Introduction and aim
Credit plays a central role in the economy. The word credit itself is derived from the Latin word credere, to believe, to put confidence in someone, to trust someone. Credit stands for a person’s ability (the trust one person possesses) to sell a promise to repay in the future so that he can make purchases in the present. While the volume and complexity of credit transactions has grown over the centuries, the act of credit extension and debt creation, or lending and borrowing, as such, is probably as old as human society. To enlarge credit means to transfer the property rights on a given object (e.g. an amount of money) in exchange for a claim on specified objects (e.g. certain sums of money) at specified points of time in the future. To take credit, to become a debtor, is the other side of the coin (Conant 1899, Baltensperger 1987).¹

When a person applies for credit, lend money etc he or she enters into some form of contractual arrangement. Loan contracts are agreements that are voluntarily established between lenders and borrowers. One party (person) promises or agrees to perform certain acts, while the other party (person) agrees to pay in return for the performance of the contract. These contracts can be verbal or written. Such a contract demands a repayment at a future date. All credit transactions involve the risk that the debtor may fail to honor his or her financial obligation. If this repayment is not made the debtor is declared to be in default. By not delivering those property rights as promised the debtor violates one of the most fundamental contracts of the economy. This insecure situation describes the essential characteristics of any credit transaction, namely that of high uncertainty under imperfect information. One main problem in the estimation of credit risks is information asymmetries. The borrower has better information about his economic circumstances than the lender. Therefore it has always been many possibilities for fraud, deceit and misjudgment (Berghoff 2005).²

Swindel with credit – to cheat someone to give an advance – has probably always occurred.

Creditworthyness is a comprehensive designation about the qualities of moral and economic nature which are the fundamentals at credit – rating that is to say when a borrowers ability and will to fulfil his obligations is judged by the lenders. The moral qualities have often concerned the debtors’ honesty, trustworthiness, earning capability, business ethics, financial circumstances.

The overall purpose with this study is to describe and to analyze what instruments have been used in Sweden to prevent breaches of loan contracts throughout history. Another

aim of this study is to bring out the change of the views and values that have been part of
the legislation on insolvent debtors and the sanctions stated for insolvency. Furthermore,
I study how insolvent debtors were punished and what changes have been made in the
penalties. Unfortunately, there exists very little statistical information on this issue.
Relatively reliable information can only be found from the 1840’s and onwards. Though
borrowing and lending have been important themes in Swedish economic history
research the subject of the insolvent debtor has received no systematic attention.

The structure of the study and the underlying data
By way of introduction, I will provide a survey of the early regulations on insolvency.
The present Swedish legislation has its origins in Roman, Germanic and Italian law. This
part of the study is mainly based on earlier studies of legal history. Above all, the interest
of the German historical school in legal institutions has yielded fundamental work that
will be employed here. The next section describes the Swedish development from the time of the law-rolls of
the Swedish provinces until our days. The presentation focuses on how an insolvent
debtor was treated in these regulations and it is based on information from the Royal
Statues, Ordinances, Bills and Decrees, which can be found in the Royal Library in
Stockholm, Uncatalogued Printed Material Section.

Then, there is a section dealing with how and when the last medieval legal system
disappeared, i.e. the use of debtors’ prison, in order to extract any possible hidden assets.
Using diverse sources, ranging from published statistics, political pamphlets to prison
records from Stockholm and Gothenburg, from court depositions to Parliamentary
diaries, I will try to tell the story of how the debtor, the creditor, the government official
came together to define the practice in Sweden. The study is then concluded with a
summary.

1. The origins of Swedish legislation
Any economy that admits the concept of debt has to develop some means of dealing with
those who default on their obligations. In Sweden these means are now well settled. The
present Swedish legislation on insolvency originates in Roman, German and Italian law.
The issue of whether different legal systems had an influence on each other in the past is
considered to be one of the most difficult questions for research on legal history
(Munktell 1935). Thus, I have been obliged to limit my ambitions in this economic-
historical study to creating a relatively large picture of legal development. The central
element is the study of the changes in the systems regulating insolvency during a very
long historical process.

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3 Studies in legal history studier on how roman and medival European law regulated the treatment of the insolvent
debtor have been done by amongst others Beyer (1850), Löning (1876), von Hoiningen (1878) and Kaser (1955).
The history of Swedish insolvency laws has been written by Bergström (1771), Olivecrona (1862), Lantmanson
(1866), Broome (18..), Agge (1934), Olivecrona (1964) and recently by Tuula (2001). Studies of how the laws on
criminal offences against bankruptcies developed have been done by Rydin (1888), Neumeyer (1891), Bergendahl

4 As a layman in legislation and legal history, I have refrained from dealing with technical issues on legislation and
from making in-depth studies of the effect of legislations in various countries on each other at specific points in
time.
Roman law

Already long before the time of the Roman emperors, a legal procedure emerged, regulating the relationship between creditors and insolvent debtors. A basic feature of this regulatory system was that the life and property of an insolvent debtor accrued to his creditors. It was the debtor as a person who was the main target of the distraint. This execution of the person necessarily came to develop so that the debtor’s property (the execution of the tangible assets) became the main objective of the distraint. This shift in the emphasis from an execution of the person, to an execution of the tangible assets went on for several hundred years and at least two phases can be distinguished: 1) the proceedings in the older Roman law according to the Twelve Tables and 2) a weakening of the creditors’ power through lex poetelia and lex Julia.

In the early legislative period (the so-called Twelve Tables 451 B.C.), it was customary for a person wanting to get credit to commit himself, his family and his property to the creditor as a pledge. If the debtor could not fulfill his payment obligations, he became the creditor’s slave and the latter even had the right to kill him. If there were several creditors, the Twelve Tables gave them the right to dismember the debtor’s body (Alexander 1892, Lantmanson 1866, Erler, 1978). However, the first attempt at a bankruptcy law can be discerned in this cruel custom. The original aim of the bankruptcy system was to create justice between creditors, i.e. as concerns equality in losses in case of the debtor becoming insolvent. It is unclear to what extent this law was exercised, but an insolvent debtor always ended up in servitude; he and his family could be sold as slaves.

The next step in the development towards a bankruptcy system was taken when creditors were given instant access to the debtor’s property. Through lex poetelia (326 BC), omitting to fulfill a debtor’s contract became a criminal offence. At the same time, the creditor’s unlimited rights to the life, property and family of the debtor was restricted. Among other things, this law abolished the right to ill-treat, kill or sell the debtor and his family as slaves. The debtor was still forced to stay in the creditor’s private prison in a kind of debtor’s servitude, but he regained his freedom if the debt was settled. Only if the debtor was suspected of trying to escape was it allowed to put him in chains. A debtor who kept in hiding could be subject to a kind of bankruptcy process (missio in bona). This meant that the creditor received a letter of attorney (missio) from the receiver (praetor) to dispose of the debtor’s property (bona). An insolvent debtor still also lost his civil rights (infamia). No consideration was taken of whether he had become insolvent by accident or whether he was responsible for the situation himself. A temporary inability to pay a due debt thus led to the destruction of the debtor’s entire existence.

A lex julia, attributed to Caesar by some, and to Augustus by others, removed the creditor’s power one step further from the debtor as an individual and towards his property. The new legal system was called cessio bonorum. The debtor now had the possibility to avoid the disgraceful consequences of missio in bona, since he was given the chance of declaring his insolvency and voluntarily surrender (cedera) his property (bona) to his creditors. The modern Swedish bankruptcy system can thus be traced back to the missio in bona of the Roman law which was an execution of the tangible assets on basis of an application from the creditor, and cessio bonorum, which meant that the
debtor voluntarily surrendered his possessions to the creditor. Roman law had now separated the debtor as a person from his property and had introduced the principle of equality between creditors in losses due to the debtor being insolvent. The main objective of the execution, i.e. distraint, was no longer the debtor as a person and his body, but his property. This must be considered as a very important innovation of the system.

In principle, all insolvent debtors could ask to be allowed to voluntarily surrender their property (cessio bonorum) which exempted them from disgrace. Thus, the door was also open to abusing the new system. When a careless debtor no longer had any assets, he could declare to his creditors that he had become insolvent and wished to surrender his property without losing his citizen’s rights. In order to prevent further abuse, this exemption was restricted to those cases where the debtor was found not to have caused his insolvency. Only those who could show that they had become bankrupt due to external circumstances (such as fire, shipwreck, attacks from robbers etc) were exempt from disgraceful treatment. In those cases where the debtor himself was considered to have caused his insolvency, cessio bonorum still meant infamy and severe treatment. At the same time, the punitive measures against a debtor who had been careless or fraudulent towards his creditors by withholding assets before or after the bankruptcy became more severe. He was sentenced to prison and debtor’s servitude (Beyer 1850, Hoiningen 1878, Kaser 1955, Olivecrona 1964, Löfmark 1986, Neumeyer 1891). By this legal usage, Roman law had introduced the important difference between honest and dishonest debtors.

Germanic law, the European Middle Ages and the renaissance of Roman law

The Roman Empire collapsed during the flood of the Great Migration (Dahn 1883, 1977) and many of the systems developed by the Empire eroded or disappeared. This was a degenerative process for legislation. The migrating Germanic people brought their own legislation into the previously Roman areas in Gaul, Italy and Spain where they lived according to their own laws along with the older, Romanized population and its laws. The European society in the Middle Ages was characterized by Germanic law and together with Roman law, it still constitutes one of the bases for the European legal culture.

Germanic law is originally a common law, i.e. a product of people’s customs which, for a long time, were only retained in the oral tradition, in the minds of those learned in the law (cf jurisdictional district). Not until the late Middle-Ages was a consciously innovative legislation introduced, often produced by the emerging royal power and the church. (Amira 1913).

According to old Germanic law, an insolvent debtor was subject to just as severe a treatment as in old Rome. The Germanic view that the inability to pay a debt equaled theft from the creditor thus played an important role. If the debtor had no assets, he would be sentenced to become the creditor’s bondsman (Schuldnechtschaft). Prison, and even torture, were used as means of extracting property. Surrendering one’s property was

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often followed by degrading ceremonies, where the debtor wore a special gown, was forced to walk barefoot and so on.\textsuperscript{6}

In contrast to Roman law, older Germanic law did not distinguish between \textit{honest} and \textit{dishonest} debtors. The distraint was first aimed at the debtor’s fortune, but if this was not sufficient, he was handed over to the creditor as a bondsman and could be sold or killed.\textsuperscript{7}

Besides debtor’s servitude, the debtor could also be subject to a feud or become an outlaw. Debtor’s servitude was not limited in time or defined as to its contents. The debtor’s responsibility could also be regulated in a contract of responsibility. Pledges and hostages also appear in these contracts. If a hostage was held as a pledge, the personal responsibility for the debt was taken over by a third party. Like other material pledges, hostages were handed over to the creditor who was to keep the hostage in custody. If the debtor did not satisfy the creditor in time, the hostage became the creditor’s property. The hostage then lost his freedom. The collective responsibility of the family required its members to become hostages for the sake of a family member in need. Even wives and children could be put up as hostages by debtors.

Not until the era of the Franks (approx 200-900)\textsuperscript{8} were creditors’ initiatives superseded by the state. Judges would hand over an insolvent debtor to his creditor, who could then freely dispose of him. If the creditor’s claims were satisfied, he was to give the debtor back his freedom. The debtor was considered as a compensation or substitute for a pledge.

During the period of the Franks, a debtor could voluntarily enter into servitude, a proceeding reminding us of Roman law. The ongoing development is parallel to the direction earlier taken by Roman law. An insolvent debtor is no longer killed or sold but is put to hard labor for the creditor. At the same time, the servitude was allayed since the debtor was given the right to work off his debt. Sources from the Carolingian monarchy (approx 800 – 1000) confirm the beginning of a transit from life-long to limited servitude (Erler 1978a). In German cities, creditors could still take debtors into custody, without the intervention of a court and at their own initiative. Outlawry developed into a procedure for arresting escaped debtors. This procedure of taking people into custody was also used for insolvent debtors at a later stage. It was first used in cities against foreigners who were reluctant to pay (\textit{Schuldturm}).

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{6} Ett synligt tecken för träldom var avrakad hår och i vissa delar av det medeltida Europa en igenkännbar klädesdräkt (Amira 1913).
\item \textsuperscript{7} Early Norwegian law (Leyfingsbalken chapter 15) confirmed that a creditor could force a debtor to a court. If no one bails him out the creditor had the right to cut off a pice at the topp and down in the lower half (Grimm 1881).
\item \textsuperscript{8} The kingdom of the Franks (Regnum Francorum, ca 200 - 900) is seen by historians to be the starting point for the development of institutions and cultures characteristic for medieval european states (especially for France and Germany). Remnants of the antic culture where maintained and transformed which had a first stabilizing effect after the chaos caused by the flood of the Great Migration. This was brought about by more friendly relations between Roman and Germanic people. The center of political gravidity moved from the Mediterranian to the North West in Europe (Prinz 1985). Den antika kulturens rester bevarades och omvandlades vilket utgjorde en första stabiliserande faktor under folkvandringstidens virrvarr. Detta åstadkoms genom att skapa ett närmande mellan romanska och germanska folk. De politiska skeendenas tyngdpunkt flyttades från Medelhavet bort mot nordväst i Europa).
\end{itemize}
\end{footnotesize}
Some time between the end of the 15th and the beginning of the 16th century, the Roman system *cessio bonorum* was incorporated into German law in a reform of criminal law. The possibility to voluntarily surrender one’s property was immediately seized by debtors to avoid debtors’ prison. At the same time, the door became wide-open to fraudulent proceedings towards creditors. Debtors lacking the funds to satisfy their creditors, or who did not wish to do so, could escape from the severe consequences of insolvency by surrendering their assets. This led to an abuse which made legislators return to a more severe treatment of irresponsible or dishonest debtors. The extensive "Reichs-Polizei-Ordnung" from 1548 is the first law to regulate penalties for dishonest debtors in Germany and the final traces of debtor’s servitude did not disappear until the 18th century in that country. The procedure with a voluntary surrender of property, and the ensuing abuse of the new system which brings about special laws against dishonest creditors, is similar to Roman law.

**Italian law**

A legal system including bankruptcies emerged in the Italian city states from the 12th century and onwards, but it only applied to merchants. Debtors were subject to very severe treatment, including a very strange and humiliating ceremony, even for honest debtors. Torture was permitted in order to extract hidden assets (Uhlenbruck 1977). The following statement by Baldus, a Roman learned in law, could be copied as a suitable motto for the older Italian bankruptcy law: *fallitus, ergo fraudator* (insolvent, thus a swindler). It is unclear to what extent there was empirical support for these severe judgments but obviously fraud (*fraus*) was suspected in each case of insolvency and thus, an additional statement was made: *falliti sunt infames* (insolvency means disgrace). The 13th century was an intense century for legislation in an international perspective. In that century, Roman law had a strong influence all over Europe (Inger 1980). The treatment of people in debtor’s servitude was naturally influenced by these views. Only a debtor who could prove that he had become insolvent by accident escaped prison. The penalty for fraudulent debtors varied between cities and the circumstances of the crime. Withholding property and escape could incur a penalty ranging from the loss of rights to

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10 Viktiga konkursstadgor skapades i Venezia (år 1244, 1395 och 1415), Milano (år 1341), Florens (1415), se Alexander 1892.
death. In many cities, a voluntary surrender of property (\textit{cessio bonorum}) was completely excluded (Rydin 1888). The view that behind each debtor, there was a swindler who should be dealt with severely was spread to, above all, France, Spain and England by Italian merchants.\textsuperscript{11}

A difference between \textit{honest} and \textit{dishonest} debtors gradually emerged in France, but already earlier, severe punishments had been decreed for different crimes in connection with bankruptcy. French regulations always decreed corporal punishment and beheading (Rydin 1888, Löfmark 1987).\textsuperscript{12}

2. The development of Swedish law
Not until the year 1000 can we talk about a joint Swedish kingdom. The structure of this kingdom was fairly loose, however. This agrarian society did have a common king, but it was still dominated by families which had constituted the basis of society for a long time. The centuries up to 1350 were characterized by the emergence of royal power and class society. The oldest Swedish laws were the law-rolls of the Swedish provinces and the General Urban Law Code which were drawn up in the 13th and 14th century. A common law for the entire kingdom was drawn up in the middle of the 14th century in the form of Magnus Eriksson’s national law code and Magnus Eriksson’s general urban law codes. The law-rolls of the Swedish provinces were formally replaced by a general national law code around 1350, but they were still to be applied for a long period of time. The first such law was Magnus Eriksson’s general national law code from the mid 14th century. This was replaced by that of King Kristofer in 1442, which did not get a full impact until 1608, but was valid until the enforcement of the law of 1734.

At the time of the law-rolls of the Swedish provinces, a barter economy was the predominant system and the credit system was poorly developed in the countryside. According to most of the law-rolls of the Swedish provinces, a debtor might be taken into servitude if a procedure of distraint, \textit{maet}, was without result. Both \textit{maet} and debtor’s servitude were decreed in the case when a creditor required payment. These laws contained no bankruptcy procedure for living debtors (Lantmanson 1866, Löfmark 1987, Tuula 2001). Traces of a bankruptcy procedure are probably first found in \textit{Upplandslagen} (from the end of the 13th century), and only in those cases where the debtor had passed away.\textsuperscript{13} An adequate pledge was required from living debtors and the rest of the claim was extracted by enforced work or exercising pressure by debtors’ prison.

A somewhat more elaborate view on bankruptcy can be found in the general urban law codes. In the cities, where credits were of importance for the growing business life, the circumstances were somewhat different. Also in Visby stadslag (the urban law code of Visby) (II: 30), the tem “\textit{besetten}” was used in the sense of sequestrating goods due to

\begin{itemize}
\item \textsuperscript{11} Som ett exempel på detta kan nämnas en lag som infördes 1321 i Barcelona. Lagen föreskrev att bankirer som gått i konkurs skulle sitta i fängelse ett år, på vatten och bröd, tills de hade reglerat alla sina skulder. Om de inte lyckades med detta blev följderna drastiska. Ett exempel på denna rättspraxis kan vara bankmannen Francesc Castellos öde. Han halshöggs 1360 på offentlig plats utanför sin bank (Hunt & Murray 2000).
\item \textsuperscript{12} Sådana förordningar kom t.ex. år 1536, 1609 och 1673. Straffbestämmelserna upptogs i olika konkurslagar fram till Napoleon I:s tid, då de infördes i den år 1807 promulgarerade \textit{Code de Commerce}. Efter vissa anmärkningar reviderades lagen ganska snart och en ny konkurslag infördes 1838. Straffen för konkursbrott upptogs i tredje boken av \textit{Code Pénal}.
\item \textsuperscript{13} Det stadgas här, att vid brist i dödsboet borgenärerna i proportion till sina fordringars storlek skulle lida avdrag på fordringarna; ett slags urarvakonkurs.
\end{itemize}
debts. Visby stadslag, which was written in the 15th century, was the first to consider bankruptcy for living people.\textsuperscript{14} Visby Stadslag also contained regulations for taking debtors into custody instead of making them subject to debtor’s servitude. Furthermore, there were regulations stating that debtors having escaped with property get a life-time sentence. This is the only law on punishments for crime directly preserved from that time.

In this period, Visby was a flourishing commercial Nordic city with relations with countries and cities where Roman law was known or applied. Visby stadslag does not make any explicit statement about the possibility to surrender one’s property as a key to freedom for an insolvent debtor voluntarily surrendering his assets. But there are signs of a familiarity with the doctrine of Roman law of a \textit{beneficium cessionis bonorum}. It was considered that a debtor could, in some cases, free himself from his obligations by surrendering his fortune (Olivecrona 1866). Regulations on the voluntary surrender of assets did also exist in Magnus Eriksson’s National Law Code and in Carl IX:s Privilegier för Göteborg av 1607 (The Privileges of Carl IX for Gothenburg of 1607). Surrendering one’s property probably gave the debtor all the advantages of this system. (Lantmanson 1866, Löfmark 1987). The principle was that in the case of an accident where the debtor was not at fault (war, damage at sea, fire, the failure of others), the debtor was offered to make a compound, while a fraudulent debtor was severely treated. If the debtor lacked means, he was sentenced to pay off his debt by work. Fraudulent debtors were put in custody until they had satisfied their creditors (Olivecrona 1862).

The development of Swedish legislation in the 16th and 17th century is characterized by a considerable influence from Roman and Germanic-Roman law (Inger, 1997). Rules from Roman law including pledges and securities, bankruptcy and priority rights were invoked and were often applied in practice in the 17th century, and came to characterize the legislation.

In the 17th century, it was up to the authorities to decide whether the debtor should be allowed to surrender his property. This required that the insolvency was due to an accident. If this was the case, the debtor was exempt from enforced work and prison as well as from disgrace and future responsibility for the debt. If it could be proved that the debtor had intentionally taken measures to reduce the creditors’ rights, or if he had been guilty of leniency and carelessness as concerns their interests, there were no valid reasons for using these special provisions. A Royal Decree in 1673 extended the possibility to surrender goods to apply to the entire country. A person who had voluntarily entered into bankruptcy and proved the bankruptcy to be due to an accident which he had not caused himself, not only became a free person but was also – which was an important innovation – liberated from any future claims from his creditors. In that way, the stipulations in Roman law about \textit{cessio bonorum} lessened the effects of a severe Swedish executionary procedure. This relief did in particular apply to honest debtors.

**Regulations against dishonest debtors**

The possibility for a debtor to escape disgraceful treatment by voluntarily surrendering his possessions had been abused in the Roman Empire and in Germany. This abuse had brought on special criminal laws for dishonest and careless debtors. The Swedish trend seems to have entered upon a similar path. In the privilege given to Gothenburg by Gustavus Adolphus II in 1621, the fundamental principle that "falsanter och Bankarupti" (falsifiers and bankrupts) should be sentenced to serious penalties was sanctioned. A legal commission submitted a legal proposal in 1643 which contained the first Swedish attempt at creating a bankruptcy legislation. The proposal clearly distinguishes between debtors whose insolvency is due to an accident and those responsible for their insolvency. The former became a free man as soon as he had voluntarily surrendered his assets to his creditors.

In 1664, the Royal Councils complained about the fact that executions were dealt with "feebly and carelessly both in the country and in the cities" and that the current legislation in the area was "without force".15 An extensive legislation on insolvent debtors began to take shape at the end of the 17th century.16

The legal regulations on insolvency were of importance, for they constituted the key to keeping up the faith in the credit system. A Royal Decree on executions dated July 10, 166917 (which only applied to knights and noblemen) is, to my knowledge, the first making a more detailed distinction between various reasons for insolvency, though from a moral perspective. § 15 decrees that the court shall determine how debt and poverty have come about. If the court found that the debtor had become insolvent due to an accident where he was without guilt, he should become a free man but should repay the debt if his financial circumstances improved. If the debtor has contributed to the insolvency himself by "an extravagant and unvirtuous life", he will receive no compassion leading to a more lenient treatment. He shall then be severely punished with debtors’ prison or custody. § 23 decrees that an insolvent, common person must "pay with his body", i.e. work for his freedom or be imprisoned, and can receive no bail”.18

That a person who had becomes insolvent "through extravagance and carelessness” was equaled with a swindler and should be "punished and chastised bodily and by work” was clarified anew in a Royal Resolution of 1675.19 Debtors who delayed the investigation or escaped were considered to be swindlers. It was considered to be more "difficult to protect oneself against [them] than against thieves and obvious robbers". Thus, they were not only condemned to serve their entire debt in prison but were also exposed to shaming penalties. to be "put on a pillar in a square or a public venue to be publicly disgraced for two hours and also be sentenced to prison on bread and water or to work in any of the

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18 Se även om det i 15 kap Rådstugu Balken St. L.
Penalties for bankruptcy crimes were mentioned or assumed in certain older legal works. The first real penal legislation in this area, the Royal Decree of 1699, concerning fraud in bankruptcy, was later completed with the Decree of 1730 concerning escape from debt. These penal regulations for deliberate crimes were transferred to the law of 1734.

The law of 1734
The next major law, the law of 1734, applied to both the countryside and the city. It contained nine codes with concrete regulations. The law built on older practice in courts and was very conservative. The regulations for bankruptcy that were introduced were very brief. In the 18th century, the bankruptcy process had become very detailed and slow (Inger 2002) due to the influence of German law. In the law of 1734, chapter 8 of the Debt Enforcement Law deals with "On sequestration and debtors’ prison". The former means that a debtor’s property is put up as security so that it can be used to pay a debt, the latter that the debtor is deprived of his freedom due to his debt. According to the Trade Code ch. XVI of the same law, the debtor shall be imprisoned and serve his debt by enforced labor, if it is found that his "poverty is due to wastefulness, gambling, idleness or carelessness". If this was not possible, the debt should be reduced by 24 öre a day.

The rule that the debtor should be put on a pillar still existed in the law of 1734, in those cases when the debtor has behaved fraudulently or tried to hide property, or used treachery and tricks towards his creditors, then

"such a swindler shall be put on a pillar in a square or a public venue, to be put to shame for two hours, and also be sentenced to prison on bread and water or to work in one of the king’s fortresses.

An escaped debtor became an outlaw and wanted. Outlawry meant being excluded from the peace that the legal system guarantees its members. The outlaw lost his legal rights but was also obliged to escape from peace and quiet and become an exile. He was given a short respite to put himself in safety. Then, anyone could kill or molest him without penalty. Being an outlaw also had certain repercussions on the relationship with those covered by the legal system. Everyone was thus forbidden to house, feed or even socialize with the outlaw. In time, the consequences of being an outlaw were reduced so that the criminal could no longer be killed but only imprisoned

"If a debtor escapes from debt...he will never find peace within the borders of the country and will in his absence be condemned as a swindler and his name will be posted on a pillar, and he will be condemned a swindler in all commercial cities".

21 Se 16 kap.4 och 5 §§ handelsbalken.
A list of decrees follows upon the law of 1734. In particular, regulations on sentencing insolvent debtors to debtors’ prisons were very common. In summary, according to the law of 1734 and the decrees issued later on, a debtor could be put in debtors’ prison for bills of exchange and promissory notes as soon as he had failed in his obligation to pay and for other debts, when he had been found to lack the means of payment after a distraint. There was no stipulated limit to the period of time a debtor could be kept in debtors’ prison, which was thus dependent on the creditors’ willingness to pay.

Forced labor and prison for dishonest debtors were abolished in a Royal Decree of 1773, but debtors’ prison was still used if the debtor was suspected of having obtained new assets that he were withholding from the creditors.

The possibility to voluntarily surrender one’s property in exchange for freedom from future responsibility for the debt, disappeared completely in the bankruptcy law of 1818. Even a debtor who had become insolvent by accident remained responsible to pay the debt with any possible assets acquired in the future. In return, the penalty regulations became more detailed in this law. Carelessness was punished and fixed latitudes were stipulated for the different crimes. A French influence can be discerned in the more severe view of the debtor’s actions which characterizes the bankruptcy law of 1818 (Löfmark 1986).

In contrast to the older bankruptcy statutes, the bankruptcy law of 1818 was characterized by clearly limited regulations on, among other things, the responsibility of careless and fraudulent debtors. The final difference between honest and dishonest debtors disappeared in the bankruptcy law of 1862.

French law received a great deal of attention in Sweden. The severe judgment of bankrupt debtors stated in Code de Commerce (1807), which was a moral condemnation of insolvency, once more became predominant. A new bankruptcy law was


28 Vårdslöshet av konkursgäldenär var som begrepp känt för 1734 års lagstiftare och nämndes i motsats till å ena sidan bedrägeri och å andra sidan oförvållat konkurs. I konkursförfattningarna intogs vissa föreskrifter om påföljd av sådan vårdslöshet (härte, förbud mot att visa sig på börsen eller mot att sköta allmän syssla). Straff för vårdlös gåldenär infördes först med 1818 års konkurslag. Genom 1862 års konkurslag skapades en ny klass av konkursförbrytelser, s.k. ordelighet. För 1942 års strafflagsreform gällde nämnda bestämmelser, reviderade enligt lagar den 14 oktober 1892 och den 13 maj 1921. Straffbarheten avsåg bedrägeri emot borgenärer (1 §) och ordelighet mot borgenärer (2 §). En bestämmelse om vårdslöshet mot borgenärer fanns i 3 §. Som ett särskilt brott betraktades rymning för skuld (5 §). En genomgående förutsättning för straffbarhet var att gåldenären hade försatts i konkurs (Löfmark 1986).

29 Exempel på detta synsätt: “Man har sett affärsmän utan böcker, böcker utan ordning och sammanhang och ganska ofta böcker, vilkas skenbara riktighet för det sista året icke annat var än en veckas verkliga bedrägeri, ett skriveri, uppstått att för borgenära fördöja sveket, för rättvisan brottet.” …”Konkurser, långt ifrån att vara föremål för blygsel, har blivit medlet till en förmögenhet, vars källa man knappt bryr sig om att döja; och om denna mängd bankrutter icke alltid voro ett verk av brottet, voro de åtminstone ett verk av okunnigheten, emedan hela världen
implemented in 1830. For the present issue, it was an identical repetition of the law of
1818. The suggestion for a general criminal law made by the legislative committee
contained new regulations on bankruptcy crimes. Fraud was divided into two types, a
more serious and a lesser one. The proposal tried to define this criminal area in a
comprehensive way that would satisfy the new legal principle of “no punishment without
law” (nul ła poenia sine lege). After some changes, the proposal was included in a new
proposed bill in 1844. This proposal was not implemented either, but the regulation on
bankruptcy crimes was included in the bankruptcy law of 1862. In this law, dishonesty
was entered as a particular crime. Thus, there was a division into three kinds of crimes,
after which bankruptcy, dishonesty, and carelessness. In the penal law of 1864, these penalty regulations
were included in chapter 23 under the heading ”on a fraudulent, dishonest or careless
debtor in bankruptcy”. A Royal Decree in 1868 made the use of debtors’ prison very restricted. According to
the new regulations, this measure must not be taken until the debtor had been found to be
lacking sufficient assets to pay his debts after distraint had taken place. According to this
decree, the debtor could protect himself from debtors’ prison by swearing an oath that he
did not have any other assets than those stated. Furthermore, it was prescribed that the
confinement to debtors’ prison should cease after six weeks. In the new enforcement
order of 1877, the requirement for debtors’ prison is not mentioned and, as of January 1,
1879, when this law was enforced, the use of debtors’ prison entirely disappeared from
Swedish legislation.

3. The system of debtors’ prison and its disappearance
In this section, some of the reasons why the system of debtors’ prison disappeared will be
mentioned. Furthermore, a quantitative description will be given of the extent of the use
debtors’ prison, the length of the period of confinement and the reasons for release.
Finally I will try to answer the question if the institution of debtors’ prison was efficient
given the aim to squeeze out hidden assets from the debtor, his family or friends.

The transit from debtor’s servitude at the creditor’s, to custody in the city jail started in
the 12th century, but did not become more common in small cities until the 16th century
(Löning 1876, Erler 1978a). The transit started by the creditor applying to the magistrate
for disposing a room in one of the city buildings for keeping a debtor in custody.
Gradually, this service came to be considered as a matter of course by the public.

vil  göra affärer utan att veta, vad där till fordrades.”…”Också, oaktad lagens stränghet emot brottsliga bankruttö rer,
har ingenting varit mer sällsynt, än dess tillämpning; och samlingen har så uppmunrat till dessa brott som just denna
Maj:t, angående Kreditförhållandenes och Låne-anstalternes ordnande avgivet den 8 april 1853 af särskilt i Nåder
30 25 kap. under rubriken ”Om bedrägligt eller vårdslös gäldenär i konkurs”;
31 KL, 8 kap: ”Om ansvar i konkurs för bedrägligt förhållande, annan oredlighet och vårdslöshet”.
32 Enligt de ursprungliga bestämmelserna i strafflagen kunde oredlighet mot borgenärer, rymning för skuld och
vårdslöshet mot borgenärer åtalas bara av målsägande. Genom lag den 14 oktober 1892 förvandlades emellettid
oredlighet och rymning till angivelser brott, och 1921 lades båda dessa brott under allmänt åtal utan krav på angivelse
av målsägande (Justitiedepartementet 1975). With some shifts, this division of the crimes into three categories was
kept until the legal reform in 1942. In the latest reform, all debtors’ crimes were placed under public prosecution,
without any requirement for a statement from the prosecutor (Löfmark 1986).
Custody for debt became a substitute for serfdom for debt.\textsuperscript{33} Prison was still compulsory for all debtors and various kinds of disgraceful punishments were added to the punishment of being deprived of one’s freedom (Schulte 1861)\textsuperscript{34}. In the cities, a bankruptcy system then developed from this custodial procedure. (Conrad 1966).\textsuperscript{35}


debtors’ prison is already mentioned in the oldest general urban law code, the so-called Bjärköarätten.\textsuperscript{36} In order to illustrate what Bjärkoarätten decreed as concerns insolvent debtors and their treatment, chapter 40 from the translation (into Modern Swedish) by Holmbäck & Wessén is recommended reading (1979):

"A man now arrives in the city, who is involved in debt, notwithstanding if he is indebted to a man in the city or to someone else; the bailiff, the district court judge or two men of the city or the swains of the bailiff and the city are informed. The man or his property shall be taken into custody and he pays the debt he acknowledges. If he does not have enough money, he sets a bail to the person who requires the payment of the debt, that satisfies the latter. If he wishes to deny the debt, [he does so] with the oath of three men, if it amounts to less than six marks [If it amounts to six marks] or more, he defends himself with six men. Now he leaves custody and does not pay his way; then he pays a fine of three marks and the debt. Notwithstanding if he is a courtier, priest, farm-bailiff or a peasant. A peasant can be taken to debtors’ prison and his property be seized, but not his wife. If a widow with property in the city arrives and is in debt, she can be put in debtors’ prison according to the laws of the city."

As appears from the quote, the creditor could, with the aid of the bailiff, have the debtor put in debtors’ prison. The debtor could deny the debt with the aid of three or six sworn witnesses. We can also see that in Bjärköarätten, the debtor’s property and person can be

\textsuperscript{33} Detta förklarar också stadgan som var vanlig att den nu inrättade så kallade gäldstugan inte fick vara ”ovänlig” (d.v.s. inte belägen under jord) och att borgenär fick bekosta ett minimum av gäldenärens uppehälle. I syfte att framtvinga dolda tillgångar gestaltade man vistelsen i skuldtonet så svårt som möjligt. Ofta utgjordes den enda måltiden av vatten och bröd. Inte sällan sattes gäldenären i stock eller belades med tunga fängsel (Hoiningen 1878).\textsuperscript{34}


sequestrated. He himself is deprived of his freedom due to his debt. In both cases, the Swedish verb ”bysätta” is used. This double meaning of ”bysätta” continued to exist in legal language for a long period of time.  

There were several reasons for the disappearance of debtors’ prisons. One is that the treatment of criminals changed due to the emergence of a more human view of one’s fellow-beings, which is connected to the Enlightenment. In order to fully understand this radical change, I will first give a short survey of some of the characteristics of medieval criminal law. In Sweden, as on the continent, taking criminals into custody and punishing them had been the prosecutor’s responsibility for a long period of time (Brink 1848). In the law-rolls of the Swedish provinces, the right to revenge had not yet been abolished, but was subjected to certain limits. The oldest court procedure depended on the injured party finding out who was the criminal. Then, he would take him to court or to the judge where he would complete his claim. Instead of public custody, private housing was used for a long period of time. The oldest Swedish laws do mention ”fängsel” (fetters) and their use but not ”fängelse” (prison). The medieval view of punishment as a kind of redress for the injured party is, according to Munktell (1943), based on primitive feelings of revenge. As an example, the execution of corporal punishment was originally entrusted to the prosecutor and at times, he had the right to choose whether he wanted a death penalty to be enforced or whether he would accept a fine from the criminal. However, this view increasingly disappeared into the background. It took a long time before the view that a crime does not only concern the victim but also the general public to at least the same extent, gained any ground. Slowly, the view that the punishment partly constitutes a private settlement disappeared into the background.

As shown by Söderberg (1993), Jarrick & Söderberg (1994) and Söderberg (2000), the methods for punishing crime became more civilized in Sweden in the 18th century. Courts started making sentences more humane at their own initiative. A death penalty for theft was considered to be reasonable in the late Middle-Ages and many people were also executed for theft. Two hundred years later, legal practice was much more lenient. Brutal corporal punishments were gradually abolished. The practice of burying people alive disappeared in the 16th century. No one had his right hand cut off for a crime after 1620 and somewhat later, the custom to cut the ears of criminals disappeared. In the latter part of the 17th century, people were no longer buried alive, they were no longer branded with red iron and tongues were no longer cut out for blasphemy. These reforms were implemented in Sweden already in the century before the Enlightenment.

Another reason is that the entire system for recovering debts had become dated due to the requirements of an increasingly developed credit system. In the long run, it turned out

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37 I 1734 års lag handlar Utsökningsbalkens kap. 8 ”Om kvarstad och bysättning”. Det förra innebär att man sätter en gäldenärs egendom i säkerhet för att den skall kunna användas för att betala gälden, det senare att man berövar honom hans frihet på grund av hans gäld.

38 I Östgöta lagen bestämmdes laga häktande vara, att fjättra eller sätta bojar om fötterna samt binda armar på brottslingen, instänga honom i hus och om huset hålla vakt (Thaet aer lagha haefte fjaetra ok aerma binda ok hus ivir hanum lykkja ok ivir husi varp halda. Ö.G.L. II: 1 Dr.B).
to no longer be possible to adapt the regulations on insolvency to the requirements of the
new era by partial reforms (Hassler 1934). 39

A third reason is the international development in this legislative area. The first step
towards abolishing debtors’ prisons were taken in France where the requirement to use
debtors’ prisons was abolished in 1867. The French reform was then – more or less –
implemented by the North German Confederation (1868), Austria (1868), Belgium
(1871), Denmark (1872), and Switzerland and Norway (1874). Also in England – maybe
the country where the use of debtors’ prison was most common – this use was
considerably reduced by ”The Debtors Act” in 1869. In Finland, debtors’ prisons were
abolished in 1895.

A fourth reason can also be mentioned, namely the then widespread view that the
system of debtors’ prisons had outlived its day. The first criticism, to my knowledge,
appeared already in 1767. 40 The subject was frequently discussed in the different
chambers of the Swedish Parliament. The discussion was particularly intensive in the
years 1847/48, 1859/60, 1862/ and 1868/69. 41 The system of debtors’ prisons was, above
all, criticized for sentencing people on basis of confessions, at times without any trace of
a crime, and that the period of time in debtors’ prison might be subject to the discretion
of a creditor set on revenge. 42 The system was criticized for being a dated remnant of the
methods for torture in the Middle Ages. 43

Finally, the Royal Decree of 1868 restricted the use of debtors’ prisons. The effect of
this change in the legislation and the other reasons already mentioned was that the
number of people in debtors’ prison, which amounted to 470 per year in 1837-45, fell to
an average of 36 per year in 1869-77. According to the enforcement order of 1877, which
was implemented in 1879, people could no longer be sentenced to debtors’ prison. From
that year, such prisoners ceased to exist in Swedish prisons.

How extensive was then custody for debt? On basis of the existing statistics, we can get
an approximate picture of how many men and women were sentenced to debtors’ prison
in the period 1837-1878 (unfortunately, there is no data for the decade 1846-56). The
number of people in debtors’ prison, which might have amounted to between five and six
hundred a year in the 1840’s, decreased considerably after 1868. The share of women in
debtors’ prison amounted to 4% on average during the period 1837-1845.

39 1868 tillsatte Kungl. Maj:t en kommitté med uppdrag att utarbeta förslag til förändrad lagstiftning som 1871
framslade ett förslag til ny utsökningslag. Lagförslaget omarbetades 1875 och en ny utsökningslag blev gällande från
år 1879.
40 ”enligt Kongl. Maj:ts senaste förklaring, av år 1768 äger en Creditor, om han ock allenast innehafver den minsta
och obetydligaste fordran, ensam fullkommlig fri- och rättighet, att disponera över Debitors frihet. Detta är inte bara
skadligt för Debitoren utan också för övriga creditorer då en snäl och snikeful härigenom äger våld, att till de
övrigas förfång och mera lidande utpressa hela sin summa, vilken rättvisa för frihetens återvinnande ofta hända kan,
då en debitor har nog svagheten att olovligvis tillskynda en Tyrann full ersättning påde övriga borgenärernas
bekostnad (Wennberg, 1767).
41 Denna debatt skall jag redovisa för i annat sammanhang.
42 Se t. ex. Lagutskottets betänkande 1859/60, No.41
43 Riksdagens protokoll vid lagtima riksmötet år 1868. Första kammaren, första bandet, fredagen den 6 mars, s.538.
The meeting out of punishment is a neglected aspect in the lively interest in crime in historical research in recent years. The meeting out of punishment as it is manifested in the judicial process is often completely different from what is stated in the legal text (Söderberg, 2000). It might thus be of interest to see how much time the debtor spent in debtors’ prison, what the required amounts of debt were to end up in debtors’ prison and what reasons were registered for releasing debtors.

The term of punishment was divided into three categories. It turned out that a fairly large number of people spent one day or less in debtors’ prison. A fairly clear picture

Figure1. The number of men and women in debtors’ prison in Sweden 1837 - 1878

Source: Contribution to the official Swedish statistics B, Juridical system (Rättsväsendet, Överståthållarens underdåniga berättelse), 1837-77. * Data not available between 1860 –1865.
emerges from figure 2. Their share, which amounted to an average of 12% in the period 1859-62, increased by an average of 56% in the period 1875-78. If we now consider the amounts of debt for which debtors’ prison was the punishment, about 50% of the observations are found in the lowest group of 0-100 ”riksdaler”. Only about 20% exceed 300 ‘riksdaler’. Was the use of debtors’ prison efficient, given the aim to secure hidden assets? We might get some clues by interpreting the information on why those in debtors’ prison were released. The number of debtors who were released for paying their debt might be an indicator of the efficiency of the system. Six reasons were mainly stated as the grounds for being released from debtors’ prison 1) Payment (payment fulfilled), 2) an exemption warrant or an agreement with the creditor (a compound), 3) creditors neglect to pay for the debtors’ living costs in debtors’ prison 4) swearing, 5) cession 44, 6) other reasons (those who were released due to illness, madness, death and transfers to other kinds of custody are included in this group).

Figure 2. The period of time in debtors’ prison and the size of the debt 1837-78

<table>
<thead>
<tr>
<th>Year</th>
<th>1859</th>
<th>1863</th>
<th>1867</th>
<th>1871</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percent</td>
<td>100</td>
<td>80</td>
<td>60</td>
<td>40</td>
</tr>
<tr>
<td>1 day or less</td>
<td>20</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1-100</td>
<td>30</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>101-200</td>
<td>40</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>201-300</td>
<td>10</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>301+</td>
<td>5</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Contribution to the official Swedish statistics B, Juridical system (Rättsväsendet, Överståthållarens underrådiga berättelse), 1837-77. * Data not available between 1860–1865.

As appears from table 1, in the years 1857-59 and 1866-67, only an average of 16% of the total number of convicted were released because they could satisfy their creditors with the whole sum of the debt. The group who transferred their property to the creditors’ collective (cession) constituted the largest share, 38%. Thus, the use of debtors’ prison appears to have been a reason of some importance for bankruptcy. The second largest group were released because they made agreements or a compound with their creditors. Their share in the corresponding period amounted to 37 percent.

In about 90% of all observations the release usually took place because the person in debtors’ prison payed his debt, declared himself to be bankrupt, made some kind of informal agreement. For that reason the institution of debtors’ prison was quite efficient.

44 Gäldenären försatte sig själv i konkurs genom att avträdda all sin egendom till borgenärskollektivet
The rest of the prisoners were released because the creditor grew tired of paying for the upkeep of his prisoner. The main use of the system of debtors’ prisons in this period was thus to force the individual to surrender his property to the debtors. After 1868, swearing was the most common reason for releasing debtors from custody.

Table 1. Reasons for releasing people in debtors’ prison

<table>
<thead>
<tr>
<th>Year</th>
<th>Payment</th>
<th>Exemption warrant creditors</th>
<th>Creditors neglect to pay for debtor</th>
<th>Swearing</th>
<th>Cession</th>
<th>Other reasons</th>
</tr>
</thead>
<tbody>
<tr>
<td>1857</td>
<td>50</td>
<td>86</td>
<td>20</td>
<td>0</td>
<td>94</td>
<td>8</td>
</tr>
<tr>
<td>1858</td>
<td>49</td>
<td>97</td>
<td>19</td>
<td>0</td>
<td>81</td>
<td>15</td>
</tr>
<tr>
<td>1859</td>
<td>49</td>
<td>134</td>
<td>22</td>
<td>0</td>
<td>121</td>
<td>9</td>
</tr>
<tr>
<td>1860</td>
<td>*</td>
<td>*</td>
<td>*</td>
<td>*</td>
<td>*</td>
<td>*</td>
</tr>
<tr>
<td>1866</td>
<td>49</td>
<td>130</td>
<td>29</td>
<td>0</td>
<td>145</td>
<td>2</td>
</tr>
<tr>
<td>1867</td>
<td>48</td>
<td>124</td>
<td>37</td>
<td>0</td>
<td>142</td>
<td>1</td>
</tr>
<tr>
<td>1868</td>
<td>17</td>
<td>100</td>
<td>42</td>
<td>0</td>
<td>108</td>
<td>14</td>
</tr>
<tr>
<td>1869</td>
<td>5</td>
<td>14</td>
<td>2</td>
<td>36</td>
<td>4</td>
<td>7</td>
</tr>
<tr>
<td>1870</td>
<td>6</td>
<td>11</td>
<td>1</td>
<td>24</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>1871</td>
<td>2</td>
<td>7</td>
<td>4</td>
<td>4</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>1872</td>
<td>5</td>
<td>1</td>
<td>2</td>
<td>12</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>1873</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>5</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>1874</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>7</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1875</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>13</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>1876</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>8</td>
</tr>
<tr>
<td>1877</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1878</td>
<td>1</td>
<td>3</td>
<td>3</td>
<td>25</td>
<td>3</td>
<td>0</td>
</tr>
</tbody>
</table>

Source: Contribution to the official Swedish statistics B, Juridical system (Rättsväsendet, Överståthållarens underdåniga berättelse), 1837-77. * Data not available between 1860 – 1865.

Summary

The development of the legislation on insolvency has been a long historical process, covering several centuries. For long periods of time, debtors were subject to severe treatment. Insolvency was often equaled to theft from the creditors, who usually had the right to the debtor’s property and body. The death penalty, servitude, debtors’ prison and stigmatizing penalties were still in existence well after the Middle Ages.

Swedish bankruptcy law mainly originates in Roman, Germanic and Italian law. The oldest Roman executionary proceedings were not a system corresponding to bankruptcies

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*a data missing

45 From 1868 a creditor was released from prison if taking an oath.
46 Genom att avträda all sin egendom till borgenärskollektivet försatte gäldenären sig i konkurs.
in the modern legislative system and thus, the crimes that are today summarized under the heading “bankruptcy crimes” were not considered in this early law. In the early period of Roman legislation, the debtor as a person was the main target for distraint and penalty. The cruel right to dismember the body of an insolvent debtor already shows traces of the important principle of justice. An important step towards a bankruptcy system was taken around 300 BC when the debtor’s property came to be the main target of a distraint, at the same time as the legislation limited the creditor’s right to the lives of the debtor and his family. Another 300 years later, a new legal system was introduced (cessio bonorum) where a debtor could voluntarily surrender his property. Thus, he could avoid disgraceful and stigmatizing treatment and become a free person. This more lenient treatment led to the abuse of the system. The legislator distinguished between an honest and a dishonest debtor, with more severe punitive measures for the latter. A similar trend could be seen in German law and in the development of Swedish law.

We can thus see some fairly general stages of development in the treatment of an insolvent debtor. First, there is a period when the debtor is treated very severely. In the eldest Roman and Germanic as well as in the Swedish legislation, execution of the person was used as a possibility for the creditor to get possession of the debtor’s property by crushing him as an individual. At this stage, all debtors were considered to be thieves and the penalties were compulsory.

Then, there is a stage where the legislator alleviated the often cruel and inconvenient regulations for the treatment of a debtor. The debtor as a natural person was spared, but he still often lost his juridical person. Debtor’s servitude and slavery were replaced by custody and prison. Private prisons were eventually replaced by public custody.

Successively, the legislation came to accept that the debtor surrendered his property. This always opened the door to fraudulent proceedings, with special laws for careless or fraudulent debtors. Economically more developed societies thus often reverted to stricter legislations.

The situation for debtors improved in Sweden when several legal systems from Roman law were implemented. However, the use of debtors’ prison still played an important part in the second part of the 19th century. In the 19th century, the possibility to take any restrictive measures related to the debtor’s personal freedom due to liabilities, gradually disappeared. This tendency was due to the greater respect for personal freedom and general human dignity that was emerging in this new era. Debtors’ prison, the final remnant of the medieval penal system, disappeared in 1879 in Sweden. At that time, the system with debtors’ prison had become inefficient, given its goals. Many people were sentenced to debtors’ prison for a short period of time for fairly small amounts of debt. Up to 1868 about 90 per cent were released because they could pay their creditors. Most people were released because they were declared bankrupt. The main function of the system seems to have been to squeeze out money from the debtor, his/her family and friends or to enforce bankruptcy. After 1868, when a debtor was released from the prison when taking an oath, the institution was obsolete. When the system of debtors’ prisons disappeared, only fraudulent debtors were penalized according to regulations in the penal law. In my view, this constitutes a shift in paradigms. Since then, a person who has become insolvent is not stigmatized by the legislation.
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