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Author(s): Matikainen, Olli

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Judges, Law-readers and Malpractice (1560–1680)

In May 1639, a group of local judges were invited to Stockholm to meet with the Council of the Realm. Chancellor Axel Oxenstierna (1583–1654) began their meeting by reflecting on the true calling of a judge, and what such an office entailed.¹

The government understands very well what a difficult office [law-readers] hold, since they must not let their own emotions interfere with how justice is dispensed. There are, however, some who exceed their authority and are not true to their vocation and office.

The meeting with the Council had been called to ease internal unrest in a country that was embroiled in a difficult phase of war abroad in Germany. The chancellor felt irritated that local conflicts were not being resolved effectively enough by the judges. Not only did this abet social unrest, in his opinion, but it added a further burden to the higher levels of administration that already had enough on their hands with the war. According to Oxenstierna, the judges were too ready to ‘press their seal’ on letters to the central government containing “inappropriate claims” by common people. Judges should instead investigate these cases more carefully and hear all the parties equally. As Oxenstierna had hoped for, the appearance of judges with local judicial problems at the level of the Council was rare, and Oxenstierna’s critical comments hardly testify, as such, to any widespread crisis of the Swedish legal system.² This collective reprimand before the Council of the Realm did, however, show the importance of the office of judge. After all, the “welfare of the fatherland depended on their vocation”.

The aim of this chapter is to analyze how the role and status of judges developed in Sweden before the important reforms of 1680, which granted them a life-time tenure. The general concept of ‘judge’ (*domare*) refers here to a person that ‘in practice’ exercises judicial power and judges people according to law and custom in local courts (*ting*) with the help of a local jury (*nämnd*). In Sweden, regional judges were known as *häradshövding*; and the office is mentioned for the first time by the middle of the 14th century, which is a few years before the first law code was compiled for the Swedish realm (1350). By the sixteenth and seventeenth centuries *häradshövding* had

become an office that could be made part of a 'donation.' In practice this meant that an aristocratic office-holder was in charge of the revenues and hired a substitute to take charge of some or all of the court sessions. These substitutes were called law-readers.³

Oxenstierna stressed in his speech the important social role of judges and their constructive agency; and yet this subject has raised surprisingly little interest in historical studies. Nevertheless, Max Weber has written in *Economy and Society* about law being a "craft", and in which he examined legal *honoratiore*s – a group of prestigious people that played a central role in building the legal structures of society;⁴ while Harvard legal scientist, John P. Dawson, published *The Oracles of the Law* in 1968 – a modern classic of legal history in which he compares the position of judges in different legal cultures. Meanwhile more recent research has stepped out of the court rooms and analyzed the agency of judges in the wider context of society, like John McLaren's study of 19th century British colonial judges.⁵

The personal agency of judges has gone largely unnoticed perhaps because the profession of judge was traditionally perceived as a calling, or vocation, to act impartially as an oracle of sacred truth. The Reformation in the sixteenth century strengthened the idea that God sees everything and punishes all crimes that are hidden, and so judges were part of this process of uncovering the truth. Severe crimes like homicide needed to be strictly investigated and punished accordingly. Customary compensation, which was negotiated between the parties, was typical both to accusatory medieval legal culture and reciprocal relationships between kin-groups. During the course of the sixteenth and seventeenth centuries, however, the increasing centralization of the state meant that these customary communal practices became gradually more limited.⁶ It is clear that, if the judge performed his task properly, his agency would also usually remain invisible for later researchers. Olaus Petri's (1493–1552) famous sixteenth century formulation of these principles in "Instructions for Judges" was that the judge "should always have God in his mind".⁷ The Law Commission of 1643, which began to prepare reforms to the medieval code of law, stressed similar ideals; the "judge should have a growing moral reputation".⁸ Mats Pålsson worked for decades as a law-reader in Ostrobothnia without any great conflict, and at his funeral in 1685, his obituary suggests the importance of moral conduct above all else.⁹

He took good care of his office,
As many can amply prove;
He lived profoundly engaged with the world,
And did not ask for glory.

Earlier studies on judges from the early modern period have mainly focused on their career, social background, and education. In the 1950s, for instance, Yrjö Blomstedt studied the social background and careers of sixteenth and seventeenth century judges extensively in the Finnish part of the realm. Law-readers were recruited from among bailiffs, scribes, burghers, and even clergymen. Blomstedt showed that the custom of finding law-readers from

among socially lower stratum did not lead to a decline in judicial security as some contemporaries seemed to think.¹⁰ In 1598 Duke Charles (1550–1611) thought that many law-readers were “not even capable of reading or writing”.¹¹ On the contrary, Blomstedt argues that being a law-reader prepared the ground for them then developing into a more professional group of judiciary.¹² This profession began to take shape quickly after the establishment of the Court of Appeal (Svea 1614, Turku 1623), which encouraged the professional education of law-readers. David Gaunt has followed the careers of the seventeenth century judges recruited and trained by the Court of Appeal and describes the professionalization of judges as a successful incorporation strategy by the Crown. Abolishing the law-reader system in the reforms of 1680 was thus made technically easier, since many law-readers could now simply become permanent judges with tenure.¹³

Legal history has touched on the problem of judges’ agency mostly in the interaction between judge and jury in reaching verdicts. Besides handling criminal and civil cases, local courts throughout the Realm of Sweden provided a public forum for the Crown to meet people. Indeed, a typical feature of the legal culture in Nordic countries has been that it strongly involves the common people.¹⁴ It is thus surprising that not so much attention has been paid to how the administration and local community interacted; in other words, how the status and role of the judge was defined in practice. To properly evaluate this, other sources need to be considered than the usual political debates or normative sources of justice.¹⁵

Another factor contributing to the invisibility of judges in the seventeenth century – especially in Finland – is because the minutes for the Turku Court of Appeal dating from that period have been almost completely destroyed.¹⁶ Although records of the local court sessions from then exist, and are well preserved, judges rarely feature in them as actors. This is probably because, if the agency of judges was noticed at all, it was usually when there were accusations of malpractice, and in that case there would have then been an appeal and it would have passed to the higher court. Indeed, Blomstedt describes several cases where the judges were tried for such reasons in the sixteenth and seventeenth centuries, but as a classical historian wanting to build an objective picture of the past, he stresses that the value of these individual cases should not be extended to generalizations about the overall state of judicial ethics or security of the profession. In Blomstedt’s opinion, such accusations and defamations against judges were often caused by personal bitterness.¹⁷ There is, however, some room for rethinking and rereading these cases. As will be shown below, a closer study of these conflicts, even when they proved to be false accusations, can often prove rewarding and reveal something of the usual state of affairs which other studies may often have ignored.

Historical sources of judicial power

There is already substantial literature on how the role of judge developed historically in connection with the shifting balance of political power.

According to the medieval codes of the realm (1350, 1442), regional judges (*häradshöfding*) were elected by the local community in a meeting that was led by the “lawspeaker” (*lagman*) – a position appointed by the king.¹⁸ Some information on the process of electing judges is provided in two letters concerning election of regional judges in the Piikkiö district of Southwestern Finland in 1468.¹⁹ In one letter (from June 1469 and addressed to his “beloved common people”), the king confirms that “you have legally elected Sten Henriksson to be your *häradshöfding*”. However, as the *lagman* and others informed him, Sten Henriksson had not even been nominated as a candidate. A meeting led by local sheriffs (*länsman*) and six peasants from every parish in the district had, nevertheless, pushed for Sten Henriksson to be appointed.

If we were to generalize about the process of electing regional judges in late medieval Finland from this evidence, we might suppose that the letter of the law was followed, and the community played the principal role in electing the judge. Sten Henriksson also seems to have had the typical background for the makings of a regional judge, as he was a member of the local well-respected and wealthy elite.²⁰ Meanwhile in the province of Eastern Savo there was no aristocracy. One ‘judge’ (*domare*) of obviously peasant origins, Pekka Utriainen, is mentioned in a document from Eastern Finland describing the establishment of the parish of Juva in 1442. His appointment as judge has puzzled historians, but perhaps the most probable explanation is again the medieval law code. Utriainen had the status of *häradsdomare*, which meant that, according to the law, he would be nominated by the jury to act as judge if a *häradshöfding* was not available for some reason. Indeed, rather than being the vestiges of an old form of Finnish folk justice, Utriainen’s case seems to illustrate more the way in which the Swedish legal system was consolidating itself, even in remote areas of Finland.²¹

However, during the early sixteenth century, the disintegration of the Union of Calmar and the accompanying political turmoil led to rulers often nominating judges without election or hearing the opinion of local communities.²² The founding father of the modern Swedish state, King Gustavus Vasa (1496–1560), was already maintaining in the 1540s that the right of the ruler to personally nominate judges had “always” been a legitimate practice. The king thought the idea of the local community taking part in electing their own judges was “insane” (*vansinnigt*), although he did graciously promise to consider candidates that might “please” the local peasants too.²³ But this was a hollow promise considering what happened in the 1550s when the locals of Lappee in Eastern Finland tried to remove their unpleasant judge by complaining to the king. Not only did he ignore their request, but when eventually a riot broke out, he ordered two of the peasant leaders to be executed as rebels.²⁴

Throughout the sixteenth century, the Vasa kings offered many posts for the aristocracy within the realm’s military and administration. In fact, one way to reward faithful service to the king was to ‘donate’ offices such as *häradshöfding* to nobles, and this profitable reward soon became eagerly sought after by them.²⁵ A noble awarded such an office was a regional judge only nominally though. In practice, he was simply expected to collect the

revenues and be in charge of an annual judicial session, while all the other tasks were delegated to the law-readers hired for the task. The prospect of attending provincial local courts sometimes two or three times a year in remote areas of the Finnish countryside, and often in difficult conditions, was obviously not attractive to many of the nobility; and yet many sixteenth century *häradshöfding* office-holders sat in on a good number of the sessions personally. The office of Savo regional judge was donated to leading Finnish aristocrat Arvid Eriksson Stålbarm (1549–1620), who held the post from 1583 to 1599. Stålbarm was highly respected among his peers and very busy with many military and administrative tasks, yet he understood that showing up in person at least once every couple of years was vital for building authority among tax-paying peasants and the local community.²⁶

Executive and judicial power often overlapped in Sweden's sixteenth century administration; and it was not really until the new constitution of 1634 that, holding the posts of governor and judge at the same time, for instance, was officially ruled out. Gustav Fincke (d. 1566) was one of King Gustavus Vasa's trusted men, as he was personally indebted to the king for intervening on his behalf in the 1530s, when Fincke had committed a homicide in Denmark. He was thus a military commander, the Crown's bailiff, and the regional judge of Savo province all at the same time from the 1540s to the early 1560s. In 1556, the king's secretary received various complaints about Fincke's conduct, and it looked fairly evident that Fincke had been using his position as a judge, more or less within the law, to amass quite a fortune;²⁷ and there are a number of descriptions of how he 'did business' in the literature.

When Gustav Fincke attends to the court, no peasant is able to complain to him without first visiting his chamber and bringing him presents. It often happens that these presents amount to a greater value than what His Majesty collects for a fine.²⁸

As is often the case, the accusations against Fincke that he was taking bribes appeared too difficult to verify. His son Gödik (d. 1617) succeeded him in the same post as Crown's bailiff 1582. Gödik Fincke's letters are interesting in that they show how private and public interests were often mixed in sixteenth century administration. Fincke's fellow aristocrat, Arvid Stålbarm, handed part of his personal *häradshöfding* revenues to Fincke as a sign of goodwill, to help with the maintenance of the Crown's central castle.²⁹

In the course of the seventeenth century it became customary that only a few of the regional judges from the upper aristocracy visited their judicial districts at all. According to Blomstedt, between 1625 and 1653, none actually appeared in the court room personally in Finland. The system was criticized for being prone to incompetence and malpractice particularly because the law-readers were so dependent on the absent office-holder.³⁰ The relationship between law-readers and their regional judge is interesting, but there seems to be limited evidence available. For instance, the law-reader Herman Böcke's letter of 1639 to his *häradshöfding* Matthias Soop (1585–1653) shows, how the latter was mostly interested in collecting revenues.

Böcke was facing problems with peasants that had fled to Russia, and so the law-reader was left with incomplete tax rolls and gaps in tax incomes. Böcke hoped that he would not see this as a case of him “fiddling taxes”, and that “God may help him in his calling as an honest man.”³¹

Björn Asker has analyzed in detail, how the office of regional judge became an important part of a long political struggle, where the upper aristocracy holding donations stood against the king and lower estates. The king wanted to cancel the *häradshöfding* office as a donation and create in its place a system of permanent and professional Crown judges with tenure. One particular conflict in the early 1640s illustrates this tension. The Council of the Realm and *häradshöfding* Matthias Soop sent a new law-reader to his judicial district in the province of Kexholm without consulting the Turku Court of Appeal. Unaware of Soop’s actions, the Court of Appeal ordered its own judge to sit for the local court sessions in the province, but when he got there Soop’s judge was already in session and prevented the Turku judge from entering. Eventually the Courts of Appeals managed to undermine the right of office-holders to choose their law-readers; and then the law-reader system was abandoned altogether as part of the Great Reduction reforms in 1680 that simultaneously got rid of the donations.³²

One leading seventeenth century ideologue to take part in this debate, from the Swedish high aristocracy, was Count Per Brahe (1602–1680). As a holder of large donations in Finland, he knew the problems of jurisdiction personally. Brahe considered the office of *häradshöfding* to lawfully belong to the aristocracy, but he also maintained that the judge should at least be resident in his judicial district and he should not employ law-readers, if possible. Brahe’s views reflected his semi-feudal ideology, i.e., peasants and common people should not be considered as direct subjects of the Crown, but only indirectly so via patronage of the aristocracy.³³ In other words, Brahe’s patriarchal model would have meant a return to medieval practice, where the local elite took charge of jurisdiction.

Brahe made these views clear to the Turku Court of Appeal in the early 1660s, when the jurisdiction of his large donation in Northern Finland (*Cajaneborg*) was called into question. After the war against Russia in the 1650s, justice in Brahe’s donation left much to be desired. The Turku Court of Appeal received various complaints about dubious verdicts and illegal imprisonments. Accusations were directed against Brahe’s judges, Johan Curnovius and Zacharias Palmbaum.³⁴ One problem seemed to be that the personal relationship between the two judges was rather tense.³⁵ Brahe was the most powerful man in Sweden after the king, but the Court of Appeal took the accusations seriously and was not shy in reminding him that neglecting such complaints could easily escalate into serious unrest. It was therefore decided that a special commission should be sent up north to investigate the accusations.

In his response, Brahe made it pretty clear that there was really no need, as this was very much in his jurisdiction (*min jurisdiction*); and that it was his duty to investigate and punish judges, if he was to find that any malpractice had taken place. Indeed, Brahe had already asked his judges to clarify the matter, underlining that he held the power of lawspeaker (*lagman*) in his

donation. Nevertheless, since he could not sit in the sessions in person, he appointed a substitute *underlagman* to act on his behalf. Besides attending to judicial matters, this *underlagman* was also chief supervisor of social and economic affairs in the area.³⁶ Brahe dared not openly oppose the Crown by preventing the planned commission from entering his donation, but he made it clear to them that it was “usual” for the quarrelling peasants to exaggerate their problems.

The Court of Appeal noticed the hint of irritation in the letter, and replied that perhaps no special commission would be needed if things could be sorted out otherwise. The Court of Appeal continued, however, to show its superiority in legal matters by criticizing Brahe for failing to deliver court records from his donation to the Court of Appeal. The style of the letter was openly ironic, since as he had been appointed the Lord High Chancellor (*drots*), he “should not be ignorant” of the right (*riktig*) practices. It went on to suggest that actually sending the records had perhaps “slipped his mind”.³⁷ In the 1670s, Brahe did criticize his judge Nikolaus Petrellius for neglecting his duties; and he clarified the new constellation of power by adding that “politeness” required all matters of justice be first reported to him, even if *ultimate legal power* lay in the hands of the Royal Court of Appeal.³⁸

The limits of agency: the role of judge redefined

In their struggle over judicial power, both the Crown and high aristocracy comfortably forgot the medieval law code, which nevertheless remained in force up to 1734. Early legal scientists could not simply close their eyes to the fact that the right of the community to take part in the election of judges was firmly within the law. In the 1660s, the issue was discussed by the Svea Court of Appeal, and the possible role of the local community was seriously taken into consideration. After some deliberation, the judiciary reached the conclusion that the right of the community to take part in the election had, in practice (*in utendo*), been abolished.³⁹ But the memory of the common people was much longer. Legal historian Pia Letto-Vanamo has studied the judicial process of sixteenth century local courts and shown that the local community and jury certainly played a central role in reaching verdicts,⁴⁰ and this went on into the following century. This hypothesis could perhaps be supported by some of the scandals caused by Governor Herman Fleming (1579–1652) during local court sessions in Savo province during 1644. At the same time, it also illustrates the changing role of judges once the Court of Appeal had been established.

Law-reader Knut Bock reported how his local court session was suddenly interrupted, when Bailiff Ture Persson physically attacked one member of the jury and tried to drag him out of the court room. The bailiff accused the commoner of neglecting his duty to deliver fish to the governor. The jury member replied, “let go of me, I have court people (*kärjäkansa*) here”. Indeed, the common people present clearly reacted against the bailiff’s aggression and shouted him down “with one mouth”. The law-reader was forced to stand up and call for order, while Governor Fleming himself said

neither “good or bad” of the matter, watching passively from the side. Later Fleming did, however, criticize the bailiff with some harsh words, but Bock found it strange that Fleming was not chastising the bailiff for violating court proceedings so much, as for letting the law-reader give him orders. Irritated by this criticism, Bock announced that he would send a report to the Court of Appeal complaining of the governor’s “lack of action”.⁴¹

On another occasion though, Herman Fleming perhaps took too much action when he personally dragged out another bailiff, Johan Falk, in the middle of a court session. Bock described this as “illegal and against all Christian behaviour”. When he decided to interrupt the session, he was again met by a stormy reaction from the common people. The conclusion by the people was that “the rabble (*metelikansa*) had taken over”. Law and order needed to be maintained so that the session could continue, otherwise “they [the aristocrats] would act with impunity, as it was before, when law and order were not respected”.⁴² The years of the late sixteenth century peasant uprising were still fresh in the collective memory, and so the real motives of the aristocracy were held in some doubt.

Herman Fleming was son of Claes Hermansson Fleming (d. 1616), who was remembered by the oldest people in Savo as a military leader and member of the 1595 border commission that conducted the peace negotiations with Russia. The Fleming family belonged to the upper strata of the nobility in Finland.⁴³ Herman Fleming had made his career in the Turku Court of Appeal; which in many ways made his behaviour all the more difficult to fathom. Law-reader Bock’s complaints eventually reached the highest level, and the king promised that he would settle the conflict “impartially” – Fleming was nonetheless removed from his post. As a last resort, Herman Fleming tried to appeal to Count Per Brahe since he was “an old man and had already served our late King (Gustavus Adolphus, 1594–1632)”. A new man had, however, already been assigned to his post and Fleming’s petition, signed with shaky handwriting, did nothing to further his cause.⁴⁴ Indeed, Herman Fleming’s unusual aggression may even have had something to do with ageing. Aggressive outbursts by disappointed and bitter parties in court sessions were not exceptional, but in this case questioning the fundamental legitimacy of the judge’s authority was considered a step too far.

In the conflict between Bock and Fleming, the main point was in principle the same as in the tensions of colonial justice that have been studied by McLaren. The issue was whether the “executive [in this case Fleming] in exercising the royal prerogative was seen by the judiciary [in this case Bock] as trenching upon its powers in the administration of justice and rule of law sensibilities”.⁴⁵ Meanwhile, in Sääksmäki the roles were reversed in the 1650s when ageing judge Krister Nilsson Rosencrantz caused serious problems for Governor Ernst Johann Creutz (1619–1684). The governor complained that he was unable to arrange his duties (*publica negotia*) since Rosencrantz did not announce the schedule of his court sessions in enough time. The latter’s excuse that it was due to the poor postal service was not acceptable it seems, especially as the Turku Court of Appeal had also received a mass of complaints from people of both high and low status on his dubious and random verdicts. Lady Margareta Boije was furious, for

instance, that Rosencrantz had judged against her tenant Jaakko Ruuskanen in Rautalampi without her knowledge. It resulted in her losing half of one island, although she had a document proving that the land had been in her family's possession for over 60 years.⁴⁶

According to the Turku Court of Appeal's investigation, the faults found in the judge's court records (*feel och exorbitantier*) were "more numerous than one might think". The letter of the law was often not cited in an appropriate way, and the judge seemed to have given verdicts too "freely" (*pro libitu*). The Court of Appeal concluded that Rosencrantz "should have known" his vocation and office better, as a man of his experience. The final straw for Rosencrantz was to be accused of bribery and fraud. In many cases he had judged that routine fines should be paid, but they were not all found accounted for in the fine rolls for the Crown. In one case of adultery the judge had made a deal with the wife that her unfaithful husband could return back without further sanctions, in return for some pieces of cloth.

The religious element was a strong factor in building the legitimacy of justice, and the Vicar of Jämsä complained that he had difficulty getting cases of adultery handled by Rosencrantz in the local court – which did not help his case. In fact, having court sessions and church services on the same day remained a regular practice in the countryside for centuries.⁴⁷ One must also remember that clergymen could still act as substitute judges (i.e., law-readers) in the sixteenth century – the latest date known by Blomstedt for Finland is actually 1591.⁴⁸ But by the seventeenth century the idea of a 'clergyman judge' with "one foot in the court room and the other in the pulpit" was deemed unacceptable, even if the clergy often helped out the judges in many less formal ways. After all, many earthly crimes did often involve what the Church would consider 'sin', and this collaboration actually grew during the latter part of seventeenth century when the campaign against adultery intensified.⁴⁹

Governor Johan Rosenhane's (1611–1661) diary from the 1650s shows, how the roles were not always clearly defined and conflicts emerged. At Puumala in 1653, for instance, the vicar called the law-reader a "liar" and "forger".⁵⁰ Rosenhane also describes how the Bishop of Vyborg (Viborg) almost ended up in a fist fight with the representatives of the Turku Court of Appeal when he asked to check the court records, and was met with the response that such "earthly matters" did not concern the bishop at all.⁵¹ In fact, Rosenhane wrote many examples in his diary of the uneasy waltz between the actors within the administration. At Pellosniemi in 1653, for instance, both the law-reader and bailiff emerged before the court hopelessly drunk (*öfwerst fulla och druckna*). On top of this, the governor did not uncritically subscribe to the views presented by local officials – the bailiff had, for example, shown his bias to defend the interests of the donation-holder in a conflict over statute labour. Governor Rosenhane commented: "today the king, tomorrow dead".⁵²

The governor, law-reader and bailiff thus formed the holy trinity of seventeenth century local administration; and in Kexholm, in the 1640s, it was widely suspected that they actually clubbed together to ensure the highest revenues and actually added to the burden on the common people.

Like Gustav Fincke a century earlier, law-reader Anders Lythraeus was accused of transforming court sessions into a market place open to the highest bidder.⁵³ Kexholm was an exceptional province, since Sweden had won it from Russia in 1617 and so administration in the area was still suffering from irregularities as resettlement was still ongoing.⁵⁴ This fact is reflected in the minutes of Karelia's Lagman's Court between 1635 and 1645. The Lagman's Court was mentioned in medieval law code as an institution for mediating between local courts and the king. The institution has received little attention in the seventeenth century context, since the Court of Appeal has usually been considered the central institution for justice in this period.⁵⁵ However, the Lagman's Court usually handled litigation cases, such as land disputes which had not been successfully resolved by the local courts, yet considered to be of too little significance to burden the Court of Appeal with in Turku. The Lagman's Court could handle cases, for example, where the local judge was personally implicated, or legally disqualified (*interessert*).⁵⁶

Lagman Anders Swart in Savo asked Governor Reinhold Metstake, Bailiff Henrik Piper and Law-reader Herman Böcke in neighbouring Kexholm province whether any sessions of the Lagman's Court were needed in Kexholm 1639. Swart received the answer that they were not, though later it became evident that the revenues for having court sessions were collected (even though the Lagman's Court never actually sat).⁵⁷ This was understandably causing growing unrest among common people and the Crown was forced to step in. Eventually, in 1642 it was declared at every court session that "Her Majesty will do everything" to restore law and order in the province.⁵⁸ Nevertheless, the first round of local court sessions in 1642 had failed because Law-reader Peder Nilsson Raam could not speak or understand Finnish, let alone any of the local customs. Swart therefore overruled as *lagman* a sentence given by Raam in the case of an assault where a man was almost lethally hit with a stone. The offender was asked to pay a substantial compensation to go free. This verdict was thus obviously quite against the letter of the law and passed instead according to local customs only.⁵⁹

Law-reader Raam's shortcomings are perhaps quite simply explained by his outsider status in the community, but the question of a judge's integration into the local community was a double-edged issue. Local knowledge was considered important for the judge, but an involvement in community affairs that went too deep could also jeopardize his judicial independence. This problem became topical during the transition period that followed the establishment of the Court of Appeal in the 1620s. Many Finnish law-readers had a local community background as bailiffs, and this group especially was often criticized by the Court of Appeal for judging against the letter of the law – even for serious crimes like manslaughter. Many law-readers were still following old customary practices, which would usually include negotiating various forms of informal compensation between the families involved.⁶⁰ Ostrobothnian law-reader, Gabriel Pählsson, was removed for these reasons, even though he wrote a long explanatory letter to the Court of Appeal. The law-reader described himself as an "uncomprehending, sick old man", who

was powerless against other actors of administration and members of local jury.⁶¹

The improved education of law-readers after the establishment of the Court of Appeal led to more self-assertive behaviour among the judiciary. This becomes evident when one compares the law-readers of the 1620s to some of their better trained colleagues two decades later. As shown above, for example, the law-reader of Savo – Knut Bock – was not afraid of the governor when defending the autonomy of the judiciary. But Bock also found himself on the other side of the court table too, when the burghers of Lappeenranta accused him of disturbing the peace in 1645, when he landed a boat at their market place purportedly full of tar (this was his business), that inspectors considered suspicious as they were too light. When they smashed some of the barrels to pieces, a furious Bock and those he had come with in the boat attacked them with oars and stakes. The local burghers found the situation threatening and rebellious and charged him. Nevertheless, in the local court session Bock emerged as self-confident and even gave a lecture at the beginning on how court sessions should be correctly summoned.⁶²

Meanwhile, at the Lagman's Court in Vyborg (Viborg), October 1642, Law-reader Erik Hansson complained that his "vocation and office" (*kall och ämbete*) had been wrongly called into question by a Krister Simonsson. The latter had been involved in a land dispute with the commoner Antti Salakka, and when they met in a village alley had once threatened each other with weapons – Simonsson with a sword and Salakka with an axe. According to Simonsson, who introduced himself as an "old servant of the Crown" it was only Salakka who was guilty of disturbing the peace. Erik Hansson, however, did not subscribe Simonsson's interpretation – perhaps because he seemed to be hinting that he was somehow more 'above the law' than the peasant. Instead he began literally to "read the law" to a nervous Simonsson, who then reacted by accusing the law-reader of "forging the law" and taking bribes from Salakka. He quickly realized, however, the seriousness of his accusations and took his words back, explaining the behaviour in the court as being due to drunkenness. The law-reader then made a bit of a show about the power of his leniency, and mercifully announced that he was not willing to cause Simonsson "any further harm" – with the result that he was only charged a minor fine for the slander.⁶³

Two years later the same local judge got in another clash. This time it was with Lt. Col. Berndt Taube who complained that Hansson had been in his judicial district with some "loose characters" (*löösgäster*), demanding food, drinks and other benefits on the basis of his status alone. Especially irritating for the officer, was that Erik Hansson had declared that as a law-reader, he was actually their superior when they were not on a battlefield. Not only was Hansson appearing to undermine the officer's authority, but he was even trying to physically chastise Taube's men. So Taube insisted that the Lagman's Court put the law-reader back in his place, since military issues (*krigz staten*) were none of his business.

Just as soldiers have their court martials, the king's chamber is set up to supervise that law-readers do not spend the Crown's wages on loose characters.

As usual, Erik Hansson replied to this by reading aloud the law code to argue for his rights. He also represented himself as a defender of peasant's rights against violations committed by the military. But then the conflict took on an even stranger turn, when Taube began to insinuate that Erik Hansson was guilty of causing one particular peasant's death. Taube dared not officially present such a serious accusation, however, and so he "left the court room silently" with the insinuation hanging. Erik Hansson went on to admit that he had once hit a peasant with a stick, and this person had died later, but it had been from natural causes. The injuries of the peasant had already been checked by Governor Erik Gyllenstierna (1602–1657), and they were considered too minor to have caused death.⁶⁴

Common people also knew their rights and were quick to react to any signs of malpractice by judges, either in the court room or outside. One such commoner was a "poor soldier's wife" – Riitta Matintytär of Halikko – who complained to the Court of Appeal that the local judge, Arvid Matsson, had mistreated her. According to Riitta, the drunken judge had rushed in to her cottage in the middle of the night and accused her of being a child murderer, even though Riitta could show that she had recently given birth to a child that was still very much alive. Despite this, Matsson had called her an "obvious whore" and ordered one member of the jury to "milk" her, and proceeded to grab one of her breasts himself. Nevertheless, the judge saw himself simply as a loyal servant of the Crown – controlling the behaviour of loose characters.⁶⁵ Arvid Matsson continued to get involved in other conflicts in his local community, but these were all directly handled at the level of the local court by his regional superior – Magnus Rålambsstierna (1606–1666). The judge (*häradshöfding*) thus personally sat on these local court sessions. Mattson won the cases against the peasants, who ended up resorting to calling him a "false judge" and the "Crown's thief."⁶⁶

Conclusion

Studying the agency of judges in an early modern Finnish context is challenging, not only because of the destroyed archives in Turku. The vocation and office of a judge was associated with the idea that they performed their task best when their agency went undetected. The conflicts and accusations of malpractice against the judges described above should therefore not be generalized from too liberally; although in practice the role and status of judges was defined in interaction with other men of the administration (governors, bailiffs, clergy, military) and the local community. The real state of affairs is thus not discovered by only studying normative sources.

There was often more at stake in the conflicts between actors than just the personal qualities of an individual judge or the rightness of his actions. In the course of the early modern "judicial revolution" the role of judges and the limits of their agency were renegotiated. A fundamental question is how judicial and executive powers began to separate in practice at the grass-roots level. Judges in the sixteenth century could have both considerable executive and judicial powers. With the professionalization of a judge's calling and

office came a testing of the limits of a judge's agency. Thus we have cases such as those of Knut Bock, Erik Hansson, Anders Lythraeus and Arvid Matsson in the 1640s and 1650s which show to what extremes this could be pushed. It was surely no coincidence that all of these were judges of the same generation trained by the Turku Court of Appeal. The new power of the judiciary was also noted by Count Per Brahe, when the Court of Appeal was not shy in criticizing the state of legal security in his donations.

Although, in general, the status of judges improved with professionalization and their new-found assertiveness, the limits of their agency got at the same time narrower and more exactly defined, as the bureaucratic state with its various division of roles developed. Like a number of other actors in the administration, the judges were controlled by the local community. In the seventeenth century, the essential source of legitimacy for justice was still therefore very much rooted in the "people", and at the local level.

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NOTES

- 1 Severin Bergh (ed.), *Svenska riksrådets protokoll: 7* (Stockholm 1892), p. 520.
- 2 Björn Asker, "Striden om häradshövdingeämbetena under 1600-talet", *Historiskt Tidskrift för Finland* 72, 1987, p. 232.
- 3 Yrjö Blomstedt, *Laamannin- ja kihlakunnantuomarinvirkojen läänittäminen ja hoito Suomessa 1500- ja 1600-luvuilla (1523–1680). Oikeushistoriallinen tutkimus*. Historiallisia Tutkimuksia 51 (Helsinki: Finnish Historical Society, 1958), pp. 21–29; Asker, "Striden om häradshövdingeämbetena", pp. 224–225; Sten Claeson, *Häradshövdingeämbetet i senmedeltidens och Gustav Vasas Sverige*. Skrifter utgivna av Institutet för rättshistorisk forskning. Serien 1, Rättshistoriskt bibliotek 39 (Stockholm: Institutet för rättshistorisk forskning, 1987), pp. 197–198. The judicial administration of towns is not discussed in this chapter. For more on this, see Petri Karonen, "Raastuvassa tavataan". *Suomen kaupunkien hallinto- ja oikeuslaitoksen toimintaa ja virkamiehiä suurvalta-aikana* (Jyväskylä: Jyväskylän yliopisto, 1995).
- 4 Max Weber, *Economy and Society. An Outline of Interpretive Sociology* (University of California Press, 1978), pp. 784–802.
- 5 John McLaren, *Bewigged, Bothered and Bewildered: British Colonial Judges on Trial 1800–1900* (Toronto [Ont.]: University of Toronto Press, 2011).
- 6 On Early Modern "Judicial Revolution" and violence, see Bruce Lenman, Geoffrey Parker, "The State, the Community and Criminal Law in Early Modern Europe". In: Gatrell, V. A. C., Lenman, Bruce, Parker, Geoffrey (eds), *Crime and the Law: the social history of Crime in Western Europe since 1500* (London 1980), pp. 11–48; Österberg, Eva, Sogner, Sølvi (eds), *People meet the law: control and conflict-handling in the courts. The Nordic countries in the post-Reformation and pre-industrial period* (Oslo: Universitetsforlaget, 2000); Heikki Ylikangas, "What happened to violence? An analysis of the development of violence from mediaeval times to the early modern era based on Finnish source material". In: Lappalainen, Mirkka (ed.), *Five centuries of violence in Finland and the Baltic* (Helsinki: Suomen Akatemia, 1998), pp. 7–128; Olli Matikainen, *Verenperijät. Väki-valta ja yhteisön murros itäisessä Suomessa 1500–1600-luvulla*. Bibliotheca Historica 78 (Helsinki: The Finnish Literature Society, 2002).

- 7 Jan Eric Almquist, *Domarregler från den yngre landslagens tid* (Uppsala 1951).
- 8 C. J. Wahlberg, *Åtgärder för lagförbättring 1633–1665* (Upsala, 1878), pp. 89–92.
- 9 Armas Luukko, *Etelä-Pohjanmaan historia*. 3, *Nuijasodasta Isoonvihaan* (Seinäjäoki: Etelä-Pohjanmaan maakuntaliitto, 1987), p. 344.
- 10 Blomstedt, *Laamannin- ja kihlakunnantuomarinvirkojen läänittäminen*, pp. 150–151, 203–204, 264, 327–335; On judges and law-readers in Sweden, compare also Jan Eric Almquist, *Lagsagor och domsagor i Sverige med särskild hänsyn till den judiciella indelningen* (Stockholm: Norstedt, 1954).
- 11 Johan Schmedemann, *Kongl. stadgar, förordningar, bref och resolutioner: ifrån åhr 1528, in til 1701, angående justitiæ och executions-åhrender...* (Stockholm 1706), p. 113.
- 12 Blomstedt, *Laamannin- ja kihlakunnantuomarinvirkojen läänittäminen*, p. 353.
- 13 David Gaunt, *Utbildning till statens tjänst. En kollektivbiografi av stormaktstidens hovrättsauskultanter* (Uppsala: Uppsala universitet, 1975), pp. 177–180; Asker, “Striden om Häradshövdingeämbetena”, pp. 246–251; see also Marianne Vasara-Aaltonen, “From well-travelled “Jacks of all-trades” to Domestic Lawyers: the educational and career backgrounds of Svea Court of Appeals Judges 1614–1809”. In: Korpiola, Mia (ed.), *The Svea Court of Appeal in the Early Modern Period: Historical Reinterpretations and New Perspectives*. Rättshistoriska studier 26 (Stockholm: Institutet för rättshistorisk forskning, 2014), pp. 301–354.
- 14 For an overview of the Nordic development, see Österberg, Sogner (ed.), *People meet the Law*.
- 15 On interaction between judges and local community in seventeenth century criminal investigation, see Kustaa Vilkkuna, *Neljä ruumista* (Helsinki: Teos, 2009); Riikka Miettinen, *Suicide in Seventeenth-Century Sweden: The Crime and Legal Praxis in the Lower Courts* (Tampere, 2015), pp. 164–191. On power relations of Finnish seventeenth century local rural communities, see Janne Haikari, *Isännän, Jumalan ja rehelliisten miesten edessä. Vallankäyttö ja virkamiesten toimintaympäristöt satakuntalaisissa maaseutuyhteisöissä 1600-luvun jälkipuoliskolla* (Helsinki: The Finnish Literature Society, 2009).
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- 18 Blomstedt, *Laamannin- ja kihlakunnantuomarinvirkojen läänittäminen*, pp. 21–29.
- 19 Erik Anthoni, “Sten Henrikssons häradshövdingebrev för Pikis härad”, *Historisk tidskrift för Finland* 34, 1950, p. 129.
- 20 On the role of the community, see Mia Korpiola, “Not without the Consent and Goodwill of the Common people: The community as a legal authority in Medieval Sweden”, *The Journal of Legal History* vol 35: 2 (2014), pp. 95–119.
- 21 Henrik Munktel, “Häradsrätt och häradsnämnd. En rättshistorisk översikt”. In: *Domsagorna i Sverige* (Uppsala: Almqvist & Wiksell, 1944), p. 15; Jukka Korpela, *Viipurin läänin historia*. 2, *Viipurin linnaläänin synty* (Lappeenranta: Karjalan kirjapaino, 2004), p. 206.
- 22 Blomstedt, *Laamannin- ja kihlakunnantuomarinvirkojen läänittäminen*, pp. 31–34; Claeson, *Häradshövdingeämbetet*, p. 234.
- 23 Blomstedt, *Laamannin- ja kihlakunnantuomarinvirkojen läänittäminen*, p. 35.
- 24 Kimmo Katajala, *Suomalainen kapina. Talonpoikaislevottomuudet ja poliittisen kulttuurin muutos Ruotsin ajalla (n. 1150–1800)* (Helsinki: The Finnish Literature Society, 2002), pp. 168–179.
- 25 Ulla Koskinen, *Hyvien miesten valtakunta: Arvid Henrikinpoika Tawast ja aatelin toimintakulttuuri 1500-luvun lopun Suomessa* (Helsinki: The Finnish Literature Society, 2011), p. 245.
- 26 Blomstedt, *Laamannin- ja kihlakunnantuomarinvirkojen läänittäminen*, p. 143–145; Kauko Pirinen, *Savon historia*. 2:1, *Rajamaakunta asutusliikkeen aikakautena*

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- 32 Yrjö Blomstedt (toim.), *Turun hovioikeus 1623–1973* (Helsinki 1973), p. 153.
- 33 Asker, “Striden om häradshövdingeämbetena”, p. 233. On Brahe and his influence, see Erik Pettersson, *Vicekungen. En biografi över Per Brahe den yngre* (Stockholm: Natur och Kultur, 2009); Marko Hakanen, *Vallan verkostoissa. Per Brahe ja hänen klienttinsä 1600-luvun Ruotsin valtakunnassa*. Jyväskylän Studies in Humanities 157 (Jyväskylä: Jyväskylän yliopisto, 2011).
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- 39 Blomstedt, *Laamannin- ja kihlakunnantuomarinvirkojen läänittäminen*, p. 314.
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- 42 Matikainen, *Verenperijät*, p. 83.
- 43 On Fleming family, see Anu Lahtinen, *Sopeutuvat, neuvottelevat, kapinalliset: Naiset toimijoina Flemingin sukupiirissä 1470–1620* (Helsinki: The Finnish Literature Society, 2007).
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- 50 *Johan Rosenhanes dagbok 1652–1661*. Utgiven genom Arne Jansson (Stockholm: Samfundet för utgivande av handskrifter rörande Skandinaviens historia 1995), p. 60; On Rosenhane, see Piia Einonen, “Travelling Governor”. In: Lamberg, Marko, Hakanen, Marko, Haikari, Janne (eds), *Physical and Cultural Space in Pre-industrial Europe. Methodological Approaches to Spatiality* (Lund: Nordic Academic Press, 2011), pp. 124–151.
- 51 *Johan Rosenhanes dagbok 1652–1661*, p. 17.
- 52 *Johan Rosenhanes dagbok 1652–1661*, p. 62.
- 53 Blomstedt, *Laamannin- ja kihlakunnantuomarinvirkojen läänittäminen*, p. 22; Olli Matikainen, *Iskuin ja lyönnein. Väkivalta ja käräjät Käkisalmen läänissä 1618–1651* (Jyväskylä: Jyväskylän yliopisto, 1995), p. 25.
- 54 See Antti Kujala, “Det svenska riket och dess undersåtar i Ingermanland och i Kexholms län på 1600-talet (1617–1658): kronans dialog med den lokala adeln och de ortodoxa bönderna och köpmännen”, *Historisk tidskrift för Finland* 2011, pp. 131–161.
- 55 See Rudolf Thunander, *Hovrätt i Funktion. Göta hovrätt och brottmålen 1635–1699*. Skrifter utgivna av institutet för rätthistorisk forskning 49 (Stockholm: Institutet för rätthistorisk forskning, 1993); Korpiola (ed.), *The Svea Court of Appeal*.
- 56 *Johan Rosenhanes dagbok 1652–1661*, p. 61.
- 57 KA, Laamannioikeuksien renovoidut pöytäkirjat (Judgment books of the Lagman’s Court), KA ä 1, 102.
- 58 KA, Laamannioikeuksien renovoidut pöytäkirjat (Judgment books of the Lagman’s Court), KA ä 1, 209.
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- 65 KA, Kihlakunnanoikeuksien renovoidut pöytäkirjat ((Judgment books of the Judicial Districts), KA cc7: 325–326; Blomstedt, *kihlakunnan- ja laamanninvirkojen läänittäminen*, p. 306.
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