The Foundation of Courts of Appeal in the Swedish Empire

During the 17th century the foundation was laid for the modern state. It was also the time when Sweden emerged as one of Europe’s great powers and an economic and political force to reckon with. Its administrative development was noticeably modern in certain respects while in other ways it was at least equal to that of other countries. Regional governments as well as the central government were re-organised, corporate bodies were established and provincial authorities were set up and filled with civil servants. Axel Oxenstierna, appointed Lord High Chancellor in 1611, was the driving force behind this new order, leading to the re-organisation of all levels of administration, including the meticulously structured chancellor’s collegium, which was carried out in 1626. Under the Lord High Chancellor there were two principal assistant secretaries recruited from the Council of the Realm. The right of decision, in cases where it was the duty of the chancellery to decide, was executed collectively by the two assistant secretaries and Oxenstierna.

The administrative and juridical reforms, which were instituted during this period were aimed at better governmental control over administration and the enforcement of the law. This in turn created an immediate demand for a new kind of administrative knowledge. In response, the Swedish educational system was forcefully enlarged and adapted to the needs of government administration. Prior to this time, the education system had been almost totally devoted to educating the clergy.

Sweden of the 17th century is also characterised as a military state, an aggressive force, which through its foreign policy and military activities came to affect people and nations far beyond the traditional Swedish borders. It was a state in which the needs of the military determined the division of resources and governed the formation of the state.
Dag Lindström and Örjan Simonsson have described how the will to gain increased control over the different parts of society went hand in hand with the endeavour to discipline the subjects of the realm. There was a will to maintain the old order and at the same time to reform and create a new one. Thus the old communities were demolished in order to re-arrange society into a larger system and to enable the state to demonstrate its power, forcing its subjects into submission.\footnote{Rudolf Thunander, \textit{Hovrätt i funktion, Göta hovrätt och brottmålen 1635–1699} (Lund 1993) p. 1, 3}

The principal goal for all these co-ordinated actions was to increase state control over all parts of society. Power was to be centralized so as to give the state an increased influence over production and administration, as well as on its subjects by determining their values, thoughts and religious beliefs. This was not only the case for Sweden but also for the provinces on the other side of the Baltic, which were to be re-organised in accordance with the Swedish pattern. The state apparatus in the Baltic provinces did not, however, operate under conditions similar to those found in Sweden/Finland. Swedish society was marked by a strong central administration, which sought to be directly related to its subjects. In Estonia, Livonia and Ingermanland it was the nobility that held those functions, which were exercised by the central power in Sweden.

My research aims to investigate how Sweden integrated its inhabitants in the Baltic provinces during the 17th century. The investigation is made from a juridical perspective in association with the emergence of the courts of appeal during the great power era. Although development of the juridical system is the focus of the research, it is necessary to present it against the background of the Svea court of appeal (founded in 1614) and the court of appeal in Dorpat (1630). Both courts were linked in part to the state, fulfilling important functions within the state’s ambition to integrate.

This research effort is linked to the project \textit{State, Towns and the integration of society: The Swedish Baltic dominions and the Baltic Sea region during early-modern times}. This project is based on a model through which the process of integration during the formation of the state is to be studied on three interactive levels:

1. Expansion of the international economy and the interaction of states with regard to security policies.

\footnote{Dag Lindström and Örjan Simonsson, \textit{Fru Justitia i statlig tjänst. From: Makt och vardag} (Stockholm 1993) p. 112f}
2. Co-ordination and standardisation of social organisation and the organisation of commercial and industrial life as well as exploitation of economic and social resources.

3. Social integration.

I will examine the co-ordination and standardisation of social organisation and administration on the basis of juridical material, which suggests that an investigation of the emergence of the courts of appeal is of vital importance for comprehension. However, the primary focus of my investigation will be the social integration, i.e. that the population was persuaded to support the order of society and the political system. Such support was needed to keep the large Baltic dominions together as well as to continue the process of state formation and the establishment of a strong central power over the whole territory.

In my investigation I have concentrated on the procedures of the different courts of appeal of this Baltic empire. This is done by transverse investigations of Svea and Dorpat appeal courts using their protocols and acts as source material. Questions used in the investigation include how certain categories of crime were judged and punished in the different regions? Are there differences and/or changes over time in different parts of the realm and if so, what was the reason for this? Did the same categories of cases appear in the different courts? Were there differences in punishment for perpetrators depending upon whether they were of Swedish, German or Baltic origin? To give a gender perspective to the research, a category of crime was chosen which could be perpetrated by both women and men.

Max Engman writes that historical research, until the breakthrough for social history, has often studied marginal groups as a way of understanding society as it is society, which defines who is considered a criminal, which in turn tells us something about society. This reflects the idea that you find out a lot about the norm-setters by looking at the norm-breakers: by studying the juridical system and practice, i.e. the courts’ behaviour in relation to crime, justice and punishment, it is possible to acquire interesting knowledge about society as a whole. By investigating the sentencing of the two courts of appeal during select periods of the 17th century, some information can be found to indicate endeavours of the Swedish state to adapt and standardise the provinces of the Baltic hegemony.

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3 Max Engman, *Brott, rätt och straff: Historisk tidskrift*, Finland 1 1994 årg. 79
Reorganisation of the juridical system

At the very least, the administrative measures carried out during the period of the 17th century contributed towards what has been referred to as the juridical revolution gaining momentum in Sweden. This meant that there was a shift from the local administration of justice, the aim of which was to settle conflicts and to reintegrate criminals, to the administration of justice by the state, professionally administered and controlled, with punishments adapted according to the severity of the crime. By the year 1700, the grip of the state on the judicial system was tightened to the point where the country was progressively on its way towards a professionally administered and centralised state.4

After radical reformation the courts were arranged into a developing system of control. The establishment of the courts of appeal was a last significant step in the centralisation of the judicial system. Their emergence was of direct importance to the activities of the district courts and magistrate courts which were placed directly under the control of the courts of appeal. The courts of appeal took over decisions in matters relating to both the interpretation of the law and serious criminal cases. Gradually more and more of their members were educated in law and subsequently took control of the judges’ seats of the lower courts.5

With this procedure there eventually developed a greater degree of standardisation in legal matters between the district courts and the magistrate courts. These courts increasingly made decisions according to the law, thereby reducing opportunities for the lower courts to pardon criminals and to adjust punishment to what they determined to be reasonable. This applied primarily to the more serious crimes where the district courts and the magistrate courts were always compelled to impose the death penalty when the law so required. This punishment was not to be meted out before the case was reviewed by the court of appeal, which in many cases would mitigate the sentence. In this way, the court of appeal and the King reserved the right to show clemency and mercy. Previously this had been an important part of the activities of the lower courts.6

An attempt had already been made at the end of the 16th century to create a type of superior court but the logistics of gathering all the judges together at one time proved to be too difficult. Moreover, it would have been impossible, in a

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4 ibid. p. 285
5 ibid. p. 4, 6 and 285. see also David Gaunt, *Utbildning till statens tjänst, en kollektivbiografi av stormaktstidens hovrättsauskultanter* (Uppsala 1975)
6 *Fru Justitia i statlig tjänst.* p. 108f
short period of time, to try all the cases from every province. In 1604 king Karl IX put forward to the council a proposal for rules of procedure and process, which applied to the conduct in court cases at the royal court. Only the King was to have the power to oppose a court of appeal sentence. But Karl IX met with complete opposition by the council and his plans for a superior court were laid on ice. The idea, however, had been formed and it was later completed when Gustaf II Adolf came to power.

The foundation of the Svea court of appeal
As early as 1850 Johan August Posse, in his *Bidrag till svenska lagstiftningens historia* (*Contribution to the history of Swedish legislation*), describes how Gustaf Adolf, upon his return from the Danish war, took measures to arrange legislation. At the Riksdag (Parliament) on 22 January 1614 the king put forward a proposal on articles of court proceedings. In the introduction it was stated that law and right had been practised in an unsuitable manner, which was caused by the district courts and magistrates not being especially well respected or well managed. Furthermore the peasantry were bringing complaints about sentencing to the royal court on a daily basis.

The suggested regulations meant that order was to be brought into the activities of the lower courts in an effort to re-establish their reputation. Involvement by the executive in the powers of the courts was prohibited and a new form of execution of the king’s court-rulings was laid down. Since the king could not himself be present at all the proceedings, there was to be a royal court of appeal in Stockholm. Whether the king was present or not, the court was to pass judgement in the king’s name.

The ordinance of Gustaf Adolf was published and confirmed as law. According to Posse the king himself had said that it was not his intention to change the foundations of the Swedish court establishment. Instead he wanted to restore the reputation of the courts and reform the Supreme Court to harmonize with the times. The court of appeal immediately took the most prominent position even though its first activities bore witness to the same protracted disorder as it dis-

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7 Johan August Posse. *Bidrag till svenska lagstiftningens historia* (Stockholm 1850) p. 12f
8 ibid. p. 13
9 ibid. p. 36f
10 ibid. p. 36f
11 ibid. p. 43 and 52f
played previously. It was a court with educated personnel that was always at hand so that no one had to feel himself as being without legal rights. The force of the law would now be restored and order in the legislation carried through.\textsuperscript{12}

The Svea court of appeal was established as a superior instance, which amongst other aims was to end the chaotic circumstances, which were said to have been the norm. This was to be accomplished by creating new forms for the execution of the highest court authorities. Prior to this a royal juridical system had been developed during the early middle ages, which had been superior to the popular courts, district courts and magistrates.\textsuperscript{13} According to Stig Jägerskiöld, it often occurred, at the end of the 16th century, that the ruling of the King was given to various, temporarily organised courts. These so called ”royal commissions”, were in use during the 17th century. The object was to develop a more solid, qualified jurisdiction and a control over the activities of the lower courts. In this manner a common European line of development was pursued.\textsuperscript{14}

The role of the king was not clearly defined in the first reform project. The much-debated powers of attorney for the Svea court of appeal were issued in 1614, stating that the court of appeal was to pass ”the king’s verdict”. Accordingly, the old right to appeal directly to the king disappeared and a prescribed order of instances was established. Now, a case would first have to be heard by a district court or a magistrate court before it could be brought to the king, or ”the revision”. According to the fundamental acts, the purpose behind the emergence of the court of appeal was to set in place a socially responsible piece of legislation and to safeguard the principle of equality before the law.\textsuperscript{15}

Many pictures of the function of the reformed Swedish juridical system of the 17th century have been presented and the question of whether the intentions of its creators were fulfilled has produced many positive answers. Jägerskiöld, for instance, reminds us how some have considered the establishment of the Svea court of appeal to be a ”lucky throw” in that it became an ”extremely valuable instrument for the dispensation of justice and the development of the juridical system”.\textsuperscript{16} Others have seen the establishment of the courts of appeal as the most

\textsuperscript{12} ibi. p. 53. See also Gaunt in respect of the education of court of appeal auditor.

\textsuperscript{13} Stig Jägerskiöld, Rätt och rättsskipning i 1600-talets Sverige i: Den svenska juridikens uppbloomstring i 1600-talets politiska, kulturella och religiösa stormaktssamhälle. Red. Göran Inger (Uppsala 1983) p. 217

\textsuperscript{14} ibid. p. 218

\textsuperscript{15} Thunander p. 286

\textsuperscript{16} jägerskiöld p. 217
important development in the area of judicial institutions. The strengthened grip of the state on the juridical system contributed towards an increased control and marked unity of the realm and uniformity in the interpretation of law, which implied a greater legal safety for individual citizens.\(^{17}\)

**Organisation and activities**

Thus the emergence of the Svea court of appeal was an important part of the reform of the judicial system, which the new government continued to develop. As the king’s court, it was charged with not only applying the law, but also to be an instrument for supervision and control of all lower courts. The organisation and activity of the court of appeal were governed by two basic documents: the legal proceedings ordinance of 1614, wherein it was designated the King’s court and highest judgement, and the 1615 legal proceedings process, which was founded on the ordinance and contained explicit regulations on the composition, the scope and the manner of its activities, the order when a case was brought before the court and finally the ultimate execution of the verdicts. Both documents contained specific information regarding how the lower courts should be supervised.\(^{18}\) The Chancellor was given a precise mission as the highest civil servant in the administration of justice. By his side, the Chancellor was later to have a number of judges of appeal, four of whom were to be councillors of the realm, five belong to the nobility outside the council and five from the commoner’s estate.

The court of appeal, however, was characterized not only by being created as a permanent institution with permanent office positions but also by being organised as a collegium, the first of its kind in Sweden.\(^{19}\)

Posse describes how the court of appeal was to revise all the books of verdicts of the realm to examine whether any of the lower courts’ judges had passed an unfair sentence and if so, that judge was to be prosecuted at the court of appeal. Matters relating to life and death were to have a thorough examination after which the court of appeal was to report its findings to the king. If the king was abroad, the court of appeal could immediately act upon its findings or use its prerogative of mercy. Otherwise the court of appeal could not pardon anyone; that was for the king only. In point 17 of the ordinance it was described how heinous

\(^{18}\) Thunander p. 9f and p. 46 and Posse p. 44
\(^{19}\) Petrén p. 52
crimes, such as incest, sexual intercourse with an animal, rape, murder, infanticide, robbery and manslaughter, were not to be left for too long before carrying out the punishment. If there was a confession, the sentence could be enforced without the consent of the court of appeal. In these cases the court of appeal would make a revision afterwards. Posse also points out that the court of appeal was to be the court of first instance for nobility, as ”no Nobleman should be brought to justice before anyone lesser than his peers” and all matters dealing with the life, honour and goods of a nobleman should only be investigated and judged by ”our Royal Court of Appeal”.20

Under this system, King Gustaf Adolf kept his position, in regard to new trials, of the sentences of the court of appeal. It can be said that the court of appeal and the king jointly executed the highest power of the judicial system. The unity of the highest instance was not yet disarranged. These conditions did not last long and the Svea court of appeal very rapidly lost its character of being the highest court when a number of courts of appeal were created. The Svea court of appeal became equal to these as a superior instance for district courts and magistrates courts. The character of the court of appeal as an intermediate instance was now very clear. One contributing factor was the introduction of a new juridical remedy (beneficium revisionis in 1662), which provided that a dissatisfied party in a civil suit was able to carry his case from the court of appeal to the king.21

The lower courts and the courts of appeal constituted an administration, the task of which was to execute the decisions and apply the ordinances, which the King in Council had issued. As far as civil cases were concerned, the court of appeal was placed in a hierarchical order between the king, with his ultimate powers, and the lower courts. In criminal cases however, there was no juridical remedy that corresponded to beneficium revisionis for civil suits. A death sentence passed by the court of appeal could not be altered by the defendant’s appeal to the king; nothing like a modern appeal existed. On the other hand, the court of appeal could reverse a death penalty passed by a lower court and substitute another sentence in its place.22

Only at the end of the 17th century was the practice of revision enlarged to include criminal sentencing. But the king had retained the right to pardon even prior to this and some criminal cases were always to be revised by him.

20 Posse p. 38 and 49 and Thunander p. 220 and 274
21 Posse p. 50 and Thunander p. 10 and 183
22 Thunander p. 280
In 1630 the king gave the task of ”revision authority” to the Council. After the death of Gustaf Adolf in 1632, the Council continued to manage the highest juridical position as regency. One difficulty for the Council was the workload from the increasing number of revision cases.\(^\text{23}\) For appearances, the king kept his task of being the highest caretaker of the law but in reality it was the Council that took on the character of being the highest court. In many ways this new order implied a shake-up of the juridical system and possibilities for an increased and more regulated control of the activities of the lower courts. A more systematic archive was created since the lower courts had to deliver yearly transcripts of their records to the court of appeal. The most important of this material is generally preserved as from the beginning of the 17th century.

As early as 1642, Axel Oxenstierna had proclaimed that if the number of revision cases continued to rise, neither the King nor the Council would have enough time for them. He suggested the introduction of a special court of revisions. There was tension between the desiderata to place the highest juridical authority in a court independent of King and Council and the wish of the monarch to act as the highest judge of the realm. In one corner were those who hoped for a supreme court dominated by jurists. In the other, represented by Axel Oxenstierna, those who insisted on the monarch keeping his influence over the juridical activities. Later Oxenstierna changed his mind and said he could accept the idea of a special collegium for revision with the Chancellor as president.\(^\text{24}\)

A collegium for revision never materialised. Instead, in 1647, it was decided that the revision cases were to be handled by a special secretary for revision within the chancellery. During the regency of Karl XI, the trend was towards the creation of an independent court for revision, for which a drafting committee would be developed as a lower judicial revision. However, the separation of the highest jurisdiction from the king and council did not happen. Instead, there was a partitioning of the council into two departments, one of which was the judicial revision\(^\text{25}\) which, at the end of the 17th century, finally provided the realm with a firm order of instances within the judicial system.

The Svea appeal court, however, continued to be of a higher dignity than other courts of appeal. For a long time after the creation of these other courts of appeal

\(^{23}\) Jägerskiöld p. 220
\(^{24}\) Jägerskiöld p. 220f
\(^{25}\) ibid. p. 223
the parties involved wished for their cases to be decided by this Stockholm court of appeal.\textsuperscript{26}

**More courts of appeal**

The Svea court of appeal very quickly lost its character as supreme court. In the years 1623 to 1635 new courts of appeal were established in Turku, Dorpat and Jönköping. The Svea court of appeal became equal to these as a superior instance for district courts and magistrate courts. The character of the court of appeal as an intermediate court was by now very clear.

In the process of establishing further courts of appeal, Gustaf II Adolf recognised that only one court of appeal in Stockholm would not be able to replace the so-called "Räfsteting" (joint courts) in every district. It was true that the supreme authority should be one for the whole of the realm but the object of re-establishing the faltering reputation of the lower courts had not yet been fulfilled. Had these courts been restored to their original order and their organisation improved, it would have been unnecessary to establish other courts of appeal. The lower courts could have been re-organised in accordance with older legislation but the need for additional courts of appeal became obvious as the Svea court of appeal was unable to handle the increased case load on its own. The original purpose of the court of appeal had been, amongst others things, to set a good example by its sentencing, something that had been toned down with the creation of the new courts of appeal.\textsuperscript{27}

**Turku and Jönköping**

The Turku court of appeal was created, according to its instructions of 15 June 1623, because it was cost prohibitive to pass on important matters of law to the court of appeal in Stockholm: the cost was often too high and the journey too long for the individuals involved. For this same reason, a court of appeal was created in Jönköping in 1634. The trial ordinance and the trial process were also the foundation of their activities. The courts of appeal were responsible not only for judicial matters but also as a supervising authority in relation to the lower courts within their jurisdiction. It was meant for these courts of appeal to have the same powers as the court in Stockholm, but since they could not have the same close

\textsuperscript{26} Petrén p. 44
\textsuperscript{27} Posse p. 51 and 62
co-operation as that which had been between the king and the Svea court of appeal, the original intentions for the court of appeal were lost. Instead the courts of appeal functioned as a type of superior court, while the jurisdiction of the king was handled by the king and council.28

**Dorpat**

It was clear at an early stage that opinion differed in regard to the relationship between the acquired provinces and the Swedish Crown. The alternative of incorporation, which presupposed uniformity with Swedish law, met with strong protests from the Swedish nobility. For egotistical reasons pertaining to their status, the nobility argued that the provinces should occupy a place of autonomy, i.e. to keep their own parliament, laws and privileges, which were very advantageous to them.

When Livonia was adopted as a Swedish province, the government had to rearrange the administration of the province to be more in conformity with the Swedish system of administration. Reforms were carried out primarily in relation to the judicial system with a court of appeal for the Baltic provinces being established in Dorpat in 1630. But it took some time before the Swedish central power gained full control. This was due in part to the local Baltic nobility strongly resisting Swedish legislation.29

Alexander Loit writes that the decisive circumstance was the Baltic land-owning nobility being granted extensive privileges when the country became part of Sweden, notably in regard to the domestic government of Livonia. The estates, which had accrued to the Swedish Crown when Livonia was captured were quickly donated. This meant that administrations almost ceased to exist between 1630 and 1680, as there was a shortage in actual objects to administer. Central power was also weakened by the regencies, allowing local land-owning nobility to more easily move their positions forward.30

The Dorpat court of appeal was the highest instance for all courts in Livonia except for the city of Riga, which was under the Svea court of appeal. Estonia also remained outside the jurisdiction of the Dorpat court of appeal. Ingermanland, however, was placed under the Dorpat court as was the island of Ösel in 1661.31 The period following the creation of the court of appeal was marked by a lack of

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28 ibid. p. 50
30 ibid. p. 10
31 Anna Christina Meurling, *Svensk domstolsförvaltning i Livland 1634–1700* (Lund 1967) p. 44
distinctness and certainty in regard to how special cases should be tried. This emerges from the correspondence with the king in council.\textsuperscript{32}

After the 1655–1660 war, the activities of the Dorpat court of appeal resurrected. The king in council gave the Governor General Clas Tott detailed instructions about the supervision of the judicial system.\textsuperscript{33} The task of the Governor General was to see that the administration of the court of appeal was carried out and that its activities functioned properly. He was also given the responsibilities of renovating and maintaining the houses of the court of appeal. The tasks of the lower courts included ensuring that no serious crime was to be withheld from the court of appeal. All crimes had to be punished, which required diligence in seeing that no criminals were to escape justice. Case dockets were not allowed to lag behind and all cases were required to be heard during the two eight-week annual periods when the court of appeal was in session.

Svante Jakobsson emphasizes that the personality of the Governor General was of the greatest importance and wholly decisive for the results of the administration of his office. He needed to inspire trust in the Livonian people, as well as the officials over whom he had supervision, in order to ensure that all levels of the population be obedient, upright, obliging and devoted to himself as the representative of the King of Sweden. Being able to handle the administration was also a vital part of the duties of the Governor General. It was also of importance to see to it that decayed and damaged buildings were properly repaired to remain in use. As such, the primary duty of the Governor General was to make the educational and judicial systems function better.\textsuperscript{34}

**Legislation**

Thus the 17th century was a momentous period for Swedish legislation and Swedish society. The foundations of our present judicial system were laid down in close connection to the great reforms of central and local administration of the realm. This also opened up an opportunity to modernise medieval justice. Scholars have long debated how Swedish legislation developed during the 17th centu-

\textsuperscript{32} ibid. p. 50

\textsuperscript{33} Svante Jakobsson, Överhetens påbud och förbud, Skildringar av förhållandena i svenska provinsen Livland under 1600.talets fyra sista årtionden (Uppsala 1990) p. 20, points 9-11). Obviously, at the writing the instructions for Clas Tott some parts of earlier instructions have been included more or less without changes. (note p.30)

\textsuperscript{34} ibid. p. 29
ry, before the codification of the law of 1734. How did the judges act when written law did not provide guidance and how did they interpret the centuries old texts to be in line with the circumstances of their day?

At the beginning of the 17th century the available sources of legislation were primarily the 250 years old medieval laws: Kristoffer’s law of the realm, Magnus Eriksson’s town laws and, as an eventual addition, provincial laws. These laws were written in an archaic language, they were difficult to interpret and above all they were inadequate. They were meant for a society which was very different from that of the 17th century.35

Changes in law-making and administration of justice during the last two decades of the 17th Century were marked by a desire for uniformity and by Lutheran orthodoxy. When the Commandments of Moses were introduced into law, the injunctions of the Bible came to provide legal justification for the harsh punishments meted out when domestic law was found wanting.

In spite of a desire in leading circles for more modernised legislation, medieval laws were still enforced. In the 17th century several fragmented attempts at law reforms were carried out. On the proposal of Karl XI, a new ecclesiastical law was introduced and a law commission was set up, which was to lead to the law of 1734. The purpose of this was to create legislation common to the realm. The desire for uniformity thus stretched to the conquered provinces, but on the other side of the Baltic, German law was still applied.

The new legislative features of the 17th century were primarily about penal and procedural law. The divine inspiration of the Scriptures, which provided the background for penal law, established the Old Testament as the norm for 17th Century society. This could already be seen in the appendix of Karl IX to Kristoffer’s law of the realm in the year of 1608. Punishment was made more severe for certain sexual offences. Incest, rape and sometimes double adultery (when both parties were married) should be atoned for by the death penalty. In practise the Mosaic punishments were often reduced by the courts of appeal, but under the reign of Karl XI it was tightened and only the king would, in the future, be able to reduce the sentence or grant a pardon.

The influence of civil servants and trained jurists in the legal process increased during the century. Already during the latter part of the 16th century and during

35 Stig Jägerskiöld, Rätt och rättskipning i 1600-talets Sverige i: Den svenska juridikens uppbloemstring i 1600-talets politiska, kulturella och religiösastormaktsamhälle. Red. Göran Inger (Uppsala) p. 225
the 17th century the legal theory of evidence was introduced whereby the court was required to consider evidence in a trial. This led eventually to the abolition of the process of oath-taking in 1695.

In his nationalistic style, typical of the times, Posse writes of how common lineage, language, customs and laws were seen as the natural basis for the unity of the state. The people of the Swedish provinces did not, however, wish to be integrated at the cost of losing their own nationality. Axel Oxenstierna expressed the desire that they be spared this and that they should be bound to Sweden by giving them higher education and just and humane treatment. The conquered countries were not to be forced to keep Swedish law.

In spite of this, in the 1615 process of trial 6 § and in the instruction for the Dorpat court of appeal of 1630, it was determined that the standard for judgment was to be Swedish law and regulations, treatises and decisions of the Realm, as well as by good manners and customs. Even if the aim of Johan Skytte was to introduce Swedish law into Livonia he realised that this could not be done in a short period of time. This meant that Swedish law prevailed. There was no consideration given in Livonia for a poor knowledge of Swedish laws and few attempts were made to adapt them to the special conditions of the province. The instructions for the Dorpat court of appeal was a translation of the 1615 process of trial.

From the beginning of Swedish rule, it was made clear that Swedish statutes and law were to apply in Livonia. There are also later examples of Swedish statutes stating that Swedish law should be applied. The first paragraph of the King in Council declaration in 1668 to the Dorpat court of appeal stated that Swedish law was to be used. This meant primarily the ordinance on trials and the process of trial. It also applied to the other courts of appeal. On every occasion Swedish law had a prominent position in the instructions to the courts of appeal and to the district courts. Apart from these ordinances there is not much to suggest that Sweden tried to form legislation and court administration in a Swedish manner in the Baltic provinces in these times. These decrees had no effect and did not "Swedify" the judicial system during the period up to 1680. In other words, very

36 Posse p. 152
37 Meurling S, p. 45
38 ibid. p. 46
little implies that there was an interest in judicially rectifying Livonia with Sweden-Finland prior to 1680.\textsuperscript{39}

It can be established that the interest of the Crown in introducing Swedish law in Livonia increased during the 1680s and 1690s. A turning point arrived during the 1680s with the establishment of royal absolutism and the great estate reductions, which affected both Swedish and Livonian estate holdings. The central state powers grew within all sectors of public life, judicial system, administration, the organisation of the military, financial administration and the church. This occurred at the expense of local government. The direction of politics in relation to the provinces, which had been introduced by Karl IX in the beginning of the 1600s was now resumed. These politics were marked by an ambition to equalize the differences between the Swedish mother country and its Baltic provinces and to try to incorporate them into the core of the realm. Attempts were made to "Swedify" the local administration and the public life. The Swedish language was to replace German and German public servants who held positions in the Dorpat court of appeal were to be replaced by Swedes.\textsuperscript{40}

Administrative measures were taken to "Swedify" other parts of the Baltic provinces and to "Swedify" Livonia. Ingermanland was separated from the Dorpat court of appeal in 1684 and later placed under the Turku court of appeal. This provided better guarantees that cases from Ingermanland would be tried in accordance with Swedish law.\textsuperscript{41}

With the reduction of estates and the separation of Ingermanland, two reasons disappeared, which had earlier been put forward as the main motive for having Swedish assessors in the court of appeal: that the larger part of estates were held by Swedes and that Ingermanland, which had Swedish laws, was under the Dorpat court of appeal.\textsuperscript{42} In spite of this, half of the assessors had been replaced by Swedes by the middle of the 1690s. The foundation for implementing Swedish law was established.\textsuperscript{43} Requests from the Dorpat court of appeal often led to a Swedish ordinance being introduced and in this way, precedents were created for the use of Swedish laws. Many more ordinances were issued mutually for Sweden-Finland and its provinces during the 1690s. In the 1690s for example, it was often

\textsuperscript{39} Meurling p. 234f, 239
\textsuperscript{40} Loit p. 10 and Meurling p. 211, 243
\textsuperscript{41} Meurling p. 65
\textsuperscript{42} ibid p. 210
\textsuperscript{43} ibid. p. 232
argued that there was to be a commonality between Livonia and the Dorpat court of appeal and Sweden and Sweden’s other courts of appeal. It can be established from the documents of the court of appeal to the King-in Council that Swedish paragraphs were referred to for the execution of sentences in the years 1699 and 1700. The influence from Sweden can be seen as having increased markedly in these years, as compared to the most recently preceding years.\footnote{ibid. p. 240}

There were never any clear directives to the Dorpat court of appeal to use Swedish law and it was permitted to use the old laws of the land during all of the Swedish period. Inquiries as to whether Swedish law was to be used, or previous laws, were made by the court of appeal as late as 1669, which suggests that the ”Swedification” of the use of law had not yet been wholly carried out in the judicial system.\footnote{ibid. p. 274}

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