. Lorent and then his brother-in-law J. Nonnen took over the business and introduced new capital. When A. Lorent died in 1833, the firm filed for bankruptcy. The investigation of the bankruptcy showed a very large deficit (assets amounting to about 3600 Riksdaler against debts amounting to about 1.2 million Riksdaler). In 1836, the works were sold at an auction to D. Carnegy. The firm carried on its business in his name well into the twentieth century (Andersson 1996, 1977).

<sup>77</sup> "Concerning false bankruptcies, which are one of the most terrible crimes in the area of stealing, it is well-known how the law can be avoided" (Öhman 1847).

<sup>78</sup> *Underdånigt Betänkande till Kongl. Maj:t, angående Kreditförhållanden och Låneanstaltornes ordnande avgivet den 8 april 1853 af särskildt i Nåder utsedde Comiterade. Nordstedt & Söner, Stockholm, 1853.*

<sup>79</sup> *Ibid*, pp 48, 54. "It is a great problem that property rights are often violated with regard to both the time period and the amount of the credit. One could say that the state of the art as it has developed under many years can be seen as a monopoly of disorder." [own translation]

<sup>80</sup> *Corps de Droit Commercial Francais. Paris 1841, pp. 208-09. i Underdånigt Betänkande till Kongl. Maj:t, angående Kreditförhållanden och Låneanstaltornes ordnande avgivet den 8 april 1853 af särskildt i Nåder utsedde Comiterade. Nordstedt & Söner, Stockholm, 1853.*

been rarer than its application. This absence of penalty is pointed out by the investigation as the main cause for these crimes.<sup>81</sup>

The possibility of abusing the bankruptcy system is described in literary depictions from the beginning of the nineteenth century. These describe how the bankruptcy system is used as a tool for transferring assets from creditors to debtors (Sylvan 1942). These literary depictions must be seen against the background of a large economic crisis at the beginning of the nineteenth century. According to several newspaper articles, a boom with possibilities for speculations and opportunities of obtaining easily earned money had created a range of purse-proud upstarts, stock-exchange matadors and wholesalers. With their newly created fortunes, they could lead “an opulent life of pleasure, luxury and comfort”. The increasing level of living also entailed an increasing trade in luxury goods.<sup>82</sup> In 1811, the attention was given to “infamous bankruptcies”, and thus the law could be circumvented and creditors could be put “into serious suffering and the credit, man to man/.../to the detriment of the honorable person, who is in need of financial support”.<sup>83</sup> The boom ended in a general financial crisis in 1815.<sup>84</sup> Most severely affected were all wage earners and all lenders, who turned into “beggars” while the debtors “without any other profit on their side than that of the gambler” could suddenly appear as “millionaires” (Brisman 1908). The abuse of the bankruptcy system was also pointed out in a journal article in 1824, where it is stated that the bankruptcy (“to become bankrupt”) must be one of the more profitable ways of “enriching oneself”.<sup>85</sup> The famous Swedish playwright August Strindberg described in a novel in 1879 how businessmen used the Swedish bankruptcy system with the aim of enriching themselves (Strindberg 1879, here 1976).

There is empirical evidence that in the second part of the nineteenth century it had become easier to come back as an entrepreneur after a bankruptcy. In his study of industrial entrepreneurs in Gothenburg in the nineteenth century, Åberg (1991) found that the level of tolerance towards those who became bankrupt in the mid-nineteenth century was high. He found no support for the common view that bankruptcy was something ugly and dis-

---

<sup>81</sup> *ibid* p 49

<sup>82</sup> See letter to the editor “Yppighet och lyx”, *Anmärkaren* 1816 10/4 and *Anmärkaren* 1817 30/11.

<sup>83</sup> “En liten önskan”, *Dagligt Allehanda* 1811:57.

<sup>84</sup> In order to finance a war in Finland, Sweden had been forced between the years 1808 and 1809 to resort to several considerable bank note issues. The consequences were that the nominal value fell while there was a price increase. Because the price level virtually increased in the period 1807-1812, this price revolution created considerable disturbances in the economy.

<sup>85</sup> “Om konsten att bliva rik”, *Anmärkaren* 1824 6/10. According to the Letter to the Editor, the debtor came out of the bankruptcy with a considerable gain, which, after the bankruptcy, allowed him to appear in “a beautiful horse and carriage” before his hungry and ragged creditors. Such fraudulent behavior seems to have been inaccessible to the law because of “insufficiencies in our books of law”.

honorable. According to his study, failures were common, especially because of the inability of the credit market to deal with crises. Åberg (1991) found several entrepreneurs who had been involved in more than one bankruptcy. The possibility of forming joint stock companies in an increasingly small business sector made it easier for entrepreneurs who had become bankrupt to continue their activities if they so desired. Gratzner (1996) found that it had become possible for entrepreneurs to shift debts to creditors by signing for bankruptcy. A generous interpretation of the bankruptcy legislation often made such income transfers possible. Thus, at the turn of the twentieth century, entrepreneurs who wanted to stretch the limits of the rules of the game had the possibility of returning after a bankruptcy with the same activity in the same or new firms. Bankruptcy was in no way a stigma for them. It is, however, unclear how common such a course of action was among entrepreneurs outside Stockholm (Gratzner 1988).

### What came after debtors' prison?

The state represents institutionalized capacity to deal with collective problems in society. By abolishing the system of debtors' prison, the possibilities for the state of intervening were also reduced. Some of the disciplinary and supervisory functions of debtors' prison were now to be taken over by the market. When the Swedish economy grew and became increasingly dynamic and complex in the mid-nineteenth century, old trading traditions that only built on personal trust became less reliable and useful. Merchants and factory owners to an increasing extent made deals with previously unknown people on remote markets. Reformed insolvency legislation around the mid-nineteenth century had not, according to influential Swedish tradesmen and factory owners, been able to create reasonable conditions in the credit area. The entrepreneurs now decided to take the matter into their own hands. An international crisis was the triggering factor. In the fall of 1857, a boom suddenly turned into one of the most difficult business crises that ever affected the world market. The change started in the US where large railway companies and a renowned banking house had become insolvent. When the firm stopped its payments, it led to several trading houses in Hamburg (where Swedish trade and industry got most of its capital at this point in time) going bankrupt. Sweden was now also dragged into the whirlpool. In Stockholm in November, one large renowned firm after another started to fall. It was on November 17 that panic broke out on the Stockholm Stock Exchange after the announcement that the firm Hoare, Buxton & Co in London had stopped its payments (Gårdlund 1947, Andersson 1908).

Large credit losses and bad business cycles resulted in a large need for credit information, i.e. knowledge about debtors. Information was becoming an increasingly important production factor. The increasing need for information led to the emergence of private credit information agencies. Impor-

tant agents in Swedish business life to an increasing extent required information about the economic situation of their business partners. In an economy that was increasingly based on credits with long duration, importers and businessmen always had to evaluate the wholesalers' creditworthiness. These, in turn, had to assess what scope/respite their distributors and retailers were to be allowed. At the same time, these retailers constantly had to evaluate the creditworthiness of their customers (consumption credits). It was against the background of this crisis, when the financial situation of many entrepreneurs was weakened and was only temporarily upheld through an extensive system of bills and loans against a guarantee that the decision of establishing the Stockholm Wholesale Merchants' Association was taken in 1858<sup>86</sup>.

This association started as an association of larger merchants in Stockholm and its surroundings, but soon covered the entire country. The statutes of the Stockholm Wholesale Merchants' Association aimed at improving the credit conditions: "to try to create a better arranged credit system, and both decline and decrease the losses when goods are on loan". Furthermore, the association was to safeguard the creditors' interest in case of bankruptcies and suspension of payment and find information about the solvency of businessmen in the country. A number of representatives that were spread all over the country would, against remuneration, send lists of all businessmen with information about their solvency and evaluations of their willingness to pay. There was a scale of estimations with six degrees of credit, as well as estimations about the size of the business and the reliability of the owner. The wholesale merchants' associations that had been established in different parts of the country merged into an umbrella organization in 1912 – The Central Office for Composition and Bankruptcy Proceedings – with about 530 independent underlying organizations. The members of The Central Office for Composition and Bankruptcy Proceedings consisted of banks, wholesalers and businessmen. Most important in this respect was the Stockholm Wholesale Merchants' Association, which had a network of "information cells", a network that was created by the representatives of the association, and thus the association was able to collect information from all over the country. Informal "black lists" and "spy-books" were created.<sup>87</sup> These were kept at several levels. Merchants made credit evaluations of wholesalers: the latter evaluated retailers who, in turn, evaluated their customers. In these books, longitudinal data on the solvency and fortune as well as the willingness to pay were collected for entrepreneurs and consumers. In these compiled calculations, each individual was graded according to two vari-

---

<sup>86</sup> Thus, the Swedish trend fitted well with an international pattern. Credit-rating agencies emerged at approximately the same time around the middle of the nineteenth century in the US, England, France, Germany, Austria and Sweden (Sandage 2005, Stiefel 1997, 2006).

<sup>87</sup> Such lists are kept in the uncatalogued material section of the Royal Library in Stockholm.

ables – solvency and willingness to pay (Dolck 1901). For each variable, there was a five-point scale according to which each individual could be classified (e.g., punctual payer – doubly impossible payers. For a long time, the legislator did not regulate this activity; firms with the business idea of compiling, centralizing and adapting the information in order to sell it emerged. A classification as being unwilling to pay was stigmatizing, because the individual was prevented from obtaining credit. Credit evaluation had become an increasingly important task on the financial markets. The instruments had now improved but corresponding attempts had been made already in the eighteenth century. The banks' need for prognoses of future credit risks has given support to an international line of business specializing in credit evaluation.

## Summary

The development of the legislation on insolvency has been a long historical process covering several centuries. For long periods, debtors were subjected to severe treatment. Insolvency was often equated to theft from the creditors who usually had the right to the debtor's property and body. The death penalty, servitude, debtors' prison and stigmatizing penalties were still in existence well after the Middle Ages.

We can see some fairly general stages of development in the treatment of an insolvent debtor. First, there is a period when the debtor is treated very severely. In the eldest Roman and Germanic as well as in the Swedish legislation, execution of the person was used as a possibility for the creditor to get possession of the debtor's property by crushing him as an individual. At this stage, debtors were considered thieves and swindlers and the penalties were compulsory.

Next, there is a stage where the legislator alleviated the often cruel and inconvenient regulations for the treatment of a debtor. The debtor as a physical person was spared, but he often ceased to exist as a juridical person. Debtor's servitude and slavery were replaced by custody and prison. Private prisons were eventually replaced by public custody.

Successively, the legislation came to accept that the debtor surrendered his property. This always opened the door to fraudulent proceedings, with special laws for careless or fraudulent debtors. Economically more developed societies thus often reverted to stricter legislations.

The situation for default debtors improved in Sweden when legal systems from Roman law were implemented. However, the use of debtors' prison still played an important part in the latter half of the nineteenth century. Many people were sentenced to debtors' prison for a short period for fairly small amounts of debt. The system applied the greatest pressure on those people who were least able to pay. Up until 1868, about 90% were released

because they could pay their creditors. The main function of the system seems to have been to squeeze out money from the debtor, his or her family and friends, to discipline and stigmatize him or to enforce bankruptcy. After 1868, when a debtor was released from prison when taking an oath, the institution had become obsolete. Debtors' prison, the final remnant of the medieval penal system, disappeared in Sweden in 1879. At that time, the institution had become inefficient, given its goals.

When the system of debtors' prisons disappeared, only fraudulent debtors were penalized according to regulations in the penal law. In my view, this constitutes a shift in paradigms. Since 1879, a person who has become insolvent is not stigmatized by being imprisoned. Entrepreneurial societies learn from failure by giving people a second chance. In the economy of the nineteenth century, business failure became an integral part of economic life. In the middle of the century, resources that had been invested in "failed firms" could be transferred to new firms.

Debtors' prison ceased to exist at a point in time coinciding with the breakthrough of liberalism and freedom of trade in Sweden. In a growing and more complex economy that was increasingly based on credits, there was a larger need for access to credit information and to disciplinary and supervisory instruments. The state withdrew from these tasks, which were taken over by the market. Associations of entrepreneurs created organizations that collected, standardized and centralized this credit information. A debtor who was reluctant to pay or insolvent was stigmatized by being entered on black lists. Credit information was sold to other interested parties and this business idea created an international line of business specializing in credit rating.

## References

### Unprinted sources

- Landsarkivet i Göteborg, Göteborgs stadsfångelses arkiv, GLA/11576
- Landsarkivet i Göteborg. Länsstyrelsen i Göteborg och Bohusläns landskontor, vol EVIIb, fängförteckningar avseende Göteborgs länshäkte från år 1778 och för Göteborgs stadshäkte från år 1776.
- Landsarkivet i Göteborg. Stadsfångelse i Göteborg, Liggare rörande fångar: Journaler över för gäld bysatta personer; D iii ae.
- Landsarkivet i Lund, Kristianstads stadshäktes arkiv, 11046
- Stockholm Stadsarkiv. Överståthållarämbetets kansli, Rapporter och förteckningar över bysatta personer, 1840-1878, E7B: 1.
- Stockholms Stadsarkiv. De äldre fångelsearkiven, Gäldstuguhäktet, Journaler över underhåll åt bysatta, 1834-36.
- Stockholms Stadsmuseum, Polisväsendet, Småttryck.
- Svea Hovrätt. Akter. National Archives, Stockholm.

## Printed sources

- Abrahamsson, P. (1726), *Swerikes rikkes lands-lag, som af rijkens råd blev öfversedd och förbättrat: och af k. Christofer, Swerikes, Danmarks, Norikes, Wendes och Götha konung, palatz-grefwe widh Reen, och hertigh av Beijeren, årom efter C.b. 1442 stadfäst*, Stockholm: Johan Henrich Werner.
- Adamson, R. (1963), *Den svenska järnhanteringens finansieringsförhållanden: förlagsinteckningarna 1800-1884*, Gothenburg: Elander.
- Adamson, R. (1996), "Standards and Judgments in Times of Crisis: Familiar and Unfamiliar Short Studies Concerning the Period from 1815 to 1818", in Hedström, P. and Köhlhorn, E. (eds.) *Sociology through Time and Space. Essays in Honour of Carl-Gunnar Janson*, Stockholm: Dep. of Sociology, University of Stockholm.
- Agge, I. (1934), "Några drag av det svenska konkursförfarandets utveckling", *Minnesskrift ägnad 1734-års lag*, Stockholm.
- Albinsson-Bruhner G. (2004), *Att lyss till en sträng som brast*, Stockholm: Ratio.
- Alexander, J. (1891), *Konkursgesetze aller Länder der Erde. Mit vergleichender Übersicht*, Berlin: Puttkammer & Mühlbrecht.
- Amira von, K. (1913), *Grundriss des germanischen Rechts*, Strassburg: Verlag von Karl J. Trübner.
- Andersson, B. (1996), *Från fästningsstad till handelsstad 1619-1820. Göteborgs historia. Näringsliv och samhällsutveckling*, Stockholm: Nerenius & Santerus förlag.
- Andersson, B. (1977), *Göteborgs handlande borgerskap. Ekonomiska förhållanden för handlandegrupperna i Göteborg 1806-1825*, Gothenburg: Department of Economic History, University of Gothenburg.
- Andersson, H. (1998), "Androm till varnagel..." *Det tidigmoderna Stockholms folkliga rättskultur i ett komparativt perspektiv*, Stockholm: Almqvist & Wiksell International.
- Andersson, H. and Gratzner, K. (2002) "Stigmatization and Insolvency in Sweden", paper presented at the *Social Science History association World Congress*, St. Louis, October 25-27, 2002.
- Andersson, T. (1908), *Stockholms köpmannaförening 1858-1908. Minnesskrift*. Ivar Haeggströms, Stockholm: Boktryckeri AB.
- Ayotte, K.M. (2007), "Bankruptcy and entrepreneurship: The Value of a Fresh Start", *Journal of Law, and Economics and Organization*, 2007:23.
- Baltensperger, E. (1987), "Credit", in Eatwell, J., Milgate, M. and Newman, P. (eds.), *The New Palgrave. A Dictionary of Economics*, London/New York: Palgrave Macmillan and Stockton.
- Berghoff, H. (2005), "Markterschliessung und Risikomanagement. Die Rolle der Kreditauskunfteien und Rating-Agenturen im Industrialisierungs- und Globalisierungsprozess des 19. Jahrhunderts", *Vierteljahresschrift für Sozial- und Wirtschaftsgeschichte* (VSWG).
- Bergström, C. (1771), *Tankar om Svenska Huhålls-Lagfarenheten. Om gäldbundna personers otillräckliga egendoms afhändande, till flera borgenärers förvaltning och betalning*, hvilka med den Vidt- Lagfärne Juridiska Facultetens Samtycke i Uppsala, under Facult. N. V. Decani Jurisprud. Oeconom. Och commerc. Professorens Doctor Pehr niclas Christiernins inseende, tryckt hos Johan Edmann, Uppsala 1771.
- Beyer von, H. (1850), *Theorie des Concursprocesses*, Munich.

- Bressler, S. (2004), *Schuld knechtschaft und Schuld turm. Zur Personalexekution im sächsischen Recht des 13. – 16. Jahrhunderts*, Berlin: Dunkcker & Humblott.
- Brisman, B. (1908), *Realisationsfrågan 1808-1934*, Gothenburg.
- Broberg, O. (2006), *Konsten att skapa pengar. Aktiebolagens genombrott och finansiell modernisering kring sekelskiftet 1900*, Meddelanden från ekonomisk historiska institutionen, Gothenburg: Department of Economic History, School of Economics at University of Gothenburg.
- Broomé, G. (1888), *Studier i Konkursrätt särskildt med afseende på svensk rätt*, Lund: Thesis.
- Brottsbalken den 21 december 1962 samt översikt över ändringar i strafflagen under åren 1865-1960 jämte hänvisningar till Nytt Juridisk Arkiv*. Stockholm: P.A. Nordstedt & Söners förlag (1963).
- Brown, R.L. (1996), *A History of the Fleet Prison, London: The Anatomy of the Fleet*, Lewiston, NY: Edwin Mellen.
- Conant, C.A. (1899), "The Development of Credit", *The Journal of Political Economy*, 7 (2).
- Conrad, H. (1966), *Deutsche Rechtsgeschichte*, 2 Vol, Karlsruhe: C. F. Müller.
- Contribution to the official Swedish statistics, *Rättsväsendet, 1837-77. Överståthållarens underdåniga berättelse*, Statistics Sweden, Series B, Juridical system.
- Contribution to the official Swedish statistics, *Rättsväsendet, Arbetsredogörelser samt särskilda uppgifter angående inteckning och lagfart, utsökningsmål 1861*, Statistics Sweden, Series B, Juridical system.
- Corps de Droit Commercial Francais. Paris 1841, p 208-09, in *Underdånigt Betänkande till Kongl. Maj:t, angående Kreditförhållanden och Låne-anstaltens ordnande avgivet den 8 april 1853 af särskildt i Nåder utsedde Comiterade*, Stockholm: Nordstedt & Söner (1853).
- Dolck, J.A. (1901), *Betygs-bok å tröga och icke betalande personer inom Gefle-Östersunds distrikt tillägnad köpmän och hantverkare*, Sundsvall.
- Elers, J. (1801), *Stockholm*, Stockholm: Nordström
- "En blick på Stockholms fängelser" (A glance at Stockholm's prisons), *Allmänna Journalen* no 289, 1820-12-12.
- "En liten önskan", *Dagligt Allehanda* 1811:57.
- Erler, A. (1978), "Schuldhaft", *Handwörterbuch zur deutschen Rechtsgeschichte*, Band II, Berlin.
- Erler, A. (1978a), "Schuldknechtschaft", *Handwörterbuch zur deutschen Rechtsgeschichte*, Band II, Berlin.
- Feer, R.A. (1961), "Imprisonment for Debt in Massachusetts before 1800", *The Mississippi Valley Historical Review*, 48 (2).
- Folkets röst*, Newspaper, Stockholm, Royal library.
- Ford, R. (1923), "Imprisonment for Debt", *Michigan Law Review*, 25 (1).
- Franzén, B. (2006), *Folkungatidens monetära system. Penningen mellan pest och patriarkat 1254-1370*, Acta Universitatis Stockholmiensis, Stockholm Studies in Economic History 50.
- Friedman, L.M. (1969), "Legal Culture and Social Development", *Law and Society Review*, 4 (1), pp 29-44.
- Förklaring om Fallisse mang den 23 Martii 1770.
- Förteckning över alla Kongl. Placater, Förordningar, Påbud, Resolutioner, Privilegier, Manifeste, Fredsfördrag, Relationer, Domar och andra Almänne Handlingar som från år 1522 till och med år 1750 på Kongl: befallning af trycket*

- serskilt utgågne äro.* Allmenheten til tjenst framgifwen af Johan Pehr Höppner. Tryckt i Hist: regni Tryckerie, Stockholm (1754).
- Gessner, V. (1978), *Die Praxis der Konkursabwicklung in der Bundesrepublik Deutschland: eine rechtssoziologische Untersuchung*, Cologne: Bundesanzeiger.
- Gratzer, K. (1998), *Snabbmat i automat (Fast Food in Vending Machines)*, Stockholm: SNS.
- Gratzer, K. (2001), "The Fear of Failure. Reflections on Business Failure and Entrepreneurial Activity", in Henreksson, M., Larsson, M. and Sjögren, H. (eds.) *Entrepreneurship in Business and research. Essays in Honour of Håkan Lindgren*, Stockholm: EHF.
- Gratzer, K. (2006) "Insolvent, Thus a Swindler? The Insolvency Law and Imprisonment for Debt in Sweden", paper presented at *XIV International Economic History Congress in Helsinki*, 21-25 August 2006.
- Grimm, J. (1881), *Deutsche Rechtsalterthümer*, Göttingen: Dieterische Reichsbuchhandlung.
- Gårdlund, T. (1947), *Svensk industrifinansiering under genombrottsskedet 1830-1913*, Stockholm: Svenska bankföreningen.
- Göta Hovrätts cirkulär; 1830 03 12.
- Göta Hovrätts universal; 1770 03 02.
- Göta Hovrätts universal; 1802 11 23.
- Göteborgs landsarkiv, Överskultens i Göteborgs arkiv, E II:11, utdrag ur protokollet hållet med Carl Odenius borgenärer å Göteborgs Rådhus den 19 februari anno 1830.
- Hadorph, J. (1687), *Björköa rätten: thet är then äldsta stadz lag i Sweriges rjke, först brukat i Björköö många hundrade åhr sedan; men av Byrger Järl sedermera något tillökt åhr 1254*, Stockholm, Royal Library.
- Hammar-sköld, N. (1915), *Åtten Hammarskjöld : personhistoria och tidsbilder från tre hundra år*, Stockholm: Cederquist.
- Hassler, Å. (1934), "Utsökningslagen", *Minnesskrift ägnad 1734 års lag*, Stockholm: Isaac Marcus Boktryckeri-AB.
- Hellman, F. (1905), "Das Konkursrecht der Reichsstadt Augsburg", *Untersuchungen zur Deutschen Staats- und Rechtsgeschichte*, 76. Heft, Breslau.
- Hoiningen von, H. (1878), *Beiträge zur geschichtlichen Entwicklung des strafbaren Bankerutts in Deutschland*, Bonn: Universitäts-Buchdruckerei von Carl Georgi.
- Holmbäck, Å. and Wessén, E. (1966), *Magnus Erikssons stadslag. I nusvensk tolkning*. Lund: Skrifter utgivna av Institutet för rättshistorisk forskning.
- Holmbäck, Å. and Wessén, E. (1979), *Svenska landskapslagar: tolkade och förklarade för nutidens svenskar. Äldre västgötalagen, Yngre västgötalagen, Smålandslagens kyrkobalk och Björköarätten*, Stockholm: AWE/Geber.
- Hoppit, J. (1987), *Risk and Failure in English Business 1700-1800*, Cambridge: Cambridge University Press.
- Hunt, E.S. and Murray, J.M. (2000), *Företagande och handel i det medeltida Europa 1200 – 1550*, Stockholm: SNS Förlag.
- Hunter, V. (2000), "Policing Public Debtors in Classical Athens", *Phoenix*, 54 (½.), pp 21-38.
- Inger, G. (1997), *Svensk rättshistoria*, Malmö: Liber.
- Inger, G., *Konkurs*, [http://www.ne.se/jsp/search/article.jsp?\\_art\\_id=198520](http://www.ne.se/jsp/search/article.jsp?_art_id=198520) Nationalencyklopedin (2002-02-19).

- Jarrick, A. and Söderberg, J. (1994, eds.), *Människovärdet och makten*, Stockholm: Stockholmia förlag.
- Jarrick, A. and Söderberg, J. (1998), *Odygd och vanära. Folk och brott i gamla Stockholm*, Stockholm: Raben Prisma.
- Johns, R.G. (1910), "Babylonian Law", *Encyclopedia Britannica*, Reproduced in the Yale Law School Avalon Project, <http://www.yale.edu/lawweb/avalon/medieval/hammenu.htm> (2008-02-19).
- Jones, W.J. (1979), "The Foundations of English Bankruptcy. Statutes and Commissions in the Early Modern Period", *Transactions of the American Philosophical Society*, 69 (3), pp 1–63.
- Justitiedepartementet. *P.M. med förslag till vissa ändringar i brottsbalkens bestämmelser om gäldenärsbrott*, Ds Ju 1975:3.
- Justitiestatsministerns Underdåniga berättelse om Brottmålen och civile Rättegångs ärendena i Riket. Rättsväsendet. Äldre följd.
- Kaser, M. (1955), *Das römische Privatrecht. Das altrömische, das vorklassische und klassische Recht*, Munich: C.H. Beck'sche Verlagsbuchhandlung.
- Kilpi, J. (1998), *The Ethics of Bankruptcy*, London: Routledge.
- Knight, F.H. (1921/2006), *Risk, Uncertainty and Profit*, London: Dover Publications.
- Kongl Maj:ts plakat och påbud den 14 mars 1699
- Kongl Maj:ts Stadga 10 juli 1669
- Kongl Resolution uppå N.N. Suppliquer d 16 maj 1689
- Kongl. Maj:ts brev den 14 oktober 1689
- Kongl. Maj:ts brev till Svea hovrätt; 1843 04 26.
- Kongl. Maj:ts brev; 1757 dec 20.
- Kongl. Maj:ts förklaring över Uts. B över V Cap Uts.B; 1756 05 19.
- Kongl. Maj:ts förklaring; 1757 12 20.
- Kongl. Maj:ts förklaring; 1787 02 26.
- Kongl. Maj:ts förordning; 1757 10 12
- Kongl. Maj:ts förordning; 1799 jan 29.
- Kongl. Maj:ts förordning; 1822 05 31.
- Kongl. Maj:ts förordning; 1835 03 07.
- Kongl. Maj:ts förordning; 1842 10 29.
- Kongl. Maj:ts förordning; 1845 05 19.
- Kongl. Maj:ts kungörelse; 1841 06 10.
- Kongl. Maj:ts nådiga brev 1802 11 22.
- Kongl. Maj:ts resolution från 1685 den 9 november
- Kongl. Maj:ts resolution och förklaring över samtliga ständernas fullmäktiges besvär, given den 3 oktober 1675,
- Kongl. Maj:ts resolution och förklaring, av den 28 maj 1687
- Kongl. Maj:ts svar till Svea hovrätt av d 7 oktober 1687
- Kongl. Maj:ts Placat och Påbud, angående upsåtelige Fallissementer och deras straf som ther med betrådade warda. Stockholm then 14 Martii 1699.
- Kongl. Maj:ts Stadga, *Öfver alla Executioner i gemen*. Tryckt hos Niclas Wankijst, Kongl. Booktryckeriet, 1669, Stockholm, Royal Library, Uncatalogued Printed Material Section.
- Kongl. Resolution och förklaringen den 28. maj 1687 och stadgan av den 14 mars 1699
- Kongl. Resolutionen angående exekutioner mm d 29 november 1688

- Kongl. Stadgar- Förordningar, Brev och Resolutioner. 1696, Stockholm, Royal Library, Uncatalogued Printed Material Section.
- Krigskollegii cirkulär; 1799 01 29
- Laguskottets betänkande 1859/60, No.41
- Lantmanson, I.S. (1866), "Om Concursbo, dess begrepp, uppkomst och omfattning", *Uppsala universitets årsskrift*, Uppsala: Edquist & Berglund.
- Larsen, B.G. (1994), *Stadgelagstifningen i senmedeltidens Sverige*, Lund: Rättshistorisk bibliotek.
- Lester, M. (1995), *Victorian Insolvency. Bankruptcy, Imprisonment for Debt, and company Winding-up in Nineteenth-Century England*, Oxford: Clarendon Press.
- Queenstone, L., Mellen, E. and Edwin, R. (1952), "Imprisonment for Debt in America: Fact and Fiction", *The Mississippi Valley Historical Review*, 39 (1).
- Löfmarck, M. (1982), *Gäldenärsbrotten : tolkning och tillämpning av straffbestämmelserna i 11 kap. brottsbalken*, Stockholm: Norstedt.
- Löfmarck, M. (1991), *Om brott mot borgenärer m m.*, Stockholm: Norstedts juridikförlag.
- Löning, R. (1876), *Der Vertragsbruch und seine Rechtsfolgen*, Strassburg: Verlag von Karl J. Trübner.
- Mann, B.H. (2002), *Republic of Debtors. Bankruptcy in the Age of American Independence*, London: Harvard University Press.
- Manufaktur – Privilegieerne, §.21; 1, 1739 05 29. Stockholm, Royal Library.
- Martinsson, C. (1999) "Från casusperspektiv till culpaperspektiv i obeståndsrätten" ("From a Casus Perspective to a Culpa Perspective in the Insolvency Legislation"), in Gratzner, K. and Sjögren, H. (eds.) *Konkursinstitutets betydelse för svensk ekonomi (The Role of the Bankruptcy System for the Swedish Economy)*, Hedemora: Gidlund, pp 376-389.
- Mathews, B.A. (1994), "*Forgive Us Our Debts: Bankruptcy and Insolvency in America, 1763-1841*", Providence: Department of History at Brown University.
- Michaelis, J.D. (1772/1888), *Mosaïsches Recht*, in Rydin, K. (ed.), *Om konkursförbrytelser enligt svensk rätt*, Uppsala: Almqvist & Wicksell.
- Minutes of Svea Hovrätt, criminal cases, Stockholm, National Archives.
- Modee, R.G. (1746), *Utdrag utur Publique Handlingar, Placater, Förordningar, resolutioner och Publicationer, Som Riksens Styrelse samt inwärtens Hushållning och Färfatningar i gemen, jämväl Stockholms Stad i synnerhet angå. Andra delen till År 1740*, Stockholm.
- Munktel, H. (1936), "Mose lag och svensk rättsutveckling", *Lychnos*, Lärdomshistoriska samfundets årsbok, Uppsala.
- Munktel, H. (1943), "Brott och straff i svensk rättsutveckling", *Det levande förflutna*. Svenska Historiska Föreningens Folkskrifter, 5, Uppsala.
- Müller, L. (1998), *The Merchant Houses of Stockholm, 1640-1800. A Comparative Study of Early-Modern Entrepreneurial Behaviour*. Uppsala: Acta Universitatis Uppsaliensis.
- Myrdal, J. and Söderberg, J. (1991), *Kontinuitetens dynamik. Agrar ekonomi i 1500-talets Sverige*. Stockholm: Almqvist & Wicksell International.
- Neumeyer, K. (1891), *Historische und dogmatische Darstellung des strafbaren Bankerotts unter besonders eingehender Untersuchung der Schuldfrage*, Munich: Schweitzer.

- Nyberg, K. (2005), *Risk, tillit och kreditvärdighet: finansiella nätverk I 1700- och 1800-talets Stockholm*, paper presented at the Economic History Congress Umeå.
- Nyberg, K. (2006), *Kopparkungen. Handelshuset Björkman i Stockholm 1782-1824*, Stockholm: Stockholmia förlag.
- Oetker, C.F. (1847), *Beiträge zur Lehre von Concourse*.
- Oförgrifliga och värdsammaste Påminnelser wid det Project til en ny Kongl. Förordning angående Cessions, Concurs, Boskillnads och Urarvamål, som av 8 högt lagfarne och wärdige Herrar och Mån blivwit författadt samt i trycket utgivit, 1772*, Stockholm, tryckt hos Henrik Foug. Royal Library Stockholm.
- Olivecrona, K. (1964), *Konkursrätt: efter föreläsningar av Karl Olivecrona*, Lund: Studentlitteratur.
- Olivecrona, S.R. (1862), *Bidrag till den svenska Concurstagstiftningens historia*, Uppsala: C.A. Leffler.
- Olofsson, S. (2005), *Tillitens gränser – Långivning och sociala relationer i Jämtland 1830 – 1850*, paper presented at the Swedish Historians Meeting, Uppsala 22-24 April 2005.
- “Om konsten att bliva rik”, *Anmärkaren* 1824 6/10
- Orsaken til närwarande talrika bankerotter och medlen att förekomma dem*. Öfverlämnad Patrioternas granskning av en Weldsmedborgare, tryckt i Kongl. AM:ts Boktryckeri, Carlskrona, 1799. Otto Fredrik Pålman. Anförande hos riddarhuset och adeln, den 13 april 1815, Stockholm, Royal Library.
- Perlinge, A. (2005), *Sockenbankirerna. Kreditrealiteter och tidig bankverksamhet Vånga socken i Skåne 1840-1900*, Stockholm: Nordiska museets förlag.
- Poitras, G. (2000), *The Early History of Financial Economics, 1478-1776*, Cheltenham: Edward Elgar.
- Prinz, F. (1985), *Grundlagen und Anfänge. Deutschland bis 1056*, Munich: Büchergilde Gutenberg.
- Riksdagens protokoll vid lagtima riksmötet år 1868. Första kammaren, första bandet, fredagen den 6 mars, p 538.
- “Risk capital markets, a key to job creation in Europe. From fragmentation to integration”, *Euro Papers, European Commission*, 32, Jan 99.
- Robe, M., Steiger, E-M. and Michel, P-A. (2006), *Penalties and Optimality in Financial Contracts: Taking Stock*, Berlin: SFB 649 Discussion Papers, Humboldt University.
- Rosenberg, N. and Birdzell, L.E.R. (1991), *Västvärldens väg till välstånd*, Stockholm: SNS.
- Rydin, K. (1888), *Om konkursförbrytelser enligt svensk rätt*, Uppsala: Almqvist & Wiksell.
- Safley, T.M. (2000), “Bankruptcy. Family and Finance in Modern Augsburg”, *The Journal of European Economic History*, 2000:1, pp 53-75.
- Samling Hwaruti äro under Allmänna Lagens Balkar, Capitel och Paragrapher uptagne sådane til efterlefnad nu gällande Förfatningar och stadgar hwilka antingen ändra eller förklara sielfwa Lagen i åtskillige rum, eller ock angå ämnen, som äga med dem et närmare sammanhang*, tryckt hos Johan Pehr Lind, Stockholm 1807, Royal Library.
- Sandage, S.A. (2005), *Born Losers. A History of Failure in America*, London: Harvard University Press.

- Schulte, F. (1861), *Lehrbuch der deutschen Reichs und Rechtsgeschichte*. Stuttgart: Verlag von Wilhelm Nitzschke.
- Simonsson, A. (2001), *Bland hederligt folk. Organiserat sällskapsliv och borgerlig formering i Göteborg 1755-1820*, Diss., Dep. of History, University of Gothenburg.
- Sjöholm, E. (1988), *Sveriges medeltidslagar*, Institutionen för rätthistorisk forskning Lund.
- Stadgar-Förordningar, Brev och Resolutioner, Stockholm 1696, Royal Library, Uncatalogued Printed Material Section.
- Stiefel, D. (1997), "Geschäftsgeheimnis. Zu den Anfangsschwierigkeiten der Informationsgesellschaft in Österreich im 19. Jahrhundert", in Matis, H. (ed.), *Historische Betriebsanalyse und Unternehmer. Festschrift für Alois Moser*, Wien: Veröffentlichungen der Österreichischen Gesellschaft für Unternehmensgeschichte, vol. 19.
- Stiefel, D. (2005), *Im Labor der Niederlagen. Konkurs-Politik im internationalen Vergleich USA – Europa*, <http://www.marshallplan.at/labor.pdf> (2007-10-29).
- Strindberg, A. (1879/1976), *The red room: scenes of artistic and literary life*, London: Dent.
- Strömberg, T. (1955), *Egendomsbrotten i huvuddrag*, Lund: Gleerup.
- Sundin, J. (1992), *För Gud, Staten och Folket. Brott och rättskipning i Sverige 1600-1840*, Lund: Skrifter utgivna av Institutet för rätthistorisk forskning.
- Svea Hovrätts brev; 1756 maj 19.
- Svea Hovrätts brev; 1770 02 22.
- Svea Hovrätts universal; 1810 02 01.
- Svensk författningssamling 1842 No 39.
- Svensk författningssamling 1868 No 24.
- Svenson, S. (1904), *Kort historisk beskrivning öfver Marstrands stad samt Carlstens fästning jämte dess byggnad, strider fångvård mm*. Gothenburg: Bonniers.
- Sveriges Rikes Lag Gillad och Antagen på Riksdagen Åhr 1734*. Her. Fougt, Stockholm, 1870.
- Sylvan, N. (1942), *Svensk realistisk roman 1795-1830*, Stockholm: Seelig.
- Söderberg, J. (1993), *Civilisering, marknad och våld i Sverige 1750-1870*, Stockholm: Almqvist & Wiksell International.
- Söderberg, J. (2000), "Straffmätningen och respekten för människovärdet", in Söderberg, J. (ed.), *Den moderna människans uppkomst och andra uppsatser*, Stockholm: Carlssons.
- Söderberg, J. (2000a), "Views of the Criminal in early Nineteenth-Century Sweden", in Jarrick, A. (ed.), *Only Human. Studies in the History of Conceptions of Man*, Stockholm: Almqvist & Wiksell.
- Till Kongl. Maj:ts och rikets Högloflige Svea Hov-Rätt: Anförande i *Källarmästaren J.A Badelii Concurr-sak, ingifvet den 5 Maj 1827 af Härads-hövding Bel-lander*. Stockholm, tryckt hos Olof Grahn, 1827. Stadsmuseet Biblioteket, Småtryck, Polisväsende.
- Tjerneld, S. (1949), *Stockholmsliv: hur vi bott, arbetat och roat oss under 100 år*, Stockholm: Norstedt
- Tuula, M. (2001), *Rekonstruktion av företag inom insolvenslagstiftningens ramar: en jämförande studie av svensk och amerikansk insolvensrätt*, Stockholm: Skrifter utgivna av juridiska fakulteten, Stockholms universitet.

- Uhlenbruck, W. (ed., 1977), *Einhundert Jahre Konkursordnung 1877-1977*, Cologne: Heymans Verlag.
- Underdånigt Betänkande till Kongl. Maj:t, angående Kreditförhållanden och Låne-anstaltornes ordnande avgivet den 8 april 1853 af särskildt i Nåder utsedde Comiterade*. Nordstedt & Söner, Stockholm, 1853. (*Obidient Consideration for his Royal Highness According Credit Conditions and the Arrangement of Credit Institutions Given the 8<sup>th</sup> of April 1853 by a Gracious Elected Committee*). Stockholm: Nordstedt & Söner.
- Welamson, L. (1961), *Konkursrätt*, Stockholm: Nordstedt.
- Wennberg, L. (1769), *Jämförelse Emellan de senare tiders oerhörda Penningebrist och Kongl. Maj:ts Nådiga Förklaringar af Åren 1767 och 1768. Om Hwad wid Fallissementer Samt Cessions- och Concurstwister bör iakttagas*. Tryckt hos Lars Wennberg, Stockholm 1769. Royal Library, Uncatalogued Printed Material Section
- Wergeland, A.M. (1902), "Slavery in Germanic Society During the Middle Ages", *The Journal of Political Economy*, 10 (2).
- Wessén, E. (1946), *Svenska landskapslagar*, Stockholm: Geber.
- Williams, H.D. (1983), *Private Indebtedness in the District of Columbia: A History 1800-1850*. Diss., Washington: George Washington University.
- Württembergisches Landrecht från 1610.
- "Yppighet och lyx", *Anmärkaren* 1816 10/4 and *Anmärkaren* 1817 30/11.
- Zhou, H. (1995), *A Comparative Analysis of Bankruptcy Procedures and Substantive Mechanisms of Bankruptcy Law*. Law Press Publication.
- Åberg, M. (1991), *En fråga om klass? (A Question of Class?)*. Gothenburg: Diss. Gothenburg University.
- Ågren, M. (1988), "Att lösa ekonomiska tvister – domstolarnas främsta sysselsättning på 1700-talet?", *Historisk tidskrift*, 1988:4
- Ögren, A. (2003), *Empirical Studies in Money, Credit and Banking. The Swedish Credit Market in Transition under the Silver and gold Standards, 1834-1913*, Stockholm: Stockholm School of Economics.
- Öhman, A. (1847), *Om fångvården och dess förhållande till det nya straffsystemet. Några betraktelser över de allmänna orsakerna till brotten, samt medlen att motarbete dem (On the Treatment of Offenders and its Relation to the New Penalty System. Some Reflections on the General Causes of Crimes, and the Measures for Opposing Them)*, Stockholm: Royal Library.