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Book Review. Civil Procedure in Swedish by R. B. Ginsburg and A. Bruzelius

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to rebut the arguments of defenders of the death penalty, especially when they wear the intellectual credentials of a Sidney Hook or a Jacques Barzun. While his own comments throughout the book in favor of "the ultimate punishment, literal life imprisonment" (with parole possible after ten years) are cogently and ably argued, he would have done better to confine his remarks to the introduction, or to publish them under separate cover.

Capital punishment has been slowly whittled away in America over the last century. The number of crimes has been reduced, technical distinctions introduced, and the sanity standard made more compatible with modern psychiatry. If the death penalty is retained but never used, there is surely no deterrent; instead, disrespect for the law is encouraged. The ultimate question today is: who should bear the burden of proving the crucial point of deterrence? Given the tremendous social costs of capital punishment, the danger that the innocent will be killed, the inequities of race and class, the lack of rational justification for the penalty, and the absence of evidence that murder rates have risen in states which have abolished the death penalty, the deathhouse should be abolished. But we will have to know much more before the case for abolition becomes so overwhelming as to lead to Mr. Bedau's solution: a universal constitutional amendment to ban capital punishment forever in the United States.

*Jefferson Frazier**

CIVIL PROCEDURE IN SWEDEN

By Ruth Bader Ginsburg and Anders Bruzelius
The Hague: Martinus Nijhoff (1965)

In connection with the planned civil procedure reform in Germany after World War I, a series of monographs dealing with foreign civil procedure systems has been published in the collection *Das Zivilprozessrecht der Kulturstaaten*. One of the first volumes in the collection was *Das Zivilprozessrecht Schwedens und Finnlands* by Baron Rabbe Axel Wrede, published in 1924.

Forty years later a similar project has been initiated in this country. The Project on International Procedure of the Columbia University School of Law has as its aim, among others, to prepare studies of the laws of civil procedure of selected foreign countries. The first of the

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selected foreign countries was again Sweden. The reviewed book is by no means a duplication in English language of the old Wrede's publication. Not only does the reviewed book have two authors, an American professor and a Swedish judge, but what is more significant, the book deals with a new Swedish procedure, enacted after very long preparatory steps, in 1942, and in force since 1948.

Rarely is a law book so well written that it makes not only profitable, instructive, at times even revealing reading, but which is at the same time also interesting. Certainly, one does not expect this kind of book in the field of civil procedure. The reviewed book is one of such rare publications. It is not a laboriously brought together heavy theoretical work full of hairsplitting legal questions, with or without solutions, so common in European continental legal literature. It does not consist of a compilation of thousands of cases cited and analyzed in more or less skillful manner of the type predominant in the common law literature. It is not a short outline of Swedish civil procedure presenting merely a general picture of its principles.

The book under review is an extensive, scholarly treatise depicting in detail every problem encountered in litigating a civil controversy, from the precommencement preparation of the case to the execution of the judgment.

Some authors state from time to time that the Swedish civil procedure takes, in many respects, an intermediate position between civil law and common law procedural systems. Although such a statement may have held a great deal of validity prior to 1948, one finds now a heavy preponderance of civil law elements. Some sample provisions of the new code, mentioned below, will prove this.

Confronted with the task of outlining the Swedish procedural system to foreign lawyers, not familiar with Swedish law, the authors begin with background material, summarizing briefly principal episodes in Swedish history, outlining the structure of Sweden's government, tracing the development of Sweden's judicial system, and discussing sources of law in Sweden.

We learn from the book that there is no jury in civil cases in Sweden. Instead, each district court (trial court), consisting of a judge and several assistant judicial officers, has a board of at least eighteen local citizens (the *nåmd*), elected for six year terms by popularly elected district councils. In most cases, at least seven and not more than nine *nåmdsmän* must be present at main sessions of the court. Agreement of not less than seven of these lay assessors on both the ultimate decision and the legal and factual grounds therefore prevails over the contrary opinion of the judge.

There is no requirement for the party to be represented by a lawyer. Theoretically, the party may represent himself before the court, or designate as his representative any resident citizen of good standing. In practice, the parties normally use the services of professional legal representatives in judicial proceedings of some complexity.

As a general rule, materials forming the basis of judicial judgments must be presented in oral form (the principle of orality), directly to the organ of decision (the principle of immediacy), at a single proceeding or, when necessary, a series of proceedings so closely related in time that the trier can render the judgment without delay and with a clear recollection of the entire presentation (the principle of concentration). The processing of cases is carried on in two distinct stages: preparation (between the parties and a single judge), and main, or trial hearing (before the full court). In tort cases a finding of liability with respect to the criminal claim is binding for the adjudication of the civil claims. There is no need in such a case to produce evidence twice, both in criminal and in civil trial.

The rules of evidence are simple. The concepts of relevance and admissibility are coextensive. In the absence of jury the judge is not afraid to admit as evidence anything which may lead to the finding of truth. The court may freely evaluate all occurrences in the course of proceeding. Hearsay evidence is freely admitted and, later, freely evaluated. The witness is permitted to commence his testimony by relating in narrative form and without undue interruption all he knows about the matter. After the witness has told his story in his own words, questions are put to him by counsel and by the court. Parties are not considered witnesses. They may be called to the stand, if necessary, but they are questioned by the judge rather than by the counsels. Their testimony is evaluated differently than testimony of an impartial witness. It is the function of the court to determine when expert advice is needed and to select a competent expert.

Lower court judgments are subject to court of appeals review. Within one week of the pronouncement of the judgment, the prospective appellant must give notification to the court of his intention to appeal. Within three weeks the appellant must submit his petition of appeal to the lower court. If the petition is not timely the appeal must be dismissed. Review of cases by the supreme court working in panels of five, six, or seven judges, is dependent upon supreme court's permission.

Like in other European countries, including Great Britain, the losing party is responsible for his own as well as his adversary's litigation expenses, including both counsels' fees,

The book does not limit itself to a detailed exposition of the Swedish procedural code of 1942 and related laws. It contains a great deal of information about the administration of justice in Sweden and about judicial statistics. It has a special chapter on international co-operation in litigation. The appendix contains many sample forms and documents in English of proceedings in lower courts and judgments. This last part offers the reader a real insight into a Swedish civil case file. A long table of statutes, decrees and treaties, a table of cases, as well as an index carefully prepared by M.G. Pimsleur contribute to more effective use of this great book. An extensive bibliography of references in Swedish and English lacks no item of importance. The only non-positive remark which this reviewer has concerns several sections within the book which disclose, by the language used, that they were not originally written in English. Giving full credit to the notorious difficulty involved in translating foreign legal materials, one cannot disregard the sizable number of legal terms and expressions in the book which may sound strange to lawyers schooled in the language of the common law.

In the preface to the book Professor Hans Smit, editor of the Project on International Procedure, has enumerated some of the objectives of a study of foreign civil procedure. This book gives special attention to the second of these: "they are designed to permit critical evaluation of domestic procedure in the light of foreign procedural institutions." The United States profited enormously by a wise use of foreign assets in the field of medicine, technique, fine arts. In contrast, foreign influence in the field of law has been negligible. It is to be hoped that the publication of books like Ginsburg-Bruzelius' *Civil Procedure in Sweden* may in due time lead to a reception by some legislatures of new procedural devices of proven usefulness to streamline and to expedite some stages of our own procedure.

*Jurij Fedynskij**

LAWYERS AND JUDGES

By Joel Grossman (1965).

In *Lawyers and Judges*, political scientist Joel Grossman reports the results of his research on the influence of the organized bar in the selection of federal judges. While one chapter is devoted to an overview of the selection process, most of the book focuses on the Ameri-

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