

SWEDISH CONTRIBUTIONS TO OUR LAW

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Three centuries make only a short span in the long national life of Sweden, but they twice measure the entire national existence of the United States. Our annals are concentrated in so few years that our interest in particular events sometimes appears extravagant to older peoples with longer histories. An event almost unnoticed in Sweden was the establishment in 1643 by Swedish authority of a court of justice on the banks of the Delaware. But it was an auspicious event in the New World. Channels through which the struggling settlements could draw upon the established legal cultures and experiences of the old world were badly needed on these frontiers of civilization. Colonial courts were among the first institutions to fulfill this need. It was their task to reexamine the legal traditions of European fatherlands and by selection and adaptation to unprecedented conditions build up a body of American law.

The Scandinavian settlement was made by Swedes and Finns, who comprised the Sweden of that day. It occupied a small part of the rich and varied area that now is Pennsylvania. Its existence under Swedish rule lasted only a short time. The settlement then lived under several flags and forms of government before the United States was born. Its contribution of particular laws and procedures to our present law would be difficult to trace amid competing influences. But we may discern in the philosophy of the founders of that first court much that was prophetic of the kinds of institutions that this continent was destined to create and foster. The Swedish spirit is shown by an instruction given a decade later to Johan Rissing, sent to aid the government of the colony. It reads: "Since law and right is considered and held to be one of the principal things

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among all people for [the preservation of] peace and good order, therefore he shall, together with the governor, appoint such persons there, who will know how to judge according to the Swedish law and licit custom, in order that right and righteousness may have their course in the land."

When Johan Printz became Governor of the colony in 1643, he was invested with judicial as well as executive powers. The Swedish law and custom was to be followed as far as possible. He was authorized to inflict punishments for crimes by fines, imprisonment or death, "but in the regular manner only" and after full examination and inquiry with the assistance in the trial of men to be selected from the principal and wisest inhabitants.

Printz established a formal court with stated session. It seems to have had considerable work. He was judge in most cases, assisted by a body of men, about twelve in number, and they heard the evidence and together decided the case. Printz ran into troubles as a judge. His judgments, like those of many a later judge, did not please everybody. Some of the settlers presented bill of grievances, charging that they "were at no hour or time secure as to life and property" and that he passed judgments in his own favor against the opinions of the jury. The petition stirred the wrath of the Governor, who promptly arrested, tried, convicted, and executed his leading critic on a charge of treachery. This seems hardly convincing that the criticisms were groundless.

It is not easy to appraise Printz's judicial services against his times and vexations. But Dr. Johnson recites in his history of the colony two items which seem greatly to the credit of Printz and to the legal tradition of Sweden, which he represented, if but crudely.

Intricate cases arose, and Printz several times sought to have sent to him "a learned and able man to administer justice and to attend to the law business." Even in his colony of a few hundred people Printz found that he could not administer justice "in the regular manner only" and

"according to the Swedish law and licit customs" by extemporizing judgments under the impulse of the moment. He appears to have felt that his own lay judgment needed to be steadied and his mind enlightened by reference to the accumulated learning and experience of others. Printz recognized that a system of justice under rule of law will not function uniformly without a legal profession.

But even more comprehending and statesmanlike was Printz's reason for asking professional help. He said it was "difficult and never ought to be that one and the same person appear in court as plaintiff as well as judge." I need not point out to members of the legal profession the eternal verity of this statement.

But the date of this utterance is as impressive as its insight. It comes to us out of the 1600's like a flash of lightning across a dark sky. The world was then in the chaos of the Thirty Years' War. Gustavus Adolphus, the great leader who planned the colony of New Sweden but did not see it founded, had fallen, leading the liberal western world against reactionary and autocratic forces which threatened its extinction. Printz's declaration was made a half century before John Locke published his famous *Treatise on Government* in which he espoused the philosophy that judicial power should be independent of executive policy. It was made a century and a half before Locke's writings bore fruit in our Declaration of Independence. It was made before the struggle of the English people against their kings ended with a victory over arbitrary power. That struggle in fact had only begun. In 1612, James I called the famous conference of England's judges and advised them that he might take any cause he pleased away from them and decide it for himself. Lord Chief Justice Coke bluntly denied such right and told the King that he was "under God and the law." It took nearly a century of struggle to make Coke's statement good.

Such statements as those of Printz and Coke are not often instances of isolated individual illumination. These

sentiments well up in a man because they are implicit in the experience and discipline of the people from whom he came. These men were giving voice to convictions widely but perhaps inarticulately held in common by English and Scandinavian peoples. They both represent a tradition embodied in our Declaration of Independence and in the principles upon which our new government was founded. One of the difficulties of identifying the influence of New Sweden upon our institutions is that Swedish contributions have great similarity to the pattern brought from England, and for good reason. Sweden's early history is not unlike that of England, which indeed was substantially influenced by the bold, blond men from the Scandinavian countries who sometimes came to her shores without invitation and remained without welcome. Both national governments emerged from a violent contest for power between the Crown and nobility, and both saw a constant struggle by the people for political and religious freedom. In neither of these lands were the people oppressed by their kings or their nobility to the same extent as people in many other nations.

The doctrine of the divine right of kings never gained a foothold in Sweden and gained but a temporary one in England. Many of the Swedish kings were elected by the people—a heritage from Viking times and this custom repudiated all assumptions of divine right. In Sweden the law, not the King, had divine sanction and he was subject to and below the law.

Swedish law, which New Sweden was commanded to follow, has reflected in its development the outstanding characteristics of the Swedish people. They possess an in-born love of freedom—religious and political. Serfs are unknown in Swedish history, and the Swedes are so incorrigibly independent that of all Europe they alone live in a land never occupied by a conqueror. Liberal in the sense of being tolerant of change and receptive to improvement, they are conservative in preserving a continuity with the past. The Swede is typically tolerant and rarely attempts to sup-

press views that differ from his own. He is industrious, and work is necessary to his happiness. He is a confirmed individualist, yet none has proved so capable of teamwork in voluntary cooperative efforts and enterprises. He is intensely religious, and he has profound respect for the personality and individuality of every human being, whether he is in humble or in high circumstance. He does not believe in or encourage great disparities in wealth or worldly goods. These traits have left their mark on Swedish history and on many American communities where the Swedes have assumed leadership. I have had occasion to see something of Swedish justice in Sweden and to know the spirit of the Scandinavian as a juror and official when transplanted to this country. No man is more innately just and tolerant, none more patient to hear both sides, none more dispassionate in judgment.

When, however, we go far back in history to appraise the contributions of a migrant people to the great stream of thought which we call our law, we must seek for the spirit they imparted to the law rather than for specific laws. The same institution or document may in action be put to very different ends in the hands of those whose spirit differs. Whatever of difference exists today between the Constitutions, laws, and institutions of Sweden and the United States is a matter more of form than of substance. Such is the similarity of her spirit with our own that nowhere else will an American feel more at home away from home. Both countries are trying to govern men and their relations by rules of law and not by the whim of those in seats of power. In any land where this is done a just man may feel secure and free.

But we in America—and I do not think we were alone in the mistake—imperiled our heritage of freedom by taking its safety for granted. As free people we went about our daily lives thinking whatever we did think, saying whatever we wished to say, working at tasks of our choice, worshipping God, each in his own way. When on the eve

of his invasion of the Low Countries Hitler declared that upon the battle then beginning depended the future of Europe for a thousand years, most of us hardly knew what he meant.

We know now. The "New Order" would break down every independent judicial protection of the citizen's freedom against executive power. Only recently Dr. Rothenberger, Secretary of State of Germany, has admitted a "crisis in the field of justice." He blames German judges who, as he wrote, "have not succeeded in gaining the confidence of the Fuhrer and the Party." He recommended pushing the judiciary still further "into the background" but admitted that by such a move "the present outcry about lawlessness, arbitrariness, legal insecurity, etc.," might be raised by still larger circles. This complaint about the judges confirms reports from other sources that among responsible classes the most resistance to Hitler and Nazi Party supremacy has come from the professional judges and men of the law. It lifts up our hearts to know that even in Germany, though the lights of freedom and decency burn low, they are not extinct; and that it is men of our profession who tend them.

It is hard for free people in America, in England, or in Sweden to comprehend this authoritarian philosophy. Nor can we put ourselves in the place of those who live under it and who know not by what words or acts or attitudes they may displease those in power, nor in what hour they may without hearing, or proof or stated caused be silently hurried off to concentration camp. Nor can we measure the degradation that such undermining of a man's sense of security inflicts on his dignity and personality. We are happy that this evil system nears collapse.

The waning hour of Nazi and Fascist power is an appropriate one in which to recall the establishment three hundred years ago in New Sweden of a court dedicated to the purpose "that right and righteousness may have their course in the land." We renew tonight our dedication to that old ideal, which still remains our own.