FROM ELECTED MAGNATES TO STATE-APPOINTED PROFESSIONALS: ASPECTS OF THE HISTORY OF THE FINNISH JUDICIARY

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I

As in so many other fields, there are already unmistakable traces of Continental influence on the Swedish judicial system in the earliest period for which we have tolerably exact information—i.e. the era of the provincial codes (*c.* 1200–1350). In the oldest stratum of provincial codes judicial power was still vested in the people. Thus in the province of Östergötland the lawman (*lagman*), originally the holder of the highest judicial office in a province, seems to have been elected directly by the people. There is, however, contemporaneous evidence of royal legislation, and at the end of the 13th century the notion that judicial power emanates from the King was actually laid down in the code of the central Swedish province of Uppland and later also in the group of provincial codes known as the *svealagar* (Laws of Svealand, i.e. Central and Northern Sweden)—a group which is considered to have been strongly influenced by the Uppland code. The lawman and the district judge (*häradshövding,* literally "chief of the hundred")[1] were at this time elected by a council appointed by the king's reeve (*länsman*), and the King formally bestowed judicial power on the judge-elect. In a way, Magnus Ericsson's General Rural Code of 1347 represents a compromise by allowing the people itself to choose the electoral council. This body in turn nominated three persons, out of whom the King appointed the one he considered best fitted for the position. Behind this development one can, of course, discern the *cognitio* procedure of the Roman Empire which, by the instrumentality of the Justinian and the canon law, provided the pattern for the development of procedural law on the Continent. The idea of judicial power as emanating from the emperor (i.e. from the sovereign), the system of professional judges, and other characteristic features of im-

[1] Very approximately speaking, the jurisdiction of a lawman's court (*lagmansrätt*) extended over one of the geographical provinces into which Sweden was (and in the popular mind still is) divided, whereas the district court only had jurisdiction over a smaller unit, the hundred (hence the Swedish name *häradsrätt,* i.e. hundred court). A lawman's court was thus a tribunal on a higher level. It was also, generally speaking, a court of second instance in relation to the district courts within its jurisdiction.

mean, however, that regard was in any way paid to the will of the people.[4]

At the end of his reign, Gustav Vasa bestowed large duchies on his three sons, and he also gave them power to appoint lawmen and district judges in these fiefs, with the proviso, however, that the appointment of a lawman should be subsequently approved by the King himself.[5] The relations between the brothers deteriorated in connection with the succession to the throne of the eldest of the three, Eric XIV, in 1560. Eric then resumed the entire right of appointment as far as lawmen were concerned, whereas the dukes retained their right to appoint district judges in their duchies.[6] After Eric XIV had been overthrown and the second brother, John III, had acceded to the throne (1568), the disputes about the right to appoint judges went on between John III and the third brother, Duke Charles of Södermanland. The differences widened into an open conflict in 1585, when the duke refused to accept Sten Axelsson Banér, who had the King's letters of appointment, as lawman of Södermanland. Duke Charles insisted that he was himself entitled to appoint the lawman. In an attempt to find a solution which would in no way circumscribe the royal power to appoint, John III proposed a return to a modified elective system. An electoral council presided over by the duke himself would, in accordance with the old custom, nominate three persons, of whom the King would appoint one. Apart from the duke, who would have two votes, the electoral council would consist of six officials from his court and six peasants. An agreement was reached on the lines proposed by King John, but it was never put into practice, and Södermanland remained without a lawman.[7]

Even before this episode, the royal power to appoint had been legally sanctioned by the Charter of Privileges granted to the nobility by John III in 1569 as a reward for helping him to

[4] King Gustav Vasa to the bailiff at Salberget, Matts Tordsson, June 12, 1547, in *Gustaf 1:s registratur,* vol. XVIII, p. 581.

[5] Kaarlo Blomstedt, "Kuninkaan käskyvalta ja sen käyttö Suomen herttuakunnassa", in *Historiallisia tutkumuksia J. R. Danielsonille,* 1923, p. 36. *Id., Henrik Klaunpoika Horn. Ajankuvaus,* vol. 1, 1921 pp. 311–12.

[6] Kaarlo Blomstedt, "Kauninkaan käskyvalta", p. 66. *Id., Henrik Klaunpoika Horn,* vol. I, pp. 408–11.

[7] *Stadga om konungslig och furstelig rättighet över furstendömen* (Statute of royal and princely powers over the principalities) of January 27, 1582, sec. 3, in And. Ant. Stiernman, *Alla Riksdagars och Mötens Besluth,* vol. I, pp. 351–2. Jan Eric Almquist, *Lagsagor och domsagor i Sverige,* vol. I, 1954, p. 97. *Svenska riksdagsakter jämte andra handlingar 1521–1718,* vol. II, pp. 683, 690, 695, 697, 702, 761, 774, 776, 1041–2, 1050.

power.[8] John was, however, quite capable of asserting the prerogatives of the Crown, and he did so with some success on this occasion. When the matter was discussed the King's power to appoint was never questioned—the aristocracy simply wanted to secure a monopoly of judicial posts. Only "honourable and prudent men" should be appointed lawmen and district judges, they argued, and by this, of course, they meant members of the noble estate itself.[9] John III, however, insisted that the King should retain the right to appoint as district judges any of his "permanent court attendants or others" (the word "others" referring to persons equal in rank to court attendants), whether noble or not, and he claimed the right to use this prerogative in respect of those districts in which he had already, before the Charter, appointed commoners.[1] In the final Charter of Privileges, dated July 9, 1569, the nobility was guaranteed the judgeships, with the proviso that the King had power to appoint also his "permanent court attendants and others" as judges in most of the districts of Finland and in the Swedish provinces of Uppland, Västmanland and Östergötland; as regards Norrland (the northern part of Sweden) the King was given the right to appoint whomsoever he pleased.[2] The King's unfettered right to appoint was thus recognized by the Charter as regards 60 of the 145 judicial districts of the realm. A further 17 districts belonged to duchies, where the duke in question had full powers to appoint district judges; the counts, too, were now granted this right in their countships.[3]

Of the Finnish court districts, only Åland was not mentioned by the Charter among those where the King had a free right to appoint judges—the present Finnish province of East Bothnia seems to have been included in Norrland. As regards Finland, the Charter of Privileges thus implied a formal abrogation of the people's right, already disregarded, to participate in the process of filling a vacant district judgeship. In practice, the King—in spite of the limiting provisions of the Charter of Privileges—continued to appoint district judges throughout the realm, with the exception of the duchies.[4] As the antagonism between John III and the aristocracy was intensified towards the end of his reign, it was

[8] Sven A. Nilsson, *Kampen om de adliga privilegierna 1526–1594*, 1952, p. 31.
[9] *Svenska riksdagsakter 1521–1718*, vol. II, p. 369.
[1] *Eod. lib.*, vol. II, p. 377.
[2] *Eod. lib.*, vol. II, p. 382.
[3] Jan Eric Almquist, "1569 års adelsprivilegier och våra äldsta bevarade häradshövdingeregister", *Personhistorisk tidskrift* 1953, pp. 58–70.
[4] Blomstedt, p. 37.

only natural that the question of the appointment of judges should come to the fore when the disputes about privileges flared up again after the King's death (1592). The leaders of the aristocracy demanded that there should be a return to the old elective system of the General Code with the addition that only noblemen should be qualified to be appointed judges. King Sigismund (1592–99) did not accept the claims of the nobility, and retained his personal right to appoint; when he was absent from the realm (in Poland, his other kingdom) no judges were to be appointed, since, he said, they ought to have letters of appointment signed by the King himself.[5]

The idea of restoring the elections of lawmen and district judges came up again in the course of the discussion in the early 17th century concerning the proposed revision of the General Rural Code. One project was prepared around 1603–04 by a secretary in the Royal Chancellery, Peder Nilsson Jacobsköld, and seems to embody the opinions held by King Charles IX (1599–1611) himself. According to this project, district judges were to be appointed after an elective process in complete conformity with the letter of the General Rural Code. Lawmen would be elected according to a similar procedure, which, however, differed from the one laid down by the provisions of the Code concerning the composition of the electoral council.[6] In the so-called Rosengren project, which was drawn up a few years later, the elective element in the appointment of lawmen and district judges had disappeared entirely, and the only concession to the will of the people was the provision that a lawman should after his appointment be formally "accepted" at the first session of each district court in his jurisdiction.[7]

All attempts to restore in any form the participation of the peasantry in the selection of judges were, however, doomed to failure. It is true that even the Law Commission of 1643 proposed such participation and similar ideas were put forward in parliamentary debates, i.e. in the Estate of the Clergy in 1649 and in the Estate of the Nobility in 1664.[8] On the last-mentioned occa-

[5] *Svenska riksdagsakter 1521–1718,* vol. III, pp. 395, 408, 418.

[6] Åke Hermansson, *Karl IX och ständerna,* 1962, pp. 174–85. F. A. Dahlgren, *Lagförslag i Karl IX:s tid,* in *Handlingar rörande Skandinaviens historia. Andra serien,* vol. I, 1864, pp. 245–6.

[7] Hermansson, *op. cit.,* pp. 195–203. Dahlgren, *op. cit.,* p. 430.

[8] Reply by the Estate of the Clergy to Her Majesty the Queen in February, 1649, in *Prästeståndets riksdagsprotokoll,* vol. I, p. 148. *Sveriges ridderskaps och adels riksdagsprotokoll,* vol. IX, pp. 121–5.

sion, however, the Stockholm Court of Appeal, when giving its opinion, pointed out that

> "the *ius praesentandi* which according to the General Rural Code the peasantry possessed in connection with the appointment of a lawman or a district judge seems *non utendo* to have lapsed, and in view of the fact that the King has for so many years been free with regard to the appointment of these as well as other public officers, it would be a questionable procedure to alter this during the King's minority."[9]

No change was in fact made, even after the King (Charles XI, 1660–97) had attained his majority (1672). The King in Council appointed lawmen and district judges at his pleasure, taking into consideration or disregarding petitions submitted by the applicants and any recommendations given by a court of appeal or by some powerful patron—such recommendations were often attached to the petitions. The reassumption of offices in 1680—part of the great "Reduction" whose main feature was the reappropriation of former Crown property—had no great effect in this respect. (The reassumption of offices will be considered in closer detail below.) One result was, however, that from this time onwards the courts of appeal, when a lawman or a district judge was to be appointed, no longer furnished the applicants themselves with testimonials to be attached to their petitions, but submitted recommendations to the King through official channels. As far as the Court of Appeal of Åbo was concerned, it interpreted the Letters Patent of August 1, 1682, as an express command always to submit recommendations when the office of a district judge fell vacant.[1] The Courts of appeal were often consulted, too, regarding candidates who had submitted their applications direct to the King. Notwithstanding all this, the King could appoint any applicant of his own free will.

The royal power to make judicial appointments was not manifested only with regard to the lawmen's and the district courts. The Stockholm Court of Appeal (*Svea Hovrätt*) was established in 1614 as a royal supreme court, intended to take over the judicial

[9] *Hovrätternas betänkande över ridderskapets och adelns besvär uti justitiens administrerande* (Opinion of the Courts of Appeal on the address by the Nobility relating to the administration of justice), July, 1664, in the National Archives, Stockholm (*Riksdagsacta, Adeln, 1664*).

[1] The Letters in fact concerned questions in connection with the removal of district judges for neglecting their duties, and instructed the Court of Appeal to recommend a capable man as successor in such cases. See the King to the Åbo Court of Appeal, August 8, 1682, in the National Archives, Stockholm (*Riksregistraturet 1682, IV, f. 564 b*).

business of the Council of the Realm, which up to then had acted as a final appellate tribunal. The judges of the new Court were consequently appointed at the King's pleasure. The courts of appeal—a second one was established at Åbo in Finland in 1623—were, however, regarded as official agencies and in that capacity a court was entitled to submit a list of six candidates for any vacancy which arose. But the King was not bound to appoint any of these persons.[2]

As far as the towns were concerned, in the early 17th century the Crown tried to increase its influence over the administration of justice by appointing royal bailiffs to take part in the deliberations of the town councils, which also acted as courts of law in the towns.[3] This system proved inefficient, however, and failed to meet the requirements of the age. The Crown therefore increasingly interfered in the appointment of burgomasters. Some towns had more than one burgomaster, and the Crown's interest was then naturally centred on the so-called judicial burgomasters (*justitieborgmästare*). In time these offices, in all towns situated outside the duchies and fiefs, came to be held by "royal" burgomasters appointed by the King. In Finland this development took place gradually, starting in the sixteen-forties. As the attempts to deprive the towns of their right to elect burgomasters started at a comparatively late period, the townspeople were more successful than the peasantry in defending their privileges as to the appointment of judges. In the early sixteen-seventies the ancient liberty of the cities and towns to choose their own burgomasters and aldermen was confirmed. However, in order to remove any doubts that the judicial power itself was derived from the King and the Crown and not from the common will of the city community it was the practice for the burgomasters to receive royal letters of appointment and the aldermen to have letters issued by the lord lieutenant.[4]

The entire machinery of justice thus passed through a remarkable process of centralization and bureaucratization, which was

[2] Rättegångsordinantie (Ordinance as to Legal Proceedings) of 1614, sec. 12, in Joh. Schmedeman, *Justitiae- och Executions-Ährender,* 1706, pp. 137–8, *Rättegångsprocess* (Rules of Forensic Procedure) of 1615, rule 2, in Schmedeman, *op. cit.,* pp. 144–5.

[3] Aimo Halila, *Suomen kaupunkien kunnallishallinto 1600-luvulla,* vol. I, 1942, pp. 36–43.

[4] Halila, *op. cit.,* pp. 92–8. *Resolution på ständernas besvär* (Order in Council on account of the Addresses of the Estates) of September 1, 1664, in Stiernman, *op. cit.,* vol. II, p. 1529. The King to the Lords Lieutenant, December 5, 1693, in Schmedeman, *op. cit.,* pp. 1353–4.

completed in the latter part of the 17th century. The court organization had developed into a hierarchical, almost closed system, subordinate to the Crown. The conceptions implicit in the decrees of Charles XI concerning the administration of justice and underlying his role as chief justice of the realm were in complete accordance with this.

The Caroline absolutism, established in 1680, came to an end when Charles XII was killed by a bullet at the siege of Fredrikshald in 1718. But the transition to the parliamentary rule of the "Age of Freedom" (1719–72) did not lead to any great changes as regards appointments to the judiciary. The procedure laid down in the Constitutions of 1719 and 1720 for appointments to public offices only meant that in all cases three candidates were to be nominated instead of one, two or three (depending on the circumstances) as formerly. Public servants with the rank of colonel and above were to be appointed without prior nomination; the Council of the Realm would instead supply the King with names of possible candidates. The royal power to appoint was in these cases circumscribed by the provision that the Council of the Realm could veto a proposed appointment. With regard to inferior offices the King was confined to the persons nominated by the public agency or court of appeal concerned, and he was always to appoint the "most capable" of the candidates.[5]

As a result of the notorious Royal Ordinance concerning Vacant Offices and Posts, 1756, the power of the King and of the Council of the Realm as regards appointments was further limited, as also was the latitude allowed to the public agencies in composing nomination lists. By declaring the principles stated in the Constitution for promotion—capability, experience and merit —to be equivalent to seniority and by introducing the "rule of three nominations" (which meant that a man who had been thrice nominated was entitled to be appointed the next time an office of the kind in question fell vacant), the Ordinance had the effect of making public service appointments and promotions almost automatic.[6] Certain provisions as to qualifications further restricted the powers of nomination and appointment.

[5] Constitution of 1720, arts. 34 and 40.

[6] *Kungl. förordning ang. ... lediga tjänster och beställningar* (Royal Ordinance concerning Vacant Offices and Posts) of November 23, 1756, pp. 1, 16, in R. G. Modée, *Utdrag utur alla ... Publique Handlingar ... som Riksens Styrsel ... angå*, vol. VI, pp. 4098–101, 4110. *Kungl. Maj:t till kollegierna etc.* (The King to the Public Offices etc.) of April 25, 1758, in Modée, *op. cit.*, vol. VI, pp. 4774–5.

Early in the "Gustavian Period" (1771–1809) Gustav III (1771–92) put an end to parliamentary rule, and by means of the Constitution of 1772 he reassumed the power to appoint the most capable applicant. A dissenting councillor of the realm could have his view put on record, but this would not influence the result. As from 1772 public servants who could be appointed without prior nomination included persons holding the rank of lieutenant-colonel or above; in the judicial career this meant lawmen, judges of appeal, and holders of offices higher than these.[7] Apart from this, a public office could be bartered or sold; this was regarded as a transaction between the parties concerned, but royal confirmation was necessary. In these cases the courts of appeal seem often to have been ignored, thus further limiting their influence on appointments. The sale and barter of offices was part of the public service system of the time and was due to the lack of any provision for pensions—an office was regarded as a piece of property, which could be purchased from an existing holder or from the next-of-kin of a deceased holder.[8]

At the session of the Riksdag in 1789 Gustav III staged a *coup d'état* and forced through a statute amending the Constitution. This statute, called the Act of Union and Security, empowered the King to dispose at his pleasure of all public offices in the realm. It meant a return to absolutism with regard to public service appointments, but free discretion was in practice only applied to the more important appointments. In 1789 Gustav also created a new Supreme Court to take charge of the appellate jurisdiction of the Council of the Realm; although the Stockholm Court of Appeal had been established in 1614 with the same object, the final appeal to the King had not been entirely removed and the Council had experienced a considerable increase in its judicial work. The members of the Supreme Court—half of them were to be noblemen, half commoners—held office only for a fixed period and thus were to some extent dependent on those in power in the realm at any particular time. This was perhaps counterbalanced by the fact that all other judges were made irremovable.[9]

In 1808–09 Finland was occupied by Russian troops and in-

[7] Constitution of 1772, art. 10.

[8] Cf. Israel Myrberg, "Bidrag till tjänsteackordens historia i vårt land", in *Från svenska statsförvaltningen*, 1922.

[9] *Förenings- och säkerhetsakten* (The Act of Union and Security) of April 3, 1789.

corporated in the Russian Empire as an autonomous Grand Duchy. Towards the end of the period of Swedish rule the opinion had become established that judgeships were a special kind of office, and it was clear that too free an exercise of the power of appointment would cause the educated classes, as they were called, to react. After 1809 regulations concerning the competence of the judges gradually circumscribed the unfettered power to appoint, which had passed to the Russian Emperor in his capacity as Grand Duke of Finland. At first the nominations by the courts of appeal, and any complaints lodged against these nominations, were considered by the Government Council in plenary session, i.e. by the national ministers and the highest judges jointly, before being submitted to the Emperor-Grand Duke for decision; as from 1812 this work was taken over by the Judicial Department of the Government Council (later renamed the Judicial Department of the Imperial Senate), which was in effect the Finnish supreme court. The Department was also given power to make final decisions as to complaints against nominations.[1] As a result of this, matters concerning appointments to the inferior offices in the judiciary (those below the rank of lieutenant-colonel) were given very close consideration and the Emperor-Grand Duke rarely passed over the nominee of the Judicial Department. In the course of the century the successive Tsars tended more and more to relieve themselves of the burden of the Finnish government, transferring to Helsingfors the power of making final decisions, and in 1896 the Judicial Department of the Senate was given permission to exercise the imperial prerogative of appointment in respect of such judicial offices as were filled on the basis of nominations.[2] The higher judicial officers—after the abolition of the offices of lawmen in 1868, only the presidents, vice-presidents and judges of the courts of appeal, and the senators—were ap-

[1] *Regemente för ... regeringskonselj i storfurstendömet Finland* (Regulations for ... the Government Council in the Grand Duchy of Finland) of August 18, 1809, in *Samling af Placater, Förordningar, Manifester ..., hvilka i Stor-Furstendömet Finland sedan 1808 års början utkommit,* vol. I, 1821, pp. 23–5. *Förordning om vad vid underdåniga besvärs anförande över de till ledige domarsysslor upprättade förslag ... hädanefter iakttages* (Ordinance as to the future procedure in dealing with humble complaints lodged against nominations in respect of vacant judges' offices) of February 5, 1812, in *Samling af Placater,* vol. I, pp. 213–4.

[2] *Förordning angående kejs. senaten förlänad rättighet att slutligen avgöra vissa ärenden* (Ordinance relating to the power bestowed on the Imperial Senate to make final decisions in certain matters) of July 23, 1896, sec. 1, para. 1.

pointed by the Tsar without prior nominations.[3] A partial separation of political and judicial power was thus realized, the appointments and promotions of all but the highest judicial officers being internal matters decided by the judiciary itself.

II

As the King's power to appoint lawmen and district judges gradually became established in 16th-century Sweden, the nature of these offices changed. They were increasingly regarded as grants of the Crown and were in many respects put in the same category as ordinary fiefs; the offices in fact yielded quite considerable incomes. Another development was that the dues payable by the peasantry in order to remunerate the judges came to be regarded as an ordinary tax, payable to the Crown. As it took on the responsibility of maintaining the judicial organization, the Crown felt free to use this revenue for other purposes (in so far as it had not been granted to subjects), and there are instances of mining activities and the building of castles being financed in this way.[4]

The view that the bestowal of a judgeship was in the nature of a feudal grant was clearly manifested in the fifteen-twenties, when Gustav Vasa decreed that the duty of the holders of ordinary fiefs to do military service also applied to those who had been granted judgeships. This was sometimes made evident in the letters of appointment; thus the letters appointing Lars Knutsson Fordell to be district judge in the administrative province of Korsholm (the southern part of the geographical province of East Bothnia) enjoined him to keep four armed men at Nyslott for the

[3] In 1918 the Judicial Department of the Senate was converted into a Supreme Court; at the same time a Supreme Administrative Court was founded. According to the Constitution of 1919, the President of the Republic appoints the presidents of the two supreme courts without prior nominations and their members on the basis of nominations by the supreme court concerned; he also appoints the members of the courts of appeal, after nominations by the Supreme Court. District judges and burgomasters are appointed by the Supreme Court, while the aldermen in the towns are chosen by the (modern) borough councils. Finlands Juristförbund (the Association of Finnish Lawyers) has recently expressed anxiety about a tendency of the aldermanic elections to become politicized.

[4] Blomstedt, pp. 40–41. Almquist, *Lagsagor och domsagor,* vol. I, pp. 3–4.

defence of the realm in addition to sending ten barrels of butter to His Majesty each year. When Fordell in 1559 received new letters of appointment in respect of the office, the obligation was to send five well-armed men.[5]

At the Riksdag of Jönköping in 1561 Eric XIV agreed with the nobility that those entitled to receive judges' dues were not to be burdened with other obligations than those imposed on them by the law for the benefit of the peasantry—i.e. to discharge their duties as judges. It is possible that military service was reintroduced in the reign of John III, and it is clear that that King regarded the profits of the offices of lawmen and district judges as grants: in 1573 it was decreed that part of the dues was to be paid to the Crown as a tax, in 1580 all judges' dues were reassumed by the Crown, and in 1585 a third of the other perquisites of the judgeships (e.g. shares in fines) were also taken over.[6]

The question of the exact nature of the judgeships as grants was only settled when Charles IX reached an agreement with the nobility in the course of the negotiations for a Charter of Privileges. These grants were then separated from those entailing military service.[7]

The notion that judgeships could be given away left its mark on history at an early stage. The offices were granted to the mighty in the realm. But with the passage of time such magnates increasingly found themselves unable to attend personally to their judicial duties. A judgeship, it might be said, had become an office of which the salary—mainly the judge's dues—must be regarded as compensation for work done in wholly different functions. In the fifteen-twenties Gustav Vasa rewarded his helpers in the War of Liberation with judgeships, and later his court attendants were often granted judges' dues or judgeships to support them at the start of their careers in the service of the Crown. Failure in some other pursuit might well lead to the loss of a judgeship; in 1555 Måns Nilsson of Ahtis fell into disgrace as a result of shortcomings in his conduct of a military post, and in consequence he was deprived of the judgeship of Nedre Satakunda. When in 1563 Eric XIV overthrew his brother Duke John, he rewarded his followers with judgeships; and when five years

[5] Blomstedt, pp. 42–3. Sven A. Nilsson, *Krona och frälse i Sverige 1523–1594*, 1947, p. 52.

[6] Blomstedt, pp. 43–4.

[7] Severin Bergh, *Karl IX och den svenska adeln 1607–1609*, 1882, pp. 55–6.

later he was in turn defeated by the Duke, who then became King John III, the new monarch showed his gratitude in the same way. Yet there were some who, by nimbly changing sides at the right moment, managed to keep their judgeships all through this time of ferment.[8]

The personal resources of the Swedish realm were so limited that it was quite common for a man who had been appointed district judge to have other duties, administrative or military, to perform. Consequently he was in many cases prevented from sitting as a judge, even if he wished to do so. It was sometimes a case of disqualification, as when a person had been appointed both judge and bailiff in the same district. Thus Nils Grabbe, who was judge of the district of Raseborg, could not sit as a judge between 1524 and 1526 because he was also bailiff in the district. Often it was a question of distance; being castellan of far-away Viborg the same Nils Grabbe was again precluded from sitting in 1535–46. When in 1542 the castellan of Örbyhus, Tomas Nilsson, was appointed judge of the district of Savolax, it was clear from the very beginning that he would be unable to travel three or four times a year from Uppland in central Sweden to the eastern frontier of Finland in order to attend the sessions of his court. From the middle of the 16th century the number of those used only as judges decreased steadily and in 1565 Eric Olofsson Stålarm of the district of Äyräpää seems to have been the only judge in Finland whose main occupation was not in some other field. His colleagues in other districts were admirals and colonels, or were employed in the administration of the newly conquered Estonia; the district judge of Åland performed his duties as burgomaster in Stockholm, and so on.[9]

From the fifteen-fifties onwards the realm was almost continuously in a state of war. The Russian War of 1555–57, the conquest of Estonia in 1561–63, the Seven Years' War of the North between 1563 and 1570, and the struggle with Russia extending over the twenty-five years 1570–95—all these events tied most noblemen to military tasks and prevented them from attending to the duties of a judgeship. At the beginning of the 17th century, when the central administration of the budding great power was reorganized and put on a more stable basis than previously by the establishment of a number of permanent government agencies in Stockholm, many members of the leading section of society be-

[8] Blomstedt, pp. 74–82, 134–5.
[9] Blomstedt, pp. 87–90.

came attached to these. They were often remunerated wholly or partly by the grant of judgeships. The office of lawman was usually bestowed on men belonging to the circle of aristocrats from whom the councillors of the realm were drawn, and some district judgeships were disposed of in the same way. In Finland, the office of lawman of Karelia (constituted in 1578) was held by a man outside this circle only between 1590 and 1618, and that of Southern Finland only from 1583 to 1602; while from the time of Gustav Vasa (who died in 1560) the lawmanship of Northern Finland was held by councillors of the realm, as were all the lawmanships in the realm from the sixteen-thirties onwards.

Already at the end of the 16th century Finnish district judgeships were being granted to men from other parts of the realm, and thereafter this practice became increasingly usual. In 1599 Duke Charles—after having subdued Finland, whose leaders had remained loyal to Sigismund, the legitimate king—wished to punish the Finnish nobility, and in the course of the ensuing wave of terror many Finnish district judgeships were transferred to men born in Sweden.[1] In 1619 all the accountants-general in the Treasury in Stockholm were said to hold district judgeships in Finland.[2] This development continued until the sixteen-fifties, except that the proportions tended to shift somewhat in favour of the councillors of the realm—in 1652 eleven of Finland's sixteen district judges were councillors of the realm, and two of the remaining five were summoned to the Council in 1653. In 1642 various officials of the Åbo Court of Appeal were granted eleven districts in Swedish provinces (seven in Uppland, two in Östergötland, one in Västergötland and one in Närke) but only two districts in Finland. The holders of these judgeships were apparently not even expected to discharge the duties connected with the offices. This conclusion is supported by the fact that officials of the Stockholm Court of Appeal in 1628 were granted, *inter alia,* four Finnish district judgeships to supplement their salaries, two of the districts being those farthest from Sweden.[3]

In view of what has been said above, it is no wonder that the grantees of judgeships themselves came to look upon their offices as mere sinecures. The last district judge who actually sat on the

[1] Blomstedt, pp. 90, 137–8, 187–93.

[2] Blomstedt, p. 193; cf. the review by Jan Eric Almquist in (the Swedish) *Historisk Tidskrift* 1960, p. 95. The district judgeships held by officials of the Treasury (principally as a supplement to their meagre salary) later had to be surrendered in favour of judges and officers of the courts of appeal.

[3] Blomstedt, pp. 191, 257.

bench was Henrik Claesson Fleming of Vemo (1625), and the last lawman to do so was Count Jacob de la Gardie in the jurisdiction of Southern Finland (1619).[4]

On the basis of information—to be gathered from judgments, court records and registers of fines—as to persons who presided at the sessions of the courts during the period of 1550–1652, it is even possible to follow the development statistically. The table below[5] shows how the district judges took a decreasing part in the actual administration of justice.

Period	Number of sessions (all told)	Sessions with district judge present: Number	Sessions with district judge present: Percentage of all sessions in period
1550–68	383	200	47.7
1568–99	622	430	30.8
1600–23	525	487	7.4
1624–52	1113	1	0.1

It may be added that, with respect to Finland, hardly a single case is known of a district judge being absent during the period 1500–23, except for reasons of disqualification, and as regards the period 1523–49 most accounts clearly indicate that the judge was present in person at the sessions.[6] The development is thus marked by a rapid rise in the number of sessions held without the nominal judge in the late 16th and early 17th centuries. The scarcity of sources—the fines registers are only available from the end of the fifteen-forties onwards—makes it impossible to say when the trend really became manifest. It is clear, however, that the development was speeded up by the coming of a period of war and crisis in the middle of the 16th century, and that it reached a culmination first with the appointments policy of Charles IX—inspired, as it was, by suspicion of Finland—and then with the reorganization at the beginning of the 17th century of the central government, with all that this change implied.

But since the administration of justice had to be carried on somehow, there must have been people who took over the duties of the offices by acting as judges at 52.3 per cent of the sessions in

[4] Blomstedt, pp. 196, 256.
[5] Blomstedt, pp. 97, 143, 197, 264.
[6] Blomstedt, pp. 87–9.

the period 1550–68, at nearly 70 per cent of the sessions in 1568–99, at over 92 per cent in 1600–23, and at all sessions except one between 1624 and 1652. These persons were a variety of substitutes and deputies, who gradually came to constitute a considerable body of underlawmen (*underlagmän*) "lawreaders" (*läglässare*) and "hundred judges" (*häradsdomare*). They formed an integral part of the judicial system of the 16th and 17th centuries.

What sort of people were thus made use of as substitutes? Accounts from the fifteen-twenties, fifteen-thirties and fifteen-forties speak mainly of two categories of deputy judges: other judges and noblemen on the one hand, and on the other persons with the appellation of "scribe", e.g. Henrik the Scribe of Sudenmaa in Sagu.[7] From the fifteen-fifties onwards the evidence admits of statistical treatment, and the substitutes can be divided into six categories: (a) other judges; (b) other noblemen; (c) educated substitutes (mainly clergymen and people who had studied at a university); (d) bailiffs and scribes; (e) substitutes attached to the administration of the towns (burgomasters, aldermen, burgesses); and (f) people of unknown social position. During the period 1550–1652 the direction of the sessions of the district courts[8] was distributed among these groups in the following manner:

Period	The judge himself	Percentage of sessions taken by varions groups of substitutes					
		(a)	(b)	(c)	(d)	(e)	(f)
1550–68	47.7	4.6	0.8	6.9	27.7	5.2	6.9
1568–99	30.8	2.2	2.0	6.3	41.7	4.6	12.4
1600–23	7.4	1.6		1.5	72.4	6.1	11.0
1624–52	0.1	—		35.3	30.2	20.2	14.3

A look at the table will show that it was mainly groups (d). "bailiffs and scribes", as well as (e), "burgomasters, etc.", who, up to the sixteen-twenties, increasingly had to assume the responsibility for the administration of justice in Finland. All other groups had a much smaller share in this responsibility, and the groups (a) and (b), "other judges" and "other noblemen", disap-

[7] Further examples: Henrik the Scribe of Dönsby in Ingå, Lasse the Scribe of the Castle, Henrik the Scribe of Lavila in Eura, Old Knut the Scribe of Monikkala in Janakkala, Påvel the Scribe and Peder the Scribe in Savolax. Blomstedt, p. 93.

[8] Blomstedt, pp. 95, 97, 150, 203, 264.

pear completely in the sixteen-twenties. As regards group (e), the current at this time flowed the other way too: "lawreaders" were often elected burgomasters or aldermen.

Group (c), "educated substitutes", is remarkable in that it displays a marked decrease at the beginning of the 17th century, to be transformed into a sharp rise after 1623. In fact, however, the members of this category are of completely different types in the 16th and in the 17th centuries. In the 16th century clergymen dominate, among them Georgius Michaelis, chaplain to the famous warrior and Governor-General of Estonia Henrik Klasson Horn and later parson of Reso and Nådendal, who sat almost continuously as a judge in various districts in western Finland from 1563 to 1585.[9] In the 16th century there were only two substitutes in this group who were not in holy orders.[1] In the early 17th century there were only two educated lawreaders.[2] As to the type of person found in the "educated" group when it again expanded after 1623, this question is dealt with in section III below.

It is impossible here to give a detailed account of the complaints made against the alleged incompetence of the judges' substitutes. The fact that no such complaints are known from the times of Gustav Vasa and Eric XIV is probably due as much to the paucity of sources as to the small number of deputies. A few pronouncements, emanating from the latter half of the 16th century, show that the nobility, at any rate, regarded the use of substitutes as a bad thing. In the course of the negotiations concerning the privileges of the nobility in 1569, the aristocracy were not content to have "honourable and prudent" men as judges; they also wanted men who were prepared to perform the duties of their offices themselves and not put "priests, burgesses or senseless scribes" in their places.[3] As their chief aim was to reserve these offices for their own caste, and the principle of trial by their peers was probably also involved, it is hard to say to what extent anxiety for the administration of true justice also played a role.

[9] Blomstedt, pp. 378, 150–51.

[1] Viz. Andreas Olai, a doctor of law and Chancellor to Duke John, and Jakob Teit, a secretary in the government offices and former member of the "Royal High Court", Eric XIV's instrument for curbing the aristocracy. These men had both studied at universities in Germany. Blomstedt, pp. 96, 148–51.

[2] Blomstedt, p. 202 (Jöran Henriksson and Hartvig Henriksson Speitz—the translator of, i.a., the Military Penal Code into Finnish—brothers and both educated in Wittenberg, Germany).

[3] *Svenska riksdagsakter 1521–1718*, vol. II. p. 369. Nilsson, *Kampen om de adliga privilegierna*, p. 19.

This aspect was, however, brought out with great emphasis in the declarations made in different connections with respect to the legal system by Duke Charles (afterwards King Charles IX) as Regent in Sigismund's absence abroad. As early as the beginning of 1593 the duke decreed that only men who were learned in the law and would sit themselves ought to be appointed judges; in Letters Patent of March, 1593, which treated of courts and procedure and which finally settled, among other things, the order of the instances, he laid down that a judge must take the sittings in person, but if prevented by affairs of the realm, he was to put in his stead an upright man learned in the law. In October, 1595, it was ordained that the judges should preside at the sessions themselves and must not use deputies; these provisions were repeated in the Statute of Legal Proceedings of February, 1598. In order to improve the control of the administration of justice in the realm, Duke Charles had already in 1593 directed that the records of the courts should be sent in to the Royal Chancellery in Stockholm for scrutiny, and in 1602 a Prosecutor of the Realm was appointed to perform this work. (In 1614 the office was annexed to the Stockholm Court of Appeal, then just created, and the holder restyled Prosecutor-Advocate (*advokatfiskal*). In the Statute of 1598, Duke Charles had this to say by way of preamble: "... whereas those who have been appointed lawmen and district judges do not sit on the bench but commission in their stead others who can neither read nor write and who have little understanding of the law, so that not all matters are fairly considered and decided, and many an unjust judgment is pronounced ... on account of partiality and bribes, and therefore God will visit the land and the people with all sorts of evils ...".[4]

It will be seen that the enactments just mentioned already speak of certain qualifications; thus they express the expectation that the judges and their substitutes shall be "learned in the law". In 1616 a well-known translator and printer called Ericus Schroderus published a Swedish version of a tract by the Augs-

[4] Blomstedt, pp. 158–62. Reply by Duke Charles to the Council of the Realm, January 14, 1593, in the National Archives, Stockholm (*Riksregistraturet 1593 (Hertig Carl), I, f. 12 b). Patent om åtskilliga mål* (Letters Patent concerning Various Matters) of March 20, 1593, in Schmedeman, *op. cit.*, pp. 103–7. *Svenska riksdagsakter 1521–1718,* vol. II, pp. 951–2. Letters of appointment of Knut Jönsson (Kurck) of January 17, 1593, in the National Archives, Stockholm (*Riksregistraturet 1593 (Hertig Carl), III, f. 3 b). Stadga om rättegånger* (Statute of Legal Proceedings) of February 25, 1598, in Schmedeman, *op. cit.*, pp. 112–14. Jan Eric Almquist, *Häradstingsprotokoll före 1614,* 1945. pp. 16–18.

burg jurist and disciple of Paracelsus, Georg am (und von) Waldt, with the waggish title "Disorder of Procedure" (*Rättegångs Oordningh*). This gave Swedish readers a chance to acquaint themselves with the Continental conception of the ideal judge. The qualities and attributes which a judge ought to have are described in twenty-five points, the second stating: "The judge should be learned, capable, and practised in the law. ... By this I do not mean that the judges should be doctors of law, for with us there is great scarcity of such persons."[5] The development in the 17th century was to a great extent a result of serious attempts by different means to realize this ideal and bring into existence a judiciary that would meet certain requirements as to erudition and knowledge of the law. The fact that the judges' offices yielded considerable and stable rewards which were needed to remunerate more exalted public officers or supplement their incomes made it impossible for the time being to change the system of substitutes. It was necessary to concentrate the efforts on raising the level of the deputies. In these circumstances the courts of appeal inevitably played an important role.

III

The Swedish development followed patterns from the Continent, mainly Germany. When the Swedish university organization was still in its infancy, many Swedes went abroad, particularly to German universities. As well as obtaining general knowledge in the course of their peregrinations they acquainted themselves with what those more enlightened countries expected of an ideal system of justice. Following the incorporation in 1561 of Estonia into the Swedish realm, the frontiers of the latter in fact embraced territories belonging to the German sphere of law and pursuing its traditions. On account of the reception of Roman law, the administration of justice in Germany had been endowed with elements forming part of that ideal of legal culture which is associated with Scholasticism and the Renaissance. The rapid advance of the universities had made it possible to make certain

[5] Ericus Schroderus, *Georgii am Waldt, Juris Licentiati, Phil. & Med. U. Doctoris, Rättegångs Oordningh etc.*, 1616, p. 6.

demands as to the erudition of the judges; and particularly in the superior courts highly educated judges, who were generally doctors of law, soon acquired permanent seats. According to certain rules of 1549 concerning the High Court of Appeal of Saxony, a third of its members were to be doctors of law, a proportion raised to five out of twelve in a Statute of 1588. At the beginning of the 16th century the Appellate Court at Marburg consisted of three doctors and nine knights, but a Statute of 1567 laid down that six of its members must be learned in the law and only two had to be noblemen. According to provisions issued in 1567 five members of the Supreme Appellate Court at Cassel were to be doctors of law and four were to be noblemen. The Regulations of the Court of Imperial Chamber—the supreme court of the Holy Roman Empire of the German Nation—stated that the bench was to consist in equal numbers of knights and persons learned in the law.[6]

This principle, that both persons with a legal education and aristocrats should sit as judges in the higher instances, set the pattern for Sweden as well. When the Stockholm Court of Appeal —which, as already indicated, was originally intended to be the supreme court of the realm—came into existence in 1614, it consisted of five councillors of the realm and of two classes of assessors, *adsessores nobiles* and *adsessores litterati.* The latter group was described as "other men of erudition and legal learning".[7] A substantial portion of the first members of the Court had attended foreign universities, chiefly German or Dutch.[8] By reason of the long distance and the fact that contact with Sweden was almost completely severed during part of the year, Finland in 1623 got its own Court of Appeal at Åbo. Attempts were made to organize it on the same lines as the Stockholm Court nine years earlier.[9] But it was more difficult than in Sweden to find suitable

[6] Cf. Erich Döring, *Geschichte der deutschen Rechtspflege seit 1500,* 1953; Eduard Kern, *Geschichte des Gerichtsverfassungsrechts,* 1953; Albrecht Wagner, *Der Richter,* 1959; F. Wieacker, *Privatrechtsgeschichte der Neuzeit,* 1952; Adolf Stölzel, *Die Entwicklung des gelehrten Richtertums in deutschen Territorien,* vols. I–II, 1872; *id., Die Entwicklung der gelehrten Rechtssprechung,* vols. I–II.

[7] Sture Petrén, "Hovrättens uppbyggnad 1614–1654", in *Svea Hovrätt. Studier till 350-årsminnet,* 1964, pp. 48–50 and pp. 4–5, which show that the division of the judiciary into noblemen and commoners was of old standing in Sweden.

[8] Stig Jägerskiöld, *Studier rörande receptionen av främmande rätt i Sverige under den yngre landslagens tid,* 1964, pp. 35–7.

[9] K. R. Melander, *Drag ur Åbo hovrätts äldre historia och ur rättslivet i Finland under förra hälften av 1600-talet,* 1936, pp. 18–32.

persons to fill the class of assessors which was to consist of learned commoners, and upon his appointment the first President of the Court, Baron Nils Bielke, was given unlimited authority to "summon to his assistance a few of the burgomasters and aldermen in the towns of Åbo and Viborg as well as some trustworthy men from among the lawreaders in the provinces".[1]

But even the Åbo Court of Appeal had from the very start members who had studied in foreign countries. Nils Bielke himself had travelled abroad in the fifteen-eighties for purposes of study, and so by all accounts had his successors during the 17th century (with the possible exception of Lieutenant-General Robert Lichton, who was President in 1687–92). As far as is known, the first Vice-President, Jöns Nilsson Jacobsköld, had not studied law, but he had at any rate had practical experience of the judicial profession. Among the succeeding vice-presidents were men who had studied at Marburg, Rostock and Leyden; but there are others of whose legal studies nothing is known—all that can be ascertained is that they had gone over from a military to a judicial career. Among the noble assessors who were appointed in 1623, Herman Fleming had studied at Rostock, Lars Carpelan at Wittenberg, Jena and Heidelberg, and Carl Larsson Kröpelin at Helmstädt. Later the group of former military men seems to dominate, but among the assessors belonging to the nobility there were also some former students of Basel, Wittenberg, Marburg, Leyden and Groningen. The first doctor of law in this class of assessors was Petrus Ekenberg, a former commoner by the name of Wigelius who was transferred from the non-aristocratic category upon his elevation to the nobility in 1650; he had acquired his doctorate at Basel in 1631. He was succeeded in 1657 by Michael GyldenStålpe (named Wexionius before he was ennobled), who had studied at Marburg, and in 1650 was the first on whom the degree of *juris utriusque doctor* was conferred at Åbo. Among assessors of the commoner category, lawreaders and underlawmen dominate at first, but later several men who had received a university education at home or abroad were included, e.g. Lars Cygnaeus (who had passed an examination which entitled him to be styled "Magister"), Johannes Olai Dalekarlus (also a magister and later ennobled as Stiernhöök; more will be said of him be-

[1] *Kungl. Maj:ts fullmakt för Åbo hovrätt* (The King's Warrant for the Åbo Court of Appeal) of June 15, 1623, in Schmedeman, *op. cit.*, pp. 218–19.

low), and Johannes Gartzius, who was the first to defend a thesis for the degree of *juris utriusque doctor* in Finland.[2]

The new courts of appeal were thus to a great extent staffed with men who, from their own experience, knew the importance of theoretical studies for performing the duties of a judge. The administration of justice in the lower courts was, at the same time, largely in the hands of former scribes and bailiffs, and as the courts of appeal were under obligation to scrutinize the records of the inferior courts it is hardly surprising that the judges of appeal, being themselves mostly well educated men, soon found the majority of the underlawmen and lawreaders to be of rather limited competence, to put it mildly. In course of time this deficiency came to be remedied by the provision of theoretical and practical training for the judicial career.

As far as the theoretical training was concerned, law could be studied at the University of Uppsala from the sixteen-twenties onwards, and after 1632 also at the University of Dorpat. Both universities were attended by a great many Finnish youths. It was felt to be an anomaly, however, that there were no facilities for studying law in Finland, and in 1637 the Åbo Court of Appeal wrote to the Council of the Realm asking that the university which had been planned for Åbo should be founded as soon as possible and also that there should be chairs of law. A short time afterwards, at the beginning of 1638, a further attempt was made to speed up the commencement of legal education at Åbo by suggesting that, pending the establishment of a university, legal teaching posts might be created at once in the form of senior masterships at the *gymnasium* or grammar school which had been set up at Åbo in 1630. When the University of Åbo was founded in 1640 the above-mentioned assessor in the Åbo Court of Appeal, Magister Johannes Olai Dalekarlus, was appointed professor of law. This man, who (as already indicated) assumed the name of Stiernhöök on his elevation to the nobility, has been much admired by posterity and is known as "the Father of Swedish Juris-

[2] Others were Henrik Teit, Petrus Dober, Algot Carlstadius, the already mentioned Petrus Wigelius (afterwards Ekenberg), Magnus Rhalambius (ennobled as Rålambstierna), Magister Nils Liurenius, Johan Henriksson (ennobled as Axehiälm) Georg Sylvius, Petrus Thesleff, Nils Skunck, Olof Wallenius (ennobled as Wallenstierna), Magister Johan Wassenius (ennobled as Lagermarck) and Nicolaus Lietzen. See the information in A. W. Westerlund, *Åbo hovrätts presidenter, ledamöter och tjänstemän 1623–1923*, 1923, *passim*.

prudence". His best-known work is *De jure Sveonum et Gothorum vetusto,* frequently quoted by, e.g., Blackstone in his *Commentaries on the Laws of England. De jure* was based on lectures given by Stiernhöök at the University of Åbo, but his achievements as a university teacher (1640–46) were nevertheless limited by reason of his many duties on the other side of the Baltic. His deputy and successor, Michael Olai Wexionius or GyldenStålpe (also mentioned above), seems, however, to have been an ardent and successful teacher; he was active in the period 1647–57. The academic teaching was of a rather theoretical nature, its main object according to the University Statutes being to give the students an understanding of the system of law considered to be of general application, i.e. Roman law.[3]

Thus the courts of appeal could not take it for granted that the universities would give sufficient instruction as regards indigenous laws and their practical application. This could only be done by way of practical experience, and even before the universities had begun to teach law the Stockholm Court of Appeal had started to take in "auscultators", i.e. young men who, after being sworn to secrecy, were allowed to listen to (i.e., auscultate) the proceedings in the Court of Appeal. In some cases the auscultators were even allowed to assist the notary in keeping the record, and towards the end of the auscultation period, which normally extended over three or four years, they could be permitted to represent parties in the Court of Appeal. The public often took advantage of the knowledge of the law the auscultators had picked up in this way by employing them as advocates in the inferior courts. Of the fifty auscultators enrolled in the Stockholm Court of Appeal between 1627 and 1635, at least fifteen became underlawmen or lawreaders; but Finland derived hardly any benefit from this, as only four of the fifty later moved to Åbo (three joining the Court of Appeal and one becoming town clerk).[4]

The introduction of auscultation at Åbo therefore appeared to the Court of Appeal as an urgent matter, and in a memorandum submitted to the Council of the Realm in 1633 permission was sought to receive "some suitable persons or young students as *auscultatores* who, after having taken the oath of secrecy, would

[3] Blomstedt, pp. 223–4. Yrjö Blomstedt, "Oikeustieteen tohtoreista ja tohtorinväitöskirjoista 1600-luvun Turussa", *Lakimies* 1964, pp. 691–700.

[4] As to the origin of the auscultation system, see Petrén, *op. cit.*, pp. 86–93; as to its development, see Stig Jägerskiöld, "Hovrätten under den karolinska tiden och till 1734 års lag", in *Svea Hovrätt. Studier till 350-årsminnet,* 1964, pp. 204–12, and Blomstedt, pp. 222–3.

follow how causes are dealt with and thus become qualified for posts as lawreaders and for other offices". Permission was probably given in the same year, and auscultation must have started in the autumn of 1635 at the latest. But it seems not to have yielded any spectacular results even by 1638, for in his official report of that year the Governor-General of Finland, Count Per Brahe, spoke of auscultation as something which ought to be *introduced* in Finland, and in the same year the President of the Court of Appeal, Jöns Kurck, regretted that there was "a mighty shortage" of persons suitable to be used as lawreaders.[5]

Provision for the training of judges' substitutes was thus made by the introduction of legal studies at the universities and by admitting auscultators into the courts of appeal. From the sixteen-twenties onwards these courts were increasingly in a position to have a say in the appointment of substitutes—in 1629 the Stockholm Court of Appeal was authorized to check the competence of the candidates and to administer their judge's oaths, and from 1630 onwards the Court also furnished every substitute with a special commission (*promotorial, constitutorial*) in respect of his office. Similar commissions, signed by the president of the Court of Appeal, are known in Finland from as early as 1625, but there seems not to have been any express resolution by the government authorizing the Åbo Court of Appeal to scrutinize candidates and grant them commissions in the same way as the Stockholm Court. Nevertheless, in course of time the practice became established that the Court of Appeal when commissioning a lawreader would pay regard to the views of the bearer of the office.[6]

That it so fairly soon became possible to fill the lawreaders' posts with people who satisfied the requirements of the new age, is proved by the fact that the last two persons belonging to the group of "scribes and bailiffs" (referred to above) who went over to the judiciary were the former hundredal bailiff Jöran Jöransson Påsa in 1638 and the former bailiff of the fief of Count Jacob de la Gardie, Johan Simonsson, in 1639. After 1650, when the former hundredal scribe Daniel Nilsson ended his long service as a lawreader in Tavastland, this group was no longer represented in the body of substitutes. During the entire period 1624–52, 35.3 per cent of the district court sessions were taken by "educated" lawreaders (cf. the table on p. 27). They had either auscultated or been to a university—the ecclesiastical element had disap-

[5] Blomstedt, p. 223.
[6] Blomstedt, pp. 226–30.

peared. Only 30.2 per cent of the sessions were presided over by former bailiffs and scribes—a sharp decrease in comparison with the previous period (see the table). Among those bailiffs and scribes there were, for that matter, some who had such exceptional gifts as to be fitted to act as assessors in the Court of Appeal. It is therefore fair to say that the shortcomings as regards the competence of the lawreaders had to a great extent been removed.[7] All new lawreaders who appear in the period 1643–52 were educated (leaving out of account two whose antecedents it has been impossible to establish).

But the substitutional system itself remained. In 1649 Queen Christina (1632–54) proposed to the Riksdag that the holders of judgeships should thenceforth perform the duties of their offices themselves. The noble Estate interpreted the proposal as directed against its own interests and made the counter-proposal that a vice-judge (*vice häradshövding*), drawn from the nobility in the district, should always be appointed with the duty of presiding, assisted by the lawreader, at the sessions. The commoner Estates, whose members were not to the same extent economically interested in the matter, supported the Queen's proposal. The outcome was a statement in the Final Resolution of the session of the Riksdag that "the evil state of affairs through which many in this country are denied justice, would be mitigated if district judges were appointed who would themselves take the sittings in the provinces".[8]

In accordance with this decision a beginning was made late in 1649 in planning an altered system. The result, such as it was, must probably in the first place be put down to certain proposals by the courts of appeal with a view to ameliorating their wretched conditions. In the Åbo Court of Appeal there were, for instance, assessors and other officials whose salary arrears in the course of the years had risen to considerable amounts, in some cases to sums equivalent to five years' full pay. In October 1652 all judges' dues in the realm (except those which had been granted to the hereditary prince, the future King Charles X (1654–60)) were reassumed by the Crown; but in so far as dues had actually been used to remunerate lawreaders, they were still to be employed in that manner. By three Letters Patent of 1653 all district judgeships were to be granted to assessors of the courts of appeal. In Sweden the assessors were themselves to perform all the duties

[7] Blomstedt, pp. 262, 264.
[8] Blomstedt, pp. 267–9.

of the offices, whereas in Finland, by reason of the long journeys involved, it would be sufficient if they took one of the three yearly sessions in person.[9]

This limited obligation to serve was variously performed by different Finnish appeal court assessors. Thus the assessor who was judge of the district of Kymmene, Anders Krook (ennobled as Gyllenkrook) took most sessions in person, whereas the assessor Mårten Schilling, who right up to his death in 1672 was judge successively of the districts of Kexholms Län, the Hundred of Borgå, and Stora Savolax, was never seen at all in his districts.[1] The lawreaders accordingly still had an important role to play in the machinery of justice. In the lawmen's courts underlawmen served as judges during the whole period.

Between 1653 and 1680 seventy-one persons served as judges' substitutes. (Eight of these served in the great fiefs—countships and baronies—which had a separate judicial organization.) At least fifty-three (76 per cent) out of these seventy-one had either studied at a university or auscultated in a court of appeal or had done both. With respect to some ten, nothing definite is known about their studies. Half a dozen had served in the civil administration, and the rest were judges in towns and cities. Some of the latter were of the type that had "risen from the ranks"; thus it is said of Jöran Zadler, burgomaster at Gamla Karleby and subsequently at Uleåborg, that he "is little versed in book-learning, still less has he been an auscultator in the Royal Court of Appeal".[2]

There are great gaps in the series of records, and furthermore, in those cases where an assessor of the Court of Appeal was district judge, it is often impossible to tell whether a particular session was taken by the assessor or by his lawreader. For these reasons no exact figures regarding the share of the substitutes in performing the duties of district judgeships can be given for the whole of Finland. What can be stated—to take the province of Finland proper, i.e. the region around Åbo, as an example—is this: while in the period 1600–23 approximately 3 per cent of the sessions were taken by "educated" lawreaders, the share of the latter increased to about 43 per cent in the period 1624–52, and

[9] The Letters Patent were dated April 29 (in respect of the Stockholm Court of Appeal), June 11 (the Göta or Jönköping Court, which had been founded in 1634) and June 17 (the Åbo Court). Blomstedt, pp. 269–70.

[1] Blomstedt, p. 300.

[2] Blomstedt, pp. 301–2. Eino E. Suolahti, *Porvarispoikien opinkäynti Suomen barokkiajalla,* 1946, p. 150.

the administration of justice in this province was exclusively in the hands of legally educated judges during the years 1653–80. In the course of the 17th century, the lawreaders' posts became more and more permanent, so that the same lawreader would perform the duties of the judge in a particular district for decades (thus the district of Halikko had only two successive lawreaders between 1641 and 1680, and the same applied to Nedre Satakunda between 1646 and 1680).[3]

The new system met with disapproval, particularly among the nobility, who considered that their privileges had been infringed, but also on the part of other people who did not relish seeing the administration of justice concentrated in the hands of a few. It was in itself contrary to the principles of procedural law that a person should be judge in two instances, even though the disqualification rules were always observed so that an assessor never tried the same case twice. But there were also advantages connected with the new system, particularly that competent judges with appeal-court experience managed and supervised the administration of justice in the courts of first instance as well. The disadvantages seem to have preponderated, however, and already in 1654 Queen Christina intended to appoint new judges in those districts that had been allotted to the Stockholm Court of Appeal. Her intentions remain unfulfilled, however, and corresponding plans as regards Finland the following year also proved abortive. But the system was relaxed both in Sweden and in Finland by granting district judgeships to persons outside the courts of appeal. In Finland, however, this remained an exceptional right up to 1680, so that the years 1653–80 may well be called the period of the system of assessor-district judges.[4]

Pursuant to the Letters Patent of 1653 all the Finnish court districts except Åland and East Bothnia were granted to Court of Appeal assessors; East Bothnia, too, was later (in 1657–74) "under" the Court of Appeal. Six of the districts were held by assessors during the whole period 1653–80, whereas a few districts were sometimes outside, sometimes under the Court of Appeal. At the end of the period nine out of the then fifteen Finnish court districts were under the Appeal Court and six were outside.[5]

Depending on the quarter from which the question was raised, the Council of the Realm often changed its views as to how the

[3] Blomstedt, pp. 346, 240–42, 280–81.
[4] Blomstedt, pp. 270–72.
[5] Blomstedt, p. 296.

district judgeships ought to be distributed. When the courts of appeal complained about their poor salaries and the huge arrears of pay, it was soon suggested in the Council that all district judgeships should again be granted to the officials of the courts of appeal. But when the inadequate remuneration of the councillors themselves was discussed, it was proposed with the same promptness that recourse should be had to the judges' dues in order to improve the councillors' own financial position. The question of the offices of district judges was also taken up at the sessions of the Riksdag. In 1664 it was proposed in the Estate of Nobles that the district judgeships should no longer be given away either to supplement salaries or to reward other services rendered to the realm, that the holder should be bound to perform the duties of the office himself, that the office should be filled by election, and that all district judges should have approximately the same salary. These points were included in the Nobility's sessional Address to the King with the addendum that "for these offices suitable persons among us should be used, since our Estate has gained particular distinction in this sphere and a great number of us are exerting themselves in the field of learning". This caused the government to call on the courts of appeal to state their opinions, and the Åbo Court regarded the suggestions of the Address as almost a slight upon the honour of its members: "The whole peasantry of Finland will be prepared to affirm that justice has never been so well administered in the district courts as it has since these offices were transferred to the assessors and officials of the Court of Appeal." Although the Final Resolution of the session of the Riksdag formally accepted the proposals of the Estate of Nobles, e.g. that district judges should be bound to perform their duties in person, it did not result in any concrete measures whatsoever.[6]

When the Nobles in the course of the 1668 session of the Riksdag again complained of the system of assessor-district judges, the Chancellor of the Realm, Count Magnus Gabriel de la Gardie, deplored that some other means of remunerating the judges and officials in the courts of appeal had not been found, and he exclaimed that it was "for our poverty, may the Lord deliver us, that we have been obliged to resort to this". The Final Resolution of this session was again framed in general but critical terms; no concrete steps followed. Over and over again the Estates returned

[6] Blomstedt, pp. 306–15.

to this question, the aim in view being a system whereby competent district judges would perform their duties in person. The only important result was a resolution at the 1678 Riksdag renewing and giving statutory force to the power of the courts of appeal to supervise the administration of justice and check the competence of the substitutes.[7]

The great change occurred at the famous Riksdag of 1680, when the foundations of the Caroline absolutism (1680–1718) were laid and the great Reduction, or reassumption of former Crown lands and revenues, was commenced. The question of the offices of lawmen and district judges was raised in the so-called Secret Committee—the all-important joint committee of the three higher Estates, the Nobles, the Clergy and the Burgesses (the Peasants were not allowed to take part). This was at the beginning of October, and already on the 18th of the same month the Speaker of the Estate of Nobles, Baron Claes Fleming, presented the Estate with a programme, which in reality involved the reassumption of the judges' dues and the reorganization of the service. All offices of lawmen and district judges were to be restored to the Crown, lawmen and district judges would be remunerated on the same principles, only competent persons were to be appointed judges, such persons must themselves perform the duties of the office and live within the jurisdiction, and any surplus from the dues after the judge had received his due salary was to be used for remunerating officials in the courts of appeal. In spite of resistance on the part of the titled and landed gentry, the Estate accepted the proposal and it was submitted to Charles XI as the sessional Address of the Estate. The ideas expressed evidently originated from the men surrounding the King, who shared these opinions. When the councillors of the realm objected, predicting disaster, the King replied that it seemed perfectly natural to him that the judges should themselves perform the duties of their offices and that, if only competent men with knowledge of the law were appointed, and the incompetent ones dismissed, then all would be well. Charles XI was, however, willing to compromise with the councillors by allowing such lawmen's offices and district judgeships as had been granted to members of the Council to be kept for life, provided the councillor concerned could perform the duties of the office himself. But the assessors in the courts of appeal were not in future allowed to be under-

[7] Blomstedt, pp. 316–18.

lawmen or district judges, and the offices could no longer be granted to absentees but were to be filled with persons prepared to live within the jurisdiction and to manage the offices in person.[8]

All this meant a radical reshuffling of the lawmen and district judges, in Finland as well as in Sweden. As far as Finland was concerned, only one of the lawmen, a councillor of the realm, Baron Claes Rålamb, had his appointment renewed in 1680—it may have been equivalent to a political sentence of exile in this case; of the district judges only two were reappointed. Among the new district judges now appointed were six former lawreaders or underlawmen, all with university studies and court-of-appeal auscultation behind them; two of the six were indeed appeal-court officials. All except two of the new appointees had in fact studied at a university.[9]

The same development towards better educated and more competent judges is found in the towns. By the appointment of the "royal" burgomasters, there were received among the leaders of the towns persons who met the requirements of the Crown as to holders of judgeships. And although later the towns, at any rate partially, regained their right to have a voice in the selection of burgomasters, the townspeople were at this time already infused with this new ideal; burgomasters, and often aldermen, too, were elected because they corresponded to the ideal of the age as to what constituted a competent judge.[1]

The burgomasters at Åbo, Finland's capital at that time, were from the sixteen-forties onwards always legally educated men, and when vacancies had to be filled highly competent persons were often considered.[2] But there was an increase of the learned ele-

[8] Blomstedt, pp. 318–21.

[9] The district judges who were reappointed were Nils Psilander on the islands of Åland, Johan Plagman (ennobled as Ehrnrooth) in Kexholms Län, and Arvid Horn in the Hundreds of Raseborg and Hattula. Of the new appointees one was a professor, one a deputy provincial chief of administration, one a bookkeeper of a provincial administration, one a cavalry captain, and one a former chief of administration (*Hauptmann*) of a barony. The last-mentioned man, Erik Tawast (ennobled as Tawaststjerna), and the bookkeeper, Mårten Tolpo, were not former university students. Blomstedt, pp. 324–5. Walter von Koskull," Finlands häradshövdingar 1680–1713", *Genos* 1949, pp. 8–11.

[1] Halila, *op. cit.*, pp. 80–98. Suolahti, *op. cit.*, pp. 139–64.

[2] Gudmund Krook, judicial burgomaster for a short time (1647), seems to have had a university education, and his successor, Nicolaus Lietzen (1647–73) certainly had; Lietzen finished his career as assessor in the Åbo Court of Appeal. To succeed him as judicial burgomaster the town wanted Johannes

ment among the aldermen, too: in the sixteen-sixties four aldermen were appointed, only one of whom had a legal education; in the sixteen-seventies a further six were appointed, three of them legally trained; in the sixteen-eighties there were also six new appointments, four of them secured by trained lawyers; and in the sixteen-nineties twelve new aldermen were appointed, of whom seven had a legal education and three were civil servants. The mercantile component disappeared almost completely, and it is said of the tradesman Anders Malmelin, who in 1691 become alderman (though only as an "extraordinary", i.e. non-established one), that he had been passed over several times at aldermanic elections in favour of "persons who had studied".[3]

The development at Åbo was of course dominated by the existence in the town of both a university and a court of appeal. At Viborg, for instance, the mercantile element remained longer, both as regards judicial burgomasters and aldermen, even though there were legally trained persons among these officeholders, too.[4] In the smaller towns aldermen who had been to a university were rare during the 17th century, whereas the burgomasters—in towns with several, at any rate the judicial burgomasters—had a legal education in nearly all towns from the sixteen-fifties onwards.[5]

Gartzius, a doctor of law, but Gartzius declined and remained in the Court of Appeal. Instead Laurentius Brochius was appointed to the office—he, too, was a trained lawyer. After him the office of judicial burgomaster was held by Johan Schaefer (1683)—he had, *inter alia,* been Prosecutor-Advocate in the Court of Appeal—and by Berendt Riggertson (Munster), a former registrar in the Court of Appeal (1683–85). Carl von Bonsdorff, *Åbo stads historia under 1600-talet* vol. I, 1894, pp. 203–5.

[3] Carl von Bonsdorff, *op. cit.,* pp. 208–10.

[4] From the appointment in 1678 of Johan Lifman, a former advocate practising in the Court of Appeal, as judicial burgomaster, all holders of this office were, as far as is known, legally trained. Lifman had become an alderman as early as 1669, and among other legally educated aldermen at Viborg there may be mentioned Magister Håkan Javelinus (1665) and Sven Moderus (1668–97). J. W. Ruuth, *Viborgs stads historia,* vol. II, 1906, pp. 1094–6, 1102–6.

[5] H. Em. Aspelin, *Vasa stads historia,* 1892, pp. 490–91. Erik Ehrström, *Helsingfors stads historia från 1640 till stora ofreden,* 1890, pp. 39–40. K. V. Kaukovalta, *Uudenkaupingin historia,* vol. I, 1961, pp. 40–48, 118–25. J. W. Ruuth, *Björneborgs stads historia, 1897,* pp. 472–9. A. H. Virkkunen, *Oulun kaupungin historia,* vol. I, 1919, *bihanget* (the appendix) pp. 1–20. Kaarlo Jäntere, *Naantalin historia,* vol. II, 1959, pp. 27–34. In the smallest towns, the office of burgomaster was suspended at the beginning of the 18th century and remained in abeyance for several decades. These towns were incorporated into the jurisdictions of the nearest district courts. See, e.g., Yrjö Blomstedt, *Hämeen historia,* vol. II: 2, 1960, p. 190.

IV

From 1680 onwards the autocratic monarch held the judicial system in a close rein. Soon after the offices of lawmen and district judges were bestowed on men who, according to their letters of appointment, had to discharge their duties in person, Charles XI made the provisions even more stringent by decreeing that a judge should no longer be allowed "without valid excuse and due cause" to abstain from holding sessions, "in so far as he wishes to be retained in his office".[6] Furthermore, the Åbo Court of Appeal was, by Letters Patent, empowered to take action against incompetent and neglectful judges and, if need be, to submit the name of a man suitable to replace an undesirable judge—the latter could, in effect, be removed without trial and sentence. By royal command the Court of Appeal made a list of all district judges in Finland, at the same time stating its opinion as to whether the judges were "competent, diligent, and apt for such service". As a result of this procedure, one Johan Rosskamp was appointed district judge of Halikko and Pikis, replacing the former cavalry captain Henning Johan Grass who, although in his youth he had studied law and auscultated in the Court of Appeal, had sent in records bristling with errors. In cases where the King, on account of illness or for other reasons, had granted a judge leave of absence, the Court of Appeal was to commission a substitute selected "from among persons of the greatest ability".[7]

In the correspondence between Charles XI and the Åbo Court of Appeal there is ample evidence that the King kept a stern eye on the administration of justice and paid particular attention to the judges' duty of performing their offices in person. When the Åbo Court of Appeal in 1687 made humble inquiries as to the proper allowance to be paid to an underlawman in respect of sittings taken by him, the King assumed an attitude of total ignorance as to "what lawmen's substitutes the Court of Appeal had in mind, inasmuch as the lawmen who reside in those parts are perfectly able to hold their sessions and surveys themselves." On a similar question in 1689 the Court of Appeal received an answer on the same lines.[8]

[6] The King to the Courts of Appeal, June 30, 1681, in Schmedeman, *op. cit.*, p. 737.

[7] The King to the Åbo Court of Appeal, August 1, 1682, in the National Archives, Stockholm (*Riksregistraturet 1682*).

[8] The King to the Åbo Court of Appeal, March 4, 1687, and April 4, 1689, in Schmedeman, *op. cit.*, pp. 1115, 1233.

By reason of illness or old age judges could, however, be granted leave of absence for considerable periods, and in these cases the duties were performed by a deputy, who often became an established judge later on. But it is only in the lawmen's courts that the substitute system seems to have survived the reassumption of offices in 1680 to any great extent; one might in fact speak of a certain revival in the sixteen-nineties.[9] It was, on the other hand, only on rare occasions that a district judge was given permission to employ a deputy. In April, 1700, Judge Jonas Spofvenhielm was allowed to go to Sweden, but was at the same time ordered to return in time for the next winter sessions. His leave of absence was later extended until the autumn of 1701. Judge Nils Gyllenkrok, for reasons of health, received permission in 1700 to visit the spa of Medevi in Sweden "for a time". But normally a district judge was only allowed to go to Sweden in the interval between sessions. Even then royal permission was neces-

[9] The lawman of Söderfinne, Johan Gjös, had the old lawreader Elias Streng as underlawman from the middle of the sixteen-eighties to the middle of the sixteen-nineties, while the lawman of Karelen, Johan Creutz, who was deputy Lord Lieutenant several times, in 1687–91 had another former lawreader, Matthias Halitzius (ennobled as Ehrenhoff), as his substitute. The lawman of Norrfinne, a man of German origin called Claes Henrik Grönhagen, was busy in Bremen conducting proceedings bound up with the Reduction and could only intermittently perform the duties of his office. His colleague in Söderfinne, Henrik Tawasteen, was probably in his seventies when he was appointed lawman in 1697. As Tawasteen had to attend to certain matters which were pending in the Stockholm and in the Jönköping Courts of Appeal as well as in the Commissions of Liquidation and Execution (two authorities set up to administer the Reduction), he was year by year permitted to keep a substitute in Finland. The royal councillors who had been detailed for the administration of justice in the highest instance (forming the *justitierevison*—the Department of Judicial Review—which later became the Supreme Court) were of opinion as early as 1700 that Tawasteen, being decrepit and enfeebled from old age, should be relieved of his office and replaced by another man, but he does not seem to have been discharged until 1703. The last lawman in Söderfinne before the Russian occupation of Finland (1713–21) in the course of the Great War of the North (1700–21) was Johan Stiernstedt, a former lawreader. In the disturbed and warlike times Stiernstedt was entrusted with many important functions; he was deputy Lord Lieutenant of the province of Åbo and Björneborg in 1711–13. After 1707 his duties as a lawman were generally performed by deputies. His successor, Johan Franc, who held the office all the time from 1719 to 1754, lived in Sweden almost continuously and in 1745 was granted permanent leave of absence.—Håkon Holmberg, "Suomen laamannikunnat ja laamannit", *Turun Historiallinen Arkisto,* vol. XVIII, *passim.* W. G. Lagus, *Åbo hovrätts historia,* 1834, pp. 283–4 (concerning Johan Franc). The King to the Åbo Court of Appeal, June 5, 1697, December 11, 1699, and August 7, 1697, in the National Archives, Stockholm (*Riksregistraturet* (*justitieärenden*)). The Royal Councillors commissioned to administer justice to the King, December 7, 1700, *ibid.*

sary, and the Court of Appeal was to see to it that "the duties are in the meantime properly discharged".[1]

In the legal parlance of the time a competent deputy was variously defined as "an able and suitable man", "a qualified man", or "a capable and suitable substitute", and there was hardly any settled practice as to the qualifications of a judge or his substitute. A close study of actual appointments and promotions of judges will, however, give some information as to policies and trends. Between 1680 and 1720 a total of 59 persons were appointed district judges in Finland. Only with respect to nine of these (15.3 per cent) is there no evidence that they had studied at a university or auscultated in a court of appeal. Several of the nine were civil servants of long standing (one had served in the Royal Chancellery), while some had, as it were, risen from the ranks—they had first been employed as clerks and assistants by district judges and then advanced to be notaries and registrars.[2] In the period 1721–50 twenty-nine new district judges were appointed; it is certain that twenty-five of them had behind them a university education or auscultation, or both. Of the remainder, two had acted as district vice-judges before their appointments (it is even possible that they had auscultated in a court of appeal, but the evidence is not conclusive), and two had previously been judge-advocates during the war and had "risen from the ranks". Transfers from the civil service to the judiciary—which, in a way, had been a characteristic of the preceding period—had almost completely been brought to an end at the district-judge level, while there were a few lawmen in the same period who had made their previous careers in the administration.[3]

That a legal training was no guarantee of a proper exercise of the official duties is proved by the list of judges removed from office from 1680 up to the middle of the 18th century: Henning Johan Grass in 1682, Matthias Ehrenhoff in 1695, Henrik Kluwensich in 1698, Olof Törnstedt in 1725, Isak Hagert in 1729

[1] The King to the Åbo Court of Appeal, April 16, 1700, December 12, 1700, May 11, 1700, and June 8, 1700, in the National Archives, Stockholm (*Riksregistraturet (justitieärenden)*).

[2] The King to the Åbo Court of Appeal, June 5, 1697, August 7, 1697, and April 16, 1700, in the National Archives, Stockholm (*Riksregistraturet (justitieärenden)*). Håkon Holmberg, *Suomen tuomiokunnat ja kihlakunnantuomarit*, 1959, *passim*. Cf. S. Matz. "Domarutbildningen och befordningsgången på domarbanan under 1700-talet", in *Festskrift tillägnad Karl Schlyter*, 1949, p. 276.

[3] Holmberg, *Suomen tuomiokunnat*, p. 43. *Id.*, "Suomen laamannikunnat", pp. 121–32.

(he had indeed asked to be discharged already in 1724), Johan Henrik Wijkman in 1751, and Isak Wessman in 1752. All of these, with the exception of Hagert, were educated men. An extreme example of a person being dismissed on account of his personal qualities, and not for any lack of learning, is furnished by the unfortunate judge of Lill-Savolax, the hard-drinking and unbalanced Johan Henrik Wijkman, who was executed for treason in 1751. That the personal qualities constituted the overriding consideration was indeed driven home by Charles XI when, towards the end of 1694, he wrote to the Åbo Court of Appeal that only those persons ought to be commissioned as lawmen's substitutes "who are the ablest, and in that matter no regard must be had but to the capability of a person".[4]

V

It was not until the "Age of Freedom" (1719–72), with its predilection for well-regulated career patterns, that express rules were made concerning the formal qualifications for becoming a judge. If a person fulfilled the conditions for obtaining a post better than anyone else, he was now regarded as having a *right* to be appointed, and it was also considered the duty of the Estates, which now wielded the power in society, to defend this right. Applicants who had been passed over flocked to the Riksdag with their complaints. The malcontents were, of course, mostly officers in the armed forces, men for whom rank and position belonged to the most cherished things in life; but one or two civil servants or judges also stood at the wailing wall with long memorials setting out their merits and the demerits of their rivals. Consequently all qualities that could be definitely measured were accorded enhanced importance when it was a matter of appointments and promotions.

Already in 1723 the renowned professor of law at the University of Lund, David Nehrman (ennobled as Ehrenstråhle), proposed that it should be expressly provided that no one should be admitted to the judicial career without a degree in law. He did so in

[4] The King to the Courts of Appeal, November 21, 1694, in Schmedeman, *op. cit.*, p. 1391.

connection with a suggested revision of the Statutes of the Universities of the Realm. Since, however, there was no general interest in making any far-reaching changes, the idea of modernizing the Statutes came to nothing; the whole project, and with it the proposal of Nehrman-Ehrenstråhle, remained buried in the recesses of the archives until resurrected by a Commission on Education appointed in 1745. The Commission adopted Ehrenstråhle's proposal in its entirety and made recommendations for an ordinance concerning academic testimonials for admission to the judicial career.[5] An Ordinance on these lines was issued on March 10, 1749. Among other things it provided that "no person shall be allowed to auscultate or practise as an advocate or be admitted as a notary in the courts and public offices where legal proceedings are instituted or prosecuted, nor be commissioned as a prosecutor, nor be nominated as judge-advocate, provincial chief of administration, or burgomaster", unless he was in possession of a testimonial from a university.[6]

Through this Ordinance the foundations were laid of the *examen juridicum,* conducted by the professors of law and of ethics, which had to be passed before an application to be admitted as an auscultator in a court of appeal could be considered. It was possible to evade the provisions in certain cases;[7] further, the Ordinance said nothing about the contents of the testimonial, or of the standard to be applied in testing the applicant's knowledge. As a result the courts of appeal were crowded with students possessed of testimonials whose real purport was only that the students had *taken part* in the *examen juridicum.* Of the student's knowledge the testimonial gave no information. The outcome was that the courts of appeal began to arrange their own entrance examinations in order to get a better idea of an applicant's real knowledge. Rules on this matter were included in the Royal Ordinance as to the Proper Maintenance of the Laws (November 12, 1766): a person who was desirous of being admitted as an auscultator was to be examined by two officials of the court of appeal, at

[5] Jan Eric Almquist, "David Nehrman och den juridiska undervisningen II", *Sv.J.T.* 1938, pp. 298–306.

[6] *Förordning, angående de studerandes akademiska vittnesbörder, som tänka söka sin befordran vid rättegångsverken* (Ordinance concerning academic testimonials of students intending to seek admission to the courts) of March 10, 1749, in Modée, *op. cit.,* vol. IV, p. 2857.

[7] Thus the future district judges Henrik Ahleqvist (in 1758) and Christoffer Kuhlberg (in 1762) managed to become auscultators without having been matriculated at a university. Holmberg, *Suomen tuomiokunnat,* pp. 60, 77.

least one of whom must be a judge of appeal.[8] The Ordinance hinted that the provisions relative to the *examen juridicum* were to be amended in some way or other. But this was not done; thus a future auscultator had to undergo both a final examination at the university and an entrance examination in the court of appeal.

The provisions concerning the *examen juridicum*[9] had laid down certain formal requirements as to competence. These requirements were directly applicable to the appointment of certain judges (burgomasters, judge-advocates), and also had indirect effects with respect to other judicial offices. By the Royal Ordinance concerning Vacant Offices and Posts (mentioned above, in section I) direct formal requirements as to competence were introduced in relation to offices of district judges as well. According to this measure, judicial offices were to be filled by "experienced men", and thenceforth no one was to be nominated for the office of a district judge unless he "had auscultated in a court of appeal and been employed to perform official functions by temporary authority either in or out of court".[1]

There were no special provisions concerning formal qualifications for being appointed a judge of appeal or a lawman. But according to the Constitution of 1720 a president of a court of appeal must have "made himself qualified for the office of a judge", and in the Constitution of 1772 it was stated that he should have made himself fit for the office "through learning and experience of the law".[2] It was not until the Constitution of 1772 that requirements were laid down as to the qualifications of those councillors of the realm who were charged with the appellate business of the Council—the Department of Judicial Review, later converted into the Supreme Court. Such councillors should

[8] Jan Eric Almquist, "Examen juridicum i Lund", *Sv.J.T.* 1939, pp. 470–74. *Kungl. förordning till befrämjande av lagarnes behörige verkställighet* (Royal Ordinance as to the Proper Maintenance of the Laws) of November 12, 1766, in Modée, *op. cit.*, vol. VIII, pp. 7300–1.

[9] At least at the University of Lund the standard expected of the students was raised in the seventeen-eighties. Jan Eric Almquist, "Examen juridicum i Lund", pp. 576–83, 686–90. At the Vasa Court of Appeal (founded in 1775), there was probably no examination of auscultators until 1801, Paavo Alkio, "Lainopin opiskelusta 1700-luvulla sekä virkatutkinnosta ja virastotutkinnosta", *Lakimies* 1962, pp. 141–42.

[1] *Kungl. förordning ang. ... lediga tjänster och beställningar* (Royal Ordinance concerning Vacant Offices and Posts) of November 23, 1756, secs. 1 and 3. in Modée, *op. cit.*, vol. VI, pp. 4098–100, 4102.

[2] Constitution of 1720, art. 23, and Constitution of 1772, art. 15.

have been "employed as judges and be known as impartial men learned in the law".[3]

In reality, considerable weight seems to have been attached to formal qualifications as regards appointments to the higher judicial officies, too. All the presidents of the Åbo Court of Appeal after the seventeen-forties were men who had been trained and served in the courts; at all times after the beginning of the 18th century the vice-presidents were lawyers in the strictest sense of the word. Even though there were a few judges of appeal and lawmen who had been trained as auscultators, not in an appeal court, but in certain of the public agencies, they could, practically speaking, be regarded as formally competent, since those agencies functioned in part as specialized tribunals. This also applied to the assessors of the Åbo Court of Appeal, one or two of whom had followed a public-service and not a judicial career.

The system requiring formal competence for appointment a judge was thus cemented towards the end of the Age of Freedom and during the Gustavian era (1771–1809). The fact that the reign of Gustav III exhibits a few, and often conspicuous, exceptions. is due to the special features of the Gustavian autocracy. In 1783 a certain Major Johan Herman Lode of the Åbo Provincial Infantry, who had served in the army since childhood, became lawman in the jurisdiction of Åbo and Björneborg. This was made possible by the sale of the office; it is said that the previous holder of the lawmanship, Erik Johan af Paleen, had asked 14,000 "plåtar" (approximately £2,000 in present-day currency) for his office. "Thus the soldiery have found that they can do fairly well as judges", wrote Professor Henrik Gabriel Porthan of Åbo to Archbishop Carl Fredrik Mennander at Uppsala, and added: "and all these new innovations should happen to us".[4] Already in 1779 Gustav III had commissioned a lieutenant-colonel on the retired list, Georg Ehrenmalm, as additional member of the Åbo Court of Appeal, and in 1783 Ehrenmalm received antedated letters of appointment as a supernumerary judge of appeal.

This "external" career leading to the top positions in the Court of Appeal was also adopted by Count Evert Fredrik Taube, a member of the King's Body Guard, who in 1785 became an additional member of the Court and in 1790 a judge of appeal.

[3] Constitution of 1772, art. 8.

[4] Letter by Henrik Gabriel Porthan to Carl Fredrik Mennander of December 20. 1783, in Kaarlo Österbladh, *Brev från och till C. F. Mennander,* vol. III. 1942, pp. 449–50.

Though he had no law degree, the Count was well versed in the law, as is probably best proved by the fact that he was a member of the Supreme Court in 1794–95. The celebrated Matthias Calonius, "the Father of Finnish Jurisprudence", said of Taube that he "had no systematical knowledge of the law, but had a good understanding and usually showed good will" and that he was "wiser than most that were used".[5] In the Vasa Court of Appeal (established in 1775) Count Axel Fredrik Oxenstierna, a captain of the Guards, became judge of appeal in 1784; he is said to have "studied the law", which probably means that he had tried to learn some law on his own, for he had neither been to a university nor auscultated in a court of appeal. By making this appointment Gustav III sought to support a poor man of high birth who could not afford to purchase a higher military commission in accordance with the prevailing system.[6] In 1784 Baron Axel Christian Reuterholm, also of the King's Body Guard, became lawman of Nyland and Tavastehus by purchase of the office, but he had both been a student and been enrolled in a court of appeal in his early youth; Reuterholm ended his career as President of the Vasa Court of Appeal. By purchase J. Chr. von Morian advanced from posts in the government offices to a lawmanship. The twenty-nine-year-old courtier Axel Cronstedt, who had no legal training, in 1792 became lawman in the jurisdiction of Nyland and Tavastehus by purchase; his widow in due time sold the office to the district judge Johan Smaleen.[7]

All these appointments must, however, be regarded as exceptions that prove the rule. The sale of offices did not become a serious danger to the administration of justice, for it was almost entirely limited to lawmen's offices and these were often purchased by competent men with a legal education. After the death of Count Taube in 1799, all judges in Finland from the appeal court presidents Carl August Hallenborg at Åbo and Axel Christian Reuterholm at Vasa down to the most recently appointed district judge were all legally trained, at any rate form-

[5] Cf. Yrjö Blomstedt, *Johan Albrecht Ehrenström, gustavian och stadsbyggare*, 1967, p. 457.

[6] Ernst Tegengren, "En anmärkningsvärd hovrättsutnämning", *F.J.F.T.* 1896, pp. 196–201.

[7] Letter by Matthias Calonius to Henrik Gabriel Porthan of April 17, 1795, in W. Lagus, *M. Calonii brev till H. G. Porthan*, 1902, p. 107, Letter by Henrik Gabriel Porthan to Matthias Calonius of March 12, 1795, in W. Lagus, *H. G. Porthans brev till M. Calonius*, 1886, pp. 166–7. Letters by Henrik Gabriel Porthan to Carl Fredrik Mennander of April 16 and September 24, 1784, in Österbladh, *op. cit.*, vol. III, pp. 482, 490.

ally. From 1801 onwards the academic education of lawyers was subject to control by virtue of the arrangement that the courts of appeal were to report to the public office in Stockholm charged with the supervision of education if they found a marked discrepancy between the academic testimonials as to the *examen juridicum* and the results of the courts' own entrance examinations.[8] To sum up: admission to the judicial career could normally only be obtained through university studies, auscultation in a court of appeal, and performance of judicial duties by temporary authority.

When Finland after the War of 1808–09 was incorporated into the Russian Empire as an autonomous Grand Duchy, the principles delineated above were regarded as so firmly established that they were regarded as an integral part of the legacy of Swedish law, which it was understood that Finland should keep. On account of certain circumstances, some members of the judiciary had not had the normal training and career, namely the judges in those parts of Finland—the so-called Old Finland or the province of Viborg—which had been surrendered to Russia in 1721 and 1743 but were reunited with the Grand Duchy in 1812. The office of lawman in the province of Viborg and some of the district judgeships were vacant by reason of the death of the holders, and it was even expected that the remaining judges from the Russian period would be removed and replaced by "competent" men.[9] By special favour of the Emperor, however, four district judges were allowed to retain their offices, though they were not permitted to perform the duties in person.[1] In the higher instances, too, some such "Viborg judges" remained after 1812: in the Åbo Court of Appeal the titular lawman Adolf Schröder, who

[8] *Kungörelse om vad som bör iakttagas vid deras prövning vilka i publik tjänst söka inträde* (Ordinance as to the proper procedure in connection with the examination of persons seeking admission to the public service) of October 27, 1801. At the Vasa Court of Appeal, examinations with new auscultators were held from 1801 to about 1820 (perhaps until the Ordinance of 1817), and thereafter, there was only a short written test which was really a mere formality. This, too, ended with the Ordinance of 1870, Alkio, *op. cit.* pp. 142–8.

[9] J. R. Danielson, *Viborgs läns återförening med det övriga Finland,* 1894, p. 118, O. A. Kallio, *Viipurin läänin järjestäminen muun Suomen yhteyteen,* 1901, pp. 78–84.

[1] Thus Johan Grenqvist, who had started his career in the Lower City Court at Viborg, was nominal district judge in South Kexholm until 1835, and Petter Kruskopf, who had first become enrolled in another court at Viborg (the Lower Provincial Court), was district judge in Äyräpää until his death in 1857; in the eighteen-twenties he seems to have begun presiding at the sessions

had started his career as an auscultator in a court at Sordavala, became assessor because the Court of Appeal had need for an expert member when dealing with appeals and other matters emanating from the province of Viborg; after the death of Schröder no new such expert was appointed. Matthias Calonius himself has testified that Schröder had "a thorough and complete knowledge of the existing Swedish law". The equivalent of a supreme court, viz. the Judicial Department of the Imperial Government Council (later the Judicial Department of the Imperial Senate) in Helsingfors, had also members of this category: the district judge Carl Adolf Sattler from 1812 to his death in 1815, and the former burgomaster at Fredrikshamn, Berndt Fabritius, from 1816 to 1835; after a university education on the Swedish side of the frontier, they had both commenced their careers in Russian public agencies in St. Petersburg.[2]

In spite of the fact that the Regulations for the Government Council (and, later, for the Senate) until 1892 had no provision as to the formal competence of the members of the Judicial Department, nevertheless—with the exception of the two above-mentioned "Viborg judges", who had started their careers in the Russian service—all members right from the setting up of the Department had passed the law examination and auscultated in a court of appeal.[3] In the courts of appeal (in addition to the Courts at Åbo and Vasa, a third Court of Appeal was created at Viborg in 1839) all members and officials appointed after 1809 were lawyers with a similar training (except the above-mentioned Adolf Schröder). This also applied to the district judges and burgomasters.[4] It could almost be said—for the "Viborg judges" were necessary, and there was no objection as regards their ability —that the requirement of formal competence was definitely estab-

himself. As to the district judges who remained in office, see the files marked 194.GG.1812, 277.EB.1812 and 250.E.B.1821 of the Finnish Secretariat of State in St. Petersburg, in the National Archives, Helsinki. Some of the new district judges (Kruskopf and Cygnaeus) were appointed as a result of manipulations by G. M. Armfelt, without previous nominations or other formalities, see Keijo Korhonen, *Suomen asiain komitea,* 1963, p. 93.

[2] Holmberg, *Suomen tuomiokunnat,* pp. 51–5, 102–12. As to Schröder, see file 6.SD.1820 of the Finnish Secretariat of State, in the National Archives, Helsinki. Matti Mali, *Korkein oikeus 1809–1959,* 1959, pp. 131, 133.

[3] *Reglemente för kejserliga senaten* (Regulations for the Imperial Senate) of September 13, 1892. Mali, *op. cit., passim.*

[4] See Holmberg, "Suomen laamannikunnat", the same author's *Suomen tuomiokunnat,* lists of members of the courts of appeal compiled by H. J. Boström, A. W. Westerlund and Wäinö Kannel, and the list of burgomasters by H. J. Boström.

lished in practice already at the beginning of the Russian period. There was, however, one exception: the appointment of a new president of the Vasa Court of Appeal in 1817. After the death of President Bergenheim in 1816 the Emperor Alexander I expressed to the Under-Secretary of State for Finland, Robert Henrik Rehbinder, "his desire to confer the exalted post on a person who was worthy in all respects and who had also displayed zeal for the welfare of Finland". He therefore wished to appoint the former member of the Committee for Finnish Affairs in St. Petersburg, the privy councillor Major-General Baron Johan Fredrik Aminoff. Aminoff, however, declined the post as he himself realized his lack of competence, and the offer was next made to the former member of the Imperial Government Council in Finland, the imperial "real" chamberlain Carl Fredrik Rotkirch, who had been assistant under-secretary in the Foreign Office in Stockholm during the Swedish period. Rotkirch who was trained as a civil servant, also wanted to decline as he regarded himself as unqualified in matters of law; but he had to accept after pressure had been brought to bear upon him by leading Finnish circles, where it was considered that none of "the uncouth lawyers" was suitable for promotion to the high post and that it was impossible to withdraw when the Emperor himself had selected Rotkirch. "In the present dearth of *hommes comme il faut,* Rotkirch is the only man who could be appointed."[5]

The appointment, made in March 1817, was the last of its kind. On November 3 of the same year an Imperial Manifesto was issued as to "the examination of students ... intending to seek admission to the courts or other branches of the civil administration".[6] The measure was partly a consequence of the altered circumstances, making it impossible in some cases to observe provisions retained from the Swedish period, but essentially the background was an academic controversy of a far from edifying kind.

[5] Carl von Bonsdorff, *Statsmän och dignitärer,* 1921, pp. 369–72. In 1822, J. U. Buchmann, who was judicial alderman at Viborg and whose career largely had been in Russian service, was appointed administrative burgomaster, see file 31.JD.1822 of the Finnish Secretariat of State, in the National Archives, Helsinki. Buchmann was probably the last of the judges in the former Russian government of Viborg to obtain a permanent office in Finland.

[6] *Förordning angående det som iakttagas bör i avseende å examina med de studerande vid universitetet i Åbo, vilka ämna söka sin fortkomst vid rättegångsverken eller andra grenar av civila styrelsen* (Ordinance as to the proper considerations with regard to the examination of students at the university of Åbo intending to seek admission to the courts or other branches of the civil administration) of November 3, 1817, in *Samling af Placater,* vol. III, pp. 116–9.

According to the previous ordinances and special regulations issued with respect to the University of Åbo, the *examen juridicum* was to be held with the professors of the Faculty of Law and the professor of ethics (*moralium professor*) as examiners. The latter was on such occasions, but not otherwise, to be regarded as an additional member of the Faculty of Law. In 1812, when the great Matthias Calonius was still the only professor in the Faculty of Law, the professor of ethics, Anders Johan Lagus, refused to approve any of the examinees, with the result that all failed in the entire examination. When Calonius later informed Lagus that the next examination would take place in January, 1813, the latter replied that he would not come. Calonius complained to the Consistorium Academicum (the university senate) but failed to get the support of the majority, since it was considered that Lagus could not be compelled to take part in the examination. In the course of the discussion in the Consistorium, however, the matter took a turn which had far-reaching repercussions: the view was expressed that the whole examination system was in need of adjustment. When the Chancellor of the University, Count Gustaf Mauritz Armfelt, decided in the matter in May 1814, he made no pronouncement on the point at issue—i.e. Lagus's refusal to attend at the examination—but he did instruct the Consistorium to prepare draft regulations concerning the examinations.

It took the Consistorium nearly two years to complete the draft and then the Chancellor's office spent a year and a half over it, mainly because Calonius and the Procurator (attorney-general) Carl Edvard Gyldenstolpe were slow in submitting the opinions that had been asked for. A comparison of the draft of the Consistorium with the final Manifesto shows that Under-Secretary Robert Henrik Rehbinder, who was charged with presenting the matter to the Chancellor and who drew up the final text, had been strongly influenced by Calonius's opinion. Those who intended to take the examination for admission to the judiciary and the civil service were thus from the start to be matriculated in the Faculty of Law, examinations in the subjects of the law of nature and ethics were to be held in connection with those in the subjects of positive law, and a majority would decide whether a candidate should be passed or not, without any particular professor having a right of veto.[7]

[7] Files 63/1813 and 25/1816 of the Chancellor's Office, in the Archives of the University of Helsinki. R.A. Wrede, *Matthias Calonius*, 1917, pp. 403–14.

The Manifesto lays down that "whosoever shall henceforth desire to gain *admission to and promotion in* the offices and authorities instituted in Finland for the government of the country and for the administration of justice therein, must have been matriculated as a student at the University of Åbo and must there have undergone the tests of erudition and the examinations prescribed by this ordinance and must be able to produce the requisite testimonials with respect thereto".[8] The examination that must be passed by students who "desired to gain admission to the authorities instituted for the administration of justice" consisted of three parts. There was first a theological examination to test the student's knowledge of divinity, of biblical and church history, and of the history of religion. Next an *examen philosophicum* in logic, general geography, statistics and "history generally and that of the fatherland particularly", and further in arithmetic and geometry. In this connection there was also a written test in the native language. Lastly, there was the law ecamination proper, the *examen juridicum* "as to the criminal, civil and economic law of the country as well as the law of nature and ethics".[9]

In the legal part of the examination the stress was on knowledge of the indigenous law or, to use the words of Matthias Calonius in his opinion: "Now as before I take it for granted that the essential knowledge for a future judge is that of the positive law of his own country."[1] The rules as to university examinations were revised ten years later after the removal of the University to Helsingfors. The new examination, which all those who wanted to become judges had to pass, was expressly called "Judges' Examination" (*domarexamen*) in the Ordinance of December 10, 1828.[2] The measures of 1817 and 1828 form the historical basis on which the present system of formal requirements for admission to the judicial career in Finland may be

[8] My italics.

[9] The Ordinance of November 3, 1817, secs. 1 and 2, and sec. 2 para. 1.

[1] The opinion (without a date) of Matthias Calonius delivered to the Under-Secretary, Robert Henrik Rehbinder, is in file 25/1816 of the Office of the Chancellor, in the Archives of the University of Helsinki.

[2] *Förordning angående förändring av vissa delar av den 3 november 1817 givna författning* (Ordinance to make partial amendment of the Decree issued on November 3, 1817) of December 10, 1828, secs. 1, 2, 3 and 4, in *Samling af Placater*, p. 468. As to *travaux préparatoires*, see *Handlingar rörande nya universitetsstatuter på 1820-talet* (Documents concerning new University Statutes in the eighteen-twenties) in the Archives of the University of Helsinki.

said to rest. The provisions have since been replaced by new ones, the main alterations being with regard to the subjects forming part of the examination, which has gone by many names: Judges' Examination, Law Examination (*rättsexamen*), General Examination of Law (*allmän rättsexamen*), Higher Examination of Law (*högre rättsexamen*) and *juriskandidatexamen*. From the beginning of the 19th century, it has not, however, been possible to join the judiciary without having taken this examination in one form or another. In final confirmation of the principle the Finnish Constitution of 1919 laid down that the President of the Republic cannot grant dispensations from this requirement when judicial posts are concerned.[3] Not even during the worst periods of attempted russification in the years before 1918, when the rule of law was often set aside, was the government bold enough to appoint judges without formal competence, except on one occasion: Eugraf Nyman, who was born in St. Petersburg and had taken a Russian law degree there, was made a member of the Judicial Department of the Senate in 1913, but resigned on his own initiative in the following year.[4]

The requirement of formal competence is now completely accepted as an integral part of the judge's qualifications for his important tasks. The development started with isolated attacks, often inadequate or wholly abortive, on the substitutional system. The abolition of this system in 1680 brought with it a total reorganization of the judiciary; but competence was still, on the whole, regarded as a personal qualification and additional capacity. This appraisement was changed in the course of the 18th century with the advent of altered cultural ideals and new notions

[3] The provisions as to examinations were altered by measures of October 1, 1852 (the Statutes of the University, s. 159), May 30, 1871 (Ordinance as to Examinations), August 15, 1894 (Decree concerning Examinations), and January 10, 1907 (Ordinance concerning Examinations in the Faculty of Law); the last-mentioned Ordinance was amended on December 30, 1921, October 7, 1936, May 14, 1948, June 26, 1959, and March 29, 1963.—The relevant provisions of the Constitution are arts. 29 and 85; as to the interpretation thereof, see Veli Merikoski, "Virkakelpoisuuserivapauden ala", *Lakimies* 1937, pp. 244–7.—The Ordinance of January 10, 1870, for the Increasing of the Estimate of Disbursements of the Courts of Appeal, put an end to the examination of new auscultators, Alkio, *op. cit.*, p. 142.

[4] Mali, *op. cit.*, p. 230. A great number of Russians were, however, appointed to positions in the civil service. In the latter part of the Russian period, Russians were even given posts in the Office of the Procurator (attorney-general), including the Procuratorship itself, and in the Advisory Committee on New Legislation (the *lagberedning* or, in 1915–17, the *lagråd*). An unconstitutional ordinance concerning, *inter alia*, the rights of Russian lawyers to obtain public offices in Finland, was issued on July 31, 1902.

as to the purpose of education. The Gustavian period signified a certain reversal in regard to a few higher judicial offices, but the development soon resumed its previous course and the last exercise of the sovereign's power of free appointment was in 1817. In the same year the requirement of formal competence was unequivocally fixed by a legislative measure and has ruled supreme ever since. In our days the rightness of the rule is regarded as self-evident, and it is no derogation from this that experts, such as doctors and engineers, are sitting in certain specialized tribunals side by side with legally competent judges.[5]

[5] Of late (Autumn 1969), however, some young radicals, lawyers and others, have begun to criticize, from an "ultra-democratic" point of view, the idea of formal competence as a requirement for admission to the judiciary.