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In Sweden we have a system...and it's not poverty law

I first encountered the concept of poverty law through the writings of Adam Gearey. This was somewhat of an overwhelming experience as it completely flipped my view of the world upside down. I will try to describe why.

Let us start by moving approximately a hundred years back in time to the period before both of the world wars, and before the great depression and before women could vote in Sweden. We are at the end of the époque of great codes.¹ Sweden is trying to develop its own private law code, but no general code like the code civil or the BGB turned out to be possible.² The essential content of a commercial code was instead enacted in parcels

* Doctor of Law, Uppsala University, and member of the Swedish Bar Association. I would like to take this opportunity to thank Adam Gearey for his very interesting and thought provoking book “Poverty Law and Legal Activism” which sparked the inspiration for this article. I would also like to thank Maria Grahns Farley and Joel Samuelsson for letting me be a part of this book project and for their valuable and insightful comments on earlier drafts of this piece. Any mistakes or misconceptions are mine alone. Last but not least I would like to thank all of the participants at the symposium held in Uppsala in August of 2019. Thank you all for your time, effort and for your genuine interest.

¹ I move too quickly through history here to do it justice, but think of the Code Civil and the BGB and all of their “spin offs” and predecessors in Europe and you roughly get a starting point around the Enlightenment and a fierce energy to complete and perfect the systematizations and the codes during the 19th century and the beginning of the 20th century.

² Sweden did look to Germany for guidance. There were drafts of a commercial code in the 19th century, but the Swedish way was never to muster a creation of a great code, instead several shorter acts on the most central areas of private law were developed and enacted.

by the Swedish legislator (and together with our Nordic neighbours but that is another story). The first one was the Sales of Goods Act in 1905 and then came the Contracts Act in 1915. At the same time as the Contracts Act the much less discussed Instalment Sales Act was also passed.³ The Instalment Sales Act was in force until 1978 when it was replaced by two new Acts on the same subject matter, one for consumer credits and one for non-consumers.⁴

The Instalment Sales Act⁵ together with the Contracts Act, form an important part of the Swedish system of “wealth law” (*förmögenhetsrätt*).⁶ See, Sweden does not have poverty law. Sweden has wealth law.

What is wealth law? It is a considerable part of Swedish private law; it is not family law (although family law also has a wealth side to it). It does not deal with personal status.⁷ It is not a plastic concept the way

³ Lag (1905:38 s.1) om köp och byte av lös egendom, “Sales of Goods Act”, lag (1915:218) om avtal och andra rättshandlingar på förmögenhetsrättens område, “Contracts Act” and lagen (1915:219) om avbetalningsköp “Instalment Sales Act”. Of these three Acts the Contracts Act is still in force today.

⁴ This is a slight simplification as the Consumer Credit Act came first and then the other changes followed, but more or less everything happened causally and connectedly. Before 1977 (when the consumer credit act went into force) consumer credits and non-consumer credits were treated the same in the Instalment Sales Act.

⁵ In this context it is not really relevant if one looks to the old one from 1915 or the one from 1978 which is still in force. The actual legislation has only gone through marginal changes primarily connected to the removal of all consumer credits from the applicability of the act, see prop. 1977/78:142, p. 28 f. Where the preparatory works from 1914 speaks of sewing machines and pianos, the new preparatory works discusses agricultural machines and trucks used in small businesses. This is still a very important part of the wealth law context as one of the official goals with the legislation is to “protect” poor buyers, see for instance prop. 1977/78:142, p. 11, 29 and 54.

⁶ Wealth law is a very poor and direct, but still correct, translation of “*förmögenhetsrätt*” which is elaborated below. This area of law would probably be translated as contract and property law (but property law would include other things as well and the concept is problematic from a Swedish point of view for other reasons). One could obviously also discuss the etymology of the word, but I will not.

⁷ For a discussion in Swedish on the definition and what to include or not, see for instance Rodhe, Knut, “Obligationsrätten,” 1956, p. 1 f. It could of course also be made very easy; Swedish private law consists of family law and *förmögenhetsrätt* (wealth law). It's just when one takes a closer look that it becomes all muddled and difficult...

poverty law is described by Gearey, but it is still not static.⁸ One would not discuss wealth law in relation to wealth (although there is obviously a connection otherwise it could have been called something else).⁹ It has to do with assets but not necessarily money as an asset, for instance the Instalment Sales Act and the legislation following form part of the Swedish wealth law. It is a division of law, a non-systematic system. It is also not (perceived as) political but more of an umbrella term used in Swedish private law. Wealth law is also the law on that of which you are capable – it holds promise.

The timing of the Instalment Sales Act had to do with the fact that instalment sales had become more and more common. Apparently, at this point in time, everything could be bought and sold in instalments.¹⁰ The Instalment Sales Act was part of a package together with a new article on *lex commissoria* (and similar situations) in the Contracts Act.¹¹ The intention was that through these legislative measures the common man would be protected from unconscionable contracts. The fear of the legislator was that the seller would reclaim goods sold in instalments even if only one instalment was missing and even if it was the last remaining instalment while, at the same time, keeping all prior instalments, i.e. without set off. Judging from the description in the preparatory works this fear was not without grounds.¹²

⁸ Gearey, Adam, “Poverty Law and Legal Activism,” Routledge, 2018, Chapter 1, see particularly p. 11, 12 and 16 where Gearey discusses poverty and how it can be understood from time to time. See also Chapter 9, p. 149 ff. that focuses on the ‘reproduction of lawyering’ and concept of ‘being with’ the poor. “To get at this broken middle of our being with others we need to focus on the fundamental sense that any theory of poverty law must be one that works on the quiddity of the ‘in between’. Poverty law theory is located in a constant learning and shifting of positions.”, p. 162.

⁹ A major difference to poverty law is that it is not necessary to understand what wealth is in order to understand what wealth law is. Although it could be helpful of course.

¹⁰ The Preparatory works on the Contracts Act, p. 171 ff. at footnote 1.

¹¹ “New” is perhaps a bit of a stretch. Sweden did have legislation on *lex commissoria* until 1907 through an analogous use of one of the articles in the Commercial Code. When the article in the Commercial Code was abolished there was no legislation on *lex commissoria*, neither express nor implied. This was perceived as a problem – hence the “new” legislation. See Förslag till lag om avtal och andra rättshandlingar på förmögenhetsrättens område avgivna den 31 januari 1914 (“the Preparatory works on the Contracts Act”), p. 154 ff.

¹² The Preparatory works on the Contracts Act, p. 171 ff. at footnote 1.

The Swedish legislator believed that the new legislation was needed because without instalment sales trade would not expand. With this new legislation on instalment sales and on *lex commissoria*, the playing field would (at least) be more level between the parties. But not just that, with this new legislation the “people without means”¹³ could get access to expensive things like furniture in order to create a home. It is also explicitly mentioned in the preparatory works that pianos and sewing machines could be, and often were, purchased using this type of financing.

A sewing machine made it possible for a woman to provide for herself (though she still could not vote).¹⁴ A sewing machine made it possible for the people without means to take power over the means of production.¹⁵ At least that is what is stated in the preparatory works. The 1914 preparatory works however never mentions the “working class” or the “proletariat” in relation to the means of production. It only discusses the people without means.

One could, and I do, question why people without means, i.e. poor people, needed debt.¹⁶ Why was it a good thing for a poor person to borrow money in order to buy furniture? A sewing machine could potentially (but it did not have to) create an income, but why was it so important for the people without means to be able to buy pianos? On this the preparatory works are silent. It was however very important for trade to keep the wheels spinning and after all, how many pianos could one person purchase?

It was acknowledged in the preparatory works that loans obviously could be taken in order to put food on the table, or to buy other things

¹³ The term used in the preparatory works on the Contracts Act is “obemedlade”.

¹⁴ As of 1874 (SFS 1874:109) even married women were allowed to decide on their earnings. Twenty eight years earlier (SFS 1846:39 and SFS 1846:40) widows, unmarried and divorced women had become allowed to work in certain trades and crafts. On the development of rights for women in Sweden see <http://www.jamombud.se/omjamstalldhet/jamstalldhetiar/> [viewed 28 June 2019].

A sewing machine could therefore potentially change a woman's life profoundly as well as the life of her family.

¹⁵ The preparatory works on the Contracts Act actually uses the phrase “the means of production” but only once.

¹⁶ For a modern in depth analysis of inter alia workers and debt, see McCluskey, Martha T, *Are we economic engines too? Precarity, productivity and gender*, University of Toledo Law Review, vol. 49, no. 3, p. 631–656 passim, see particularly p. 640 f., p. 651 ff.

which would not create yield, or which would only decrease in value.¹⁷ Loans of this type could, potentially, be used just to get by. And that was all good and fine for the legislator. People, i.e. poor people, would just have to be mindful.

It was expected by the legislator, no more than that – it was presupposed – that people without means would not do foolish things when presented with the opportunity of money instantly. Why? Because the money would have to be repaid. Poor people would be mindful because they would have to repay the loan; after all it was not a donation.¹⁸ These loans were part of the market and they were needed in order to reinforce trade and the general turnover.¹⁹ The reasoning was maybe along the lines of “if more people had money, more people could take part of trade and everyone would win”. The legislation does however not seem to have been interpreted as part of a liberal political act; if anything it was protective²⁰ as it protected the poor against greedy repayment clauses.

In 2015 the Institute for Future Studies²¹ published the result of the latest World Values Survey. The survey explores people's values in a total of 100 countries. The World Values Survey has been done in six waves since the 1980's and consists of interviews with citizens in all of the participating countries.²²

The result of the survey was presented in what the Institute for Future Studies calls “a cultural map”. The vertical axis measures Traditional ver-

¹⁷ Veitch, Scott, *The sense of obligation*, 2017, Jurisprudence, 8:3, p. 415–434, see particularly p. 425 ff. for a discussion on the workings of obligations and debt.

¹⁸ Preparatory works on the Contracts Act, p. 171 f.

¹⁹ See along these lines preparatory works on the Contracts Act, p. 171 and p. 175.

²⁰ See for instance the preparatory works on the Contracts Act, p. 176 and 182. In the later legislation the protection aspect has shrunk due to the division between consumer relations and commercial relations (although it is still an important part of the legislation) see prop. 1977/78:142, p. 30 and footnote 6 above.

²¹ Institute for Future Studies is a Swedish independent research foundation consisting of researchers from different social science disciplines. The Institute relays its own history like this: “In 1971, a government commission was set up in Sweden to investigate what form futures studies should take. It was led by cabinet minister Alva Myrdal and its final report was entitled *Choosing One's Future* (SOU 1972:59). The Government followed its recommendation and in 1973 the Secretariat for Futures Studies was established, which was originally accountable to the Prime Minister's Office. In 1987, the Government decided to transform the Secretariat into an independent institution, whereupon the Institute for Futures Studies was established.” <https://www.iffs.se/en/about-us/history-of-the-institute/> [viewed 28 June 2019].

²² <https://www.iffs.se/en/news/sweden-the-extreme-country/> [viewed 28 June 2019].

sus Secular–Rational Values and the horizontal axis measures Survival versus Self–Expression Values.²³ So for instance a country far to the right and high up on the vertical axis would be a country with Secular–Rational values focused on Self–Expression. Or in short – Sweden.²⁴ According to the survey Sweden is one of the most extreme countries in the world. The result is mind boggling for a Swede.

Anyone slightly familiar with Sweden knows that we also pride ourselves on being “*lagom*” which is a word with a sui generis meaning but which perhaps could be translated as “moderate and well balanced” – not too extreme or as “no exaggerations”. Moderate and well balanced does however not really rhyme well with the result of the World Values Survey.

Swedes are proud of being *lagom*. *Lagom* however only seems to be what we tell ourselves is characteristic for Sweden because simultaneously a Swedish person apparently is no stranger to start any international speech or statement with “In Sweden we have a system...”.²⁵ This statement is then usually followed by some kind of explanation as to why the Swedish system is superior to all other systems.²⁶ Apparently not even Germany, a country that has been called “Sweden for grow-ups”, has this “grandiose self-image.”²⁷ Swedes simply do it better (according to the Swedes themselves). This is in fact in line with the World Values Survey, albeit perhaps not with the Swedish self-image in general.

²³ For a lawyer this is confusing, it seems very unclear how this measurement is carried out, but this is how it is presented.

²⁴ In the middle of the graph you find countries like Greece, Portugal, Macedonia and Vietnam. For some reason the map also illustrates religion or region (it appears as if this is randomly picked since “Baltic countries” and “English Speaking” are marked as well as “Catholic Europe” and “Confucian”) and has included Greece in the catholic countries. I am not sure how the predominantly Greek-Orthodox population of Greece feels about this, but regardless of faith Greece is in the middle of the graph.

²⁵ At least this is the notion of the former Swedish foreign minister Margot Wallström whom was quoted by a former member of the European Parliament, Christofer Fjellner, in one of Sweden’s largest morning papers prior to the elections to the European Parliament in 2019, Svenska Dagbladet, 4 May 2019, p. 2. On this particular point the two were in agreement (not on much else though).

²⁶ On another theme of jurisprudence but with conclusions along these lines, see for instance Martinson, Claes, “*How Swedish Lawyers Think about ‘Ownership’ and ‘Transfer of Ownership’ – Are We Just Peculiar or Actually Ahead?*” in “Rules for the Transfer of Movables. A Candidate for European Harmonisation or National Reforms?” European Legal Studies, Band 6, edited by Faber, Wolfgang and Lurger, Birgitta, Sellier European Law Publisher, 2008, p. 69–95.

²⁷ Quotes are all from Svenska Dagbladet, 4 May 2019, p. 2.

So Sweden does not have anything called poverty law, only wealth law – so what? One should not read too much into these labels. These labels are technical and not political.²⁸ Wealth law is certainly not an extreme perception of the law and it is not a point of view. Wealth law does not require a “constant learning and shifting of positions.”²⁹ Wealth law is more of a fact. Wealth law creates possibilities for everyone. Let’s not forget that Sweden through the Instalment Sales Act did create a barrier against unconscionable repayment clauses when people without means bought things they could not afford using money they did not have (although we did not regulate when instalment sales should be possible since that would have been a market issue). Poverty law would on the other hand imply poverty in Sweden which would be a political issue. According to the preparatory works Sweden did not have poor people, or proletariat one hundred years or so ago; Sweden only had people without means (although we did have means of production).³⁰

Poverty law or wealth law. Political issues versus technical issues. It makes you wonder, if Sweden is the most extreme country in the world, could our perceptions of the law sometimes be... not “lagom”?

²⁸ Kennedy, Duncan “*The political stakes in merely ‘technical issues’ of contract law*” *European Review of Private Law*, Vol. 10, Issue 1 (2002), p. 7–28, passim. Gearey also touches upon this issue of hiding politics in technical issues, “Poverty Law and Legal Activism,” Routledge, 2018, p. 11 (with reference to Law, “*Edward V. Sparer*”, *University of Pennsylvania Law Review*, vol. 132, no. 3, p. 426).

²⁹ Gearey, Adam, “Poverty Law and Legal Activism,” Routledge, 2018, p. 162.

³⁰ In 1914 (when the Instalment Sales Act was presented to parliament) Sweden, according to the online tools of Gapminder, was only slightly more equal than the US is today. Gapminder uses the gini coefficient for measurements of inequality. <http://gapm.io/ddgini>. I’ve used Gapminder’s numbers for 2015 since later numbers are extrapolations from 2015.

