Doing “Life” in Sweden –
A Policy Analysis of the 2006 Law Reform
On Life-Time Incarceration

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Abstract

In Sweden, the harshest punishment that offenders face is a life sentence. Yet, in contrast to the United States, such a sentence does not mean that offenders necessarily spend the rest of their lives in prison. The Swedish government has traditionally been able to grant clemency to lifers, which has led to an average life sentence of about 14-16 years. In 2006, this clemency practice was modified with a law establishing a complementary judicial process deciding about the release of lifers. This paper will first embed the use of life sentences into the broader context of Sweden’s specific understanding of punishment and will then examine how the 2006 reform was designed, implemented, and what sort of effect it has had on not only the Swedish criminal justice system but also on the life-time incarcerated themselves. This paper will reveal how the specific law regarding life-time incarceration matches the broader and traditional understanding of the Swedish criminal justice system as a harm-minimizing and rehabilitative institution focused on the individual.

1. Introduction

While the United States are considered to have the most punitive crime policies in the Western world, the Scandinavian countries fall on the opposite side of the spectrum (Tonry, 2001, p. 15). In the Swedish legal system, the harshest punishment that offenders face is a life sentence. Yet in contrast to the United States, where life sentences usually mean “natural” life or might even be imposed without the possibility of parole, a life sentence in Sweden does usually not mean that “lifers”\(^1\) will spend the rest of their lives in prison.

Life-time incarcerated offenders in Sweden have traditionally had the possibility to apply for clemency from the government after a certain amount of time served behind bars. With the Swedish crime policies having aimed at limiting the negative effects of imprisonment, applications of this group of offenders have regularly been treated positively. By granting clemency, an (indefinite) life sentence is transformed into a definite time sentence. This led to an average life sentence of 14 to 16 years behind bars (SOU 2002:26, p. 37).

In 2006, release procedures for lifers changed substantially in Sweden. A new law called “Prop 2005/06:35 Lag om omvandling av fängelse på livstid” (Law regarding the transformation of life-time incarceration) was passed that established a judicial process deciding about the

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\(^1\) The term “lifer” will be used throughout this paper to refer to the inmate population sentenced to life in Sweden.
release of lifers. These judicial safeguards complemented the traditional governmentally steered clemency process.

This paper will analyze the use of life sentences in the Swedish criminal justice system by primarily focusing on the question if the 2006 legal reform has led to any fundamental changes for both the system and the lifers themselves. For this reason, the paper will be divided into two parts. The first part will provide a historical analysis of the social, economic, and political context, in which the Swedish criminal justice system is embedded and out of which the 2006 reform arose. In light of the historical background, I will examine for which specific reasons the law reform was passed at this point in time. Therefore, I will pay particular attention to the main actors, which were pushing for this legal change. At the same time, I will explore if there was any recognizable opposition to the reform.

The second part of the paper will consist of an evaluation of the 2006 reform. The law will be evaluated on the basis of four criteria: the first criterion is the laws’ effectiveness in light of public safety. The new procedures should not lead to an unsafe environment due to early, unsupervised releases of violent criminals. Secondly, the reform will be evaluated by shedding light on the political landscape surrounding its implementation. Has political support for the reform changed since 2006? Is any opposition to the law recognizable now? The third criterion for evaluating the reform will be its impact on the offenders themselves. With the establishment of additional legal safeguards, I ponder if the lifers have actually benefitted from the reform. The final criterion is the policy’s apparent impact on public opinion. Basically, life sentences now capture major media attention in Sweden, as they are only rarely imposed (there are currently about 160 people serving life sentences) and only for crimes that have already been covered extensively by the media. The paper will explore how the media has reported on life-time
incarcerated before and after the implementation of the law and see if the media’s specific reporting has had an impact on public opinion.

Life-time incarceration in Sweden will be examined through the theoretical framework of a Rational Penal Code as introduced by Sheldon B. Glueck (1928). The policy evaluation then relies on both discourse analysis of various Swedish news sources and informal interviews with actors and researchers involved in the country’s criminal justice system. Based on the historical analysis and the evaluation using the four criteria, I shall argue that the 2006 reform regarding life-time incarceration in Sweden implemented an “individualized” review of the original sentence, which fits well into the broader understanding of Sweden’s criminal justice system as consisting of harm-minimizing and rehabilitative institutions.

2. Literature Review

In scholarly literature of the past few decades, the Swedish prison system has often been praised for its liberal penal policies. Hornum (1988, p. 63) stresses that Sweden’s “enlightened and human correctional policies” have raised attention by criminal justice institutions in other countries, particularly in the United States. Prison in Sweden is generally seen as a punishment of last resort and primarily imposed for “crimes against the person” (in particular rape, murder, manslaughter, aggravated robbery, and aggravated drug and smuggling offenses) (Leander, 1995, p. 175). For most other offenses, fines are particularly common. In 2007, more than four times as many offenders who were found guilty of a criminal act received a fine rather than a prison sentence (Lindström & Leijonram, 2007, p. 559). If a prison sentence is imposed in Sweden, it tends to be much shorter than in the U.S. and in most other European countries.

Previous research on the Swedish prison system has not fallen short of putting the understanding and use of punishment into the broader context of the country’s welfare state (Hornum, 1988; Svensson, 2004; Cavadino & Dignan, 2006; Pettit & Kroth, 2011). Sweden has
long been considered the most highly developed welfare state (Lindbom, 2001, p. 171). A welfare state is defined as a “democratically created socioeconomic system”, which is designed for the benefit of its entire society. The role of the government in such a society, where each member belongs to the same family, is to protect each member in the present and the future (Hornum, 1988, p. 64). As such, poverty is not seen as one’s own choice but rather as a product of economic factors. For that reason, it is society as a whole that is responsible for tackling poverty (Sackray et al., 2010, p. 217).

The Swedish welfare state was gradually built up by a social democratic government that was, with the exception of a few years in the late 1970s and early 1990s, almost exclusively in power in the second half of the 20th century. Lindbom (2001) argues that a welfare state designed by social democratic parties particularly aims at equality and social solidarity among all citizens. In other words, in contrast to a liberal welfare state, which provides for the poor alone, a social democratic welfare state serves all citizens by applying “generous, middle-class standards” for everybody (Lindbom, 2001, p. 174).

While some scholars have grounded the specific nature of the Swedish prison system by addressing the basic standards of the welfare state, others have focused more on the specifics of the roots of Swedish culture for explaining the country’s liberal penal policies (Tonry, 2004). The Swedish culture has been described as secular, classless, egalitarian, and liberal (Cavadino & Dignan, 2006, p. 149). Tonry observed that crime policies despite similar crime rate patterns in Western European countries have varied substantially since the end of World War II. He found that specific crime policies depend primarily on the countries’ prevailing long-term trends in values, attitudes and the public debate (Tonry, 2004, p. 98).

Welfarism, social democracy, the specific understanding of the role of the government in society, and the traditional Swedish culture are all deeply intertwined and all serve as
explanations for the specific character of the Sweden’s criminal justice system. With such a worldview, Swedish society considers a criminal as a victim of disadvantageous social conditions rather than an “evil person by nature” who alone must be held responsible for the crime(s) committed. Although the Swedish welfare state ran into economic trouble in the early 1990s and the new conservative government dismantled parts of Sweden’s social security system, welfarism is still the defining characteristic of the Swedish society and defines the Swedish political and economic system (Lindbom, 2001; Svensson, 2004).

While the Swedish prison system in this broader context of the welfare state has been studied widely in recent decades, the use of life sentences specifically has not been researched in the Swedish context yet. In contrast, the impact of life sentences in the U.S on both the individual offender and the criminal justice system have received some substantial scholarly attention in the past few decades (Cheatwood, 1988; Wright, 1990; Appleton & Grøver, 2007; Johnson & McGunigall-Smith, 2008). Although life sentences have been a key feature of the American criminal justice system since the late 18th century, it was not until the 1970s that life sentences became a commonly used sentencing method (Van Zyl Smit, 2002). They have since been expanded in three different ways. First, the range of offenses punishable with life was widely expanded. There is a wide range of offenses, not necessarily only murder and rape, which can now lead to a life sentence in most U.S. states. Second, habitual offender laws with mandatory life sentences for repeat offenders were implemented in many states. Most notoriously reflected in California’s “Three-Strikes-And-You-Are-Out” law, these regulations aim at getting rid of career criminals by incapacitating them for life, even though the felonies for which they were sentenced do not necessarily have to be violent. Third, life-without-parole (LWOP) became a popular sentencing method. In contrast to regular lifers, LWOP inmates usually spend the rest of their lives behind bars. Release mechanisms for these types of offenders are rare: in some states
they could theoretically be released by commutation or after having served a certain amount of years (Wright, 1990). Do any of these uses of life sentences apply to Sweden as well?

In an effort to fit life sentences with Sweden’s understanding of making imprisonment as lenient as possible, Sheldon B. Glueck’s Principles of a Rational Penal Code will be introduced in the following section. Glueck’s work will serve as a theoretical framework for this paper.


Despite a slight shift to more punitiveness in the past three decades, the Swedish criminal justice system is still primarily characterized by individualization. It is not from the offense that punishment should be derived but rather from the individual circumstances that have led to the offense. The interest in individualization of punishment goes far back in the history of criminology. Among earlier prominent theorists, Sheldon B. Glueck noticed in 1928 a newly emerged interest in focusing on individuals in social sciences. By outlaying principles of a “rational penal code”, Glueck called for the development of a “science of human nature” that would serve as a basis for criminal law and procedure. Such a science would incorporate the disciplines of psychiatry, psychology, and social case work into a “trinity master-discipline” (Glueck, 1928, p. 454).

Glueck’s Rational Penal Code is divided into several principles, some of which apply well to explain the understanding of imprisonment in Sweden. The first principle holds that “society should utilize every scientific instrumentality for self-protection against destructive elements in its midst, with as little interference with the free life of its members as is consistent with such social self-protection” (Glueck, 1928, p. 455). The second principle basically puts the first principle into practice: scientific individualization of both “peno-correctional diagnosis” and treatment becomes necessary (Glueck, 1928, p. 481). Third, a scientifically qualified treatment board should effect individualization only after the offender was found guilty in a criminal court.
Periodical reviews of the progress that the offender has made under treatment should be put in place. Finally, individual rights should be protected by provisions against arbitrariness of the treatment board (Glueck, 1928, p. 481-2).

With these principles in mind, Glueck would strongly criticize the current focus of the criminal justice system on a few isolated acts of an individual, such as it is expressed by the understanding of parole as an “automatic reward” or the mechanically applied time-off for good behavior) rather than on the personality and motivations of criminals and their social backgrounds (Glueck, 1928, p. 460). Glueck was also skeptical of individualizing punishment by setting up different crime categories (i.e. first degree murder v. manslaughter) and indeterminate sentencing schemes, as these methods do not take into account the development of the offender with the help of “treatment”. It should be offenders that are individualized and not criminal acts (Glueck, 1928, p. 467).

With its focus on individualization, Glueck’s early ideas seem to correspond well with the current direction of the Swedish criminal justice system. In the following part of the paper, I will examine if his principles of a rational penal code can be used to analyze the 2006 law reform that changed release procedures for life-time incarcerated offenders in Sweden. However in order to understand the use of a life sentence in Sweden, its use over time will be analyzed in the broader framework of the historical development of Sweden’s prison policy.

4. Swedish Prison Policy and Life-Time Incarceration in a Historical Perspective

Such as in most Western European countries and in the United States, the breakthrough of the Swedish prison system happened in the first half of the 19th century. After corporal punishment disappeared in the Nordic country in 1855, the Criminal Code of 1864 confirmed imprisonment as the dominant form of punishment (Nilsson, 2003).
In 1965, Sweden introduced a New Penal Code (Brottsbalken). The primary goal of this Code, which was implemented at the height of international optimism about the possibility of rehabilitation of criminal offenders, was to promote the offenders’ rehabilitation in society (Cavadino & Dignan, 2006, p. 154-5). The cornerstones of this understanding of imprisonment were the differentiation and individualization of sanctioning (Leander, 1995, p. 181). In order to facilitate the resocialization of offenders, they were obliged to work during their entire time of incarceration.

Sweden went even further with its lenient understanding of imprisonment with the Prison Treatment Act of 1974. This act, which coincided with policy proposals calling for “empty the prisons”, has since been considered an important cornerstone of Sweden’s liberal prison policy (Leander, 1995, p. 169). The act resulted from efforts of prisoner and civil liberties groups to make imprisonment more humane. Since the implementation of that act, imprisonment has not only been required to promote the resocialization of an offender but also to counteract the negative effects of penal confinement (Cavadino & Dignan, 2006, p. 154). Ideally, preparations for any inmate’s release should already be made upon admission (Leander, 1995, p. 172).

While rehabilitation has been the focus of Swedish crime policy makers until then, the dominant view in the United States in the 1980s became to ensure swift and certain punishment for criminals, no matter what their personal background was like. Those who favored more repressive punishment believed that it was not possible to change the behavior of a criminal, as criminals would be inherently bad and therefore needed to be punished accordingly. Therefore, punishment should be harsh, with the purpose of it being a mix of retribution, deterrence and incapacitation. Meanwhile, rehabilitation started to play an only marginal role in U.S. prisons. With rising crime rates in the entire Western world during the 1980s, many Western European countries soon followed the U.S. lead in taking on a harsher stand on punishment. In Sweden, this
shift towards increased punitiveness was expressed by the Sentencing Reform Act of 1988, which added a “just desert” principle to the traditional rehabilitative ideal. This meant that the “penal value” of a crime (the perceived gravity of the offense) must be the most important factor in determining its appropriate sanction (Lindström & Leijonram, 2007, p. 559).

Sweden soon started to rely more on imprisonment as a tool for punishment. While the country’s prison population was 3,100 in 1977, it had increased to roughly 5,000 in the early 1990s (Swedish Prison and Probation Service, 2011). While some scholars have argued that the higher incarceration rates were primarily caused by real increases in crime, others felt that the higher rates resulted from intensified police efforts against drug sales and drunken driving (Leander, 1995, p. 174). In fact, when examining the move of crime rates, it can be seen that Sweden has followed the trend of other Western countries in the past few decades (Hofer, 2002a, p. 22). While crime rates steadily increased until the early 1990s, they have since stagnated (Tonry, 2004, p. 29).

Sweden’s shift towards a more repressive penal policy became particularly visible after the 1991 parliamentary elections. These elections put a conservative government into office and thus ended, with the exception of six years from 1976 to 1982, the era of exclusively Social Democratic-led governments since the end of World War II. Against the basic principles of the Swedish welfare state, this government that stayed in office until 1994 shifted the focus of the criminal justice system from the responsibility of the society more towards the individual (Leander, 1995, p. 186).

Apart from the expansion of the Swedish prison population in numbers, another important change since the 1980s is the change in the nature of and the increase in the number of foreign citizens sentenced to prison terms in Sweden. In the 1970s, most foreign citizens in Swedish prisons were of Finnish origin. At that time, many Finns had moved to Sweden for work
purposes, which made them soon become the biggest group of foreign citizens. In the 1990s, the Swedish society became more heterogeneous, with more immigrants from outside of Europe moving to the Nordic country. This led to the fact that in 1995 more foreign than Swedish citizens were sentenced to prison terms. In 2011, 27 percent of the Swedish prisoners were foreign citizens (Swedish Prison and Probation Service, 2012). However, this number has to be treated with caution, as many of the immigrants moving to Sweden in the 1990s have since acquired Swedish citizenship.

Overall, the Swedish criminal justice system still embraces rehabilitation rather than mere punitiveness. Despite the harsher stand on crime, Sweden is still trying to keep the deprivation of an individual’s liberty at a minimum. Crime is conceived as a “product of personal disadvantage or disability and social disorganization” (Tonry, 2004, p. 13). By aiming at reshaping the lives of individual offenders while changing the social and economic conditions from which their criminal behavior originated (Cole, Gertz & Bunger, 2004, p. 2-3), proponents of the rehabilitative approach believe that renunciation of criminal behavior actually is possible.

The Swedish Ministry of Justice stressed that the reliance on the just deserts model since the late 1980s did not mean the expansion or lengthening of prison sentences (Lindström & Leijonram, 2007, p. 559). Overall, prison sentences have remained short, with the shortest sentence being 14 days. Prison sentences serve the purpose of improving the offender’s ability to live without crime. However, incarceration should only play an important “backup role” for the reinforcement of norms, but the society’s primary institutions (in particular the family, church, and school) are considered more important for socializing people and transforming them into law-abiding citizens (Tonry, 2001, p. 4). Punishment should thus not be harsh and rather be based on the minimization of harm caused by the loss of individual liberty (Lappi-Seppälä, 2010, p. 145).
With this understanding of punishment in mind, it appears to be particularly challenging to punish the most heinous criminals. In Sweden, life sentences are used for that purpose. The following two chapters will examine the life sentence in more detail and see how it first fits into this broader context of Sweden’s liberal penal policies and also if the shift towards increased punitiveness in the 1980s has affected lifers. While Chapter Five describes the development of the life sentence in Sweden, Chapter Six explores the specifics of the 2006 legal reform regarding release procedures for life-time incarcerated offenders.

5. The Life Sentence in a Historical Perspective in Sweden

Since the abolishment of the death penalty in 1921, the harshest punishment that has been available for criminal offenders in the Swedish law has been a life sentence. The life sentence was introduced into the Swedish law in 1734 but was, in contrast to the death penalty, only rarely imposed at that time (SOU 2002:26, p. 35). There are several crimes that the Swedish Criminal Code identifies which can lead to a life sentence: while a life sentence has so far almost exclusively been imposed for murder, an offender could theoretically also be sentenced to life in prison for serious espionage, aggravated arson, kidnapping, gross sabotage, maritime, aviation and airport sabotage or serious devastation endangering the public (Swedish Prison and Probation Service Website, 2010). However, the Criminal Code holds that offenders under the age of 21 must not be sentenced to life in Sweden, regardless of which crimes they have committed (SOU 2002:26, p. 37).

The life sentence in Sweden is unique in the sense that it is the only sentence that leaves the offender unknown about the time he/she has to serve in prison. Nonetheless, a life sentence in Sweden does not mean that offenders will necessarily spend the rest of their lives in prison. Traditionally, lifers have had the possibility to apply for clemency from the government and it
has been common for the government to grant clemency after an average of about fourteen to sixteen years served.

Higher incarceration rates in Sweden starting in the 1980s are also reflected in the higher number of offenders sentenced to life. While in 1990, there were only 35 inmates serving life sentences in Sweden, this number increased to 159 in 2011 (see Table 1). This might seem surprising, as Sweden has had a relatively low and stable homicide rate during the past few decades and a life sentence has almost exclusively only been imposed for murder (Lindström & Leijonram, 2007, p. 560). In response to that development, the Swedish Prison and Probation Service points out that lifers on average now also spend more time behind bars than previously (Swedish Prison and Probation Service, 2012). Accordingly, the time lifers spend behind bars was estimated at an average time of 16 years and four months in 2010 (Personal Communication, 2010a).

Table 1: Absolute Number of Life-Time Incarcerated Offenders in Sweden

<table>
<thead>
<tr>
<th>Year</th>
<th>Total number of Life-time Incarcerated in Sweden, 1991-2011</th>
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<tbody>
<tr>
<td>1991</td>
<td>0</td>
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<tr>
<td>1993</td>
<td>50</td>
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<td>1995</td>
<td>75</td>
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<td>1997</td>
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<td>125</td>
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<td>2001</td>
<td>140</td>
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<td>2003</td>
<td>150</td>
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<tr>
<td>2005</td>
<td>175</td>
</tr>
<tr>
<td>2007</td>
<td>190</td>
</tr>
<tr>
<td>2009</td>
<td>200</td>
</tr>
<tr>
<td>2011</td>
<td>215</td>
</tr>
</tbody>
</table>

The sharp increase in life sentences is also reflected in the percentage of lifers in the total Swedish prison population (see Table 2). While in 1993 lifers still constituted less than one
percent of the total prison population, their share rose to 3.1 percent in 2011 (Swedish Prison and Probation Service, 2011).

Table 2:
Percentage of Life-time Incarcerated in the Total Swedish Prison Population

<table>
<thead>
<tr>
<th>Year</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>1995</td>
<td>0.5%</td>
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<tr>
<td>1996</td>
<td>1.0%</td>
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<td>1997</td>
<td>1.5%</td>
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<td>1998</td>
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<td>1999</td>
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<td>2001</td>
<td>3.5%</td>
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</tbody>
</table>

Such as in the total Swedish prison population, foreign citizens constitute a large share of life-time incarcerated offenders. The Swedish Ministry of Justice pointed out that between 1988 and 1998, one third of newly admitted lifers were foreign nationals (Lindström & Leijonram, 2007, p. 560). More recent statistics of the Swedish Prison and Probation Service show that this trend has continued. Between 1998 and 2010, an average of 30 percent of the newly admitted lifers were foreign citizens. Most striking was the year 2010, when only four new lifers were admitted to Swedish prison, out of which three were foreign citizens (see Table 3).
In sum, the understanding of imprisonment in the broader framework of minimizing harm and aiming at rehabilitation is also expressed in the way Sweden deals with life-time incarcerated offenders. Lifers should not spend the rest of their lives in prison but rather be given a second chance in society. How it will be determined when the lifer is ready for this second chance, will be discussed in the following chapter.

6. The 2006 Reform

In 2006, Sweden enforced crucial legal changes regarding the release procedures of life-time incarcerated offenders. With this reform, the traditional clemency tradition of the government was supplemented by a new law called “Prop 2005/06:35 Lag om omvandling av fängelse på livstid” (Law regarding the transformation of life-time incarceration). The law emerged out of an inquiry of the Ministry of Justice in 2000, which resulted in the establishment of a working group in order to examine the options for release of life-time incarcerated offenders. The working group published a report in 2002 with the title “Report of the Inquiry regarding the examination of release options for life-time incarcerated” (SOU 2002:26: “Betänkande från Utredningen om frigivningsprövning av livstidsdömda”).

Table 3: Newly Admitted Lifers – Swedish and Foreign Citizens, 1998-2010
The working group found that the practice of release through clemency granted by the government brought along some major disadvantages. Although the governmental clemency process was considered relatively simple and informal, the working group believed that it was difficult for both the offender and the Swedish Prison and Probation Service to know exactly what was required when applying for clemency. Furthermore, the working group located a risk of political interests intermingling with the clemency process (SOU 2002:26, p. 13).

In light of this opinion, the working group argued that if another institution rather than the government alone could decide about the release of life-time incarcerated, this would not only enhance the predictability for offenders and the Prison and Probation Service of the specific date of release, but it would also provide the offender with more legal safeguards (SOU 2002:26, p. 13). Consequently, the working group recommended that the Court of the City of Stockholm should be mandated with deciding about a lifer’s release, while maintaining the government’s traditional clemency granting process.

The working group’s final report was used as the base for the new law “Prop 2005/06:35”, which entered into force on 1 November 2006. Despite the working group’s recommendations, the law mandated the District Court of the city of Örebro and not Stockholm with examining applications of life-time incarcerated offenders. The law established guidelines for lifers to apply to get their indefinite life sentence changed into a definite time sentence, after having served at least ten years in prison. If their application is rejected, the lifers are allowed to re-apply after another year has passed or they might turn directly to the Court of Appeal (Prop 2005/6:35).

Örebro is a city located in Central Sweden. The Swedish government chose this city’s district court as the one for examining all of the application on two major grounds. First, it was done in an effort to decentralize the criminal justice system (from the capital Stockholm). Second, a district court should be chosen that was close to where most lifers are incarcerated (Prop 2005/06:35, p. 24).
The working group’s report also set out the various criteria, which the District Court is obliged to consider when examining the lifer’s individual application. The most important criteria are the inmate’s overall behavior and development while incarcerated, his/her participation in rehabilitation efforts, the risk of falling into relapse of crime, the nature of his/her crime, and the time already served behind bars. Finally, the Court has to make a holistic evaluation, in which it takes into consideration the individual characteristics of the application (SOU 2002: 26, p. 14-17). By trying to gain as much of a complete understanding of each lifer’s “complex mental and social factors”, the court makes use of psychiatrists, psychologists, and social investigators (Glueck, 1928, p. 462). In addition, legal experts and prison officials add to shaping this “full” picture of the individual offender. The judicial process thus demonstrates that not only legal experts but a variety of different actors systematically assist the court in determining if the lifer should be released or not.

If the court decides to change the life sentence into a definite time sentence, the new sentence must not be shorter than the longest definite time sentence that is foreseen by the Swedish law. The longest such sentence is currently 18 years (Swedish Prison and Probation Service, 2010).

In sum, the 2006 reform is a clear illustration for the tendency of individualization of punishment in Sweden. It implies that punishment should not be derived from the type of offense committed but rather from the individual circumstances that led to the offense. Such as foreseen by Glueck’s rational penal code, a “science of human nature” serves as the basis for the evaluation of the lifers’ applications. The Court has to take into consideration factors derived from psychiatry, psychology, and social case work. As such, the district court may utilize a number of scientific instruments available to it to determine if the lifer is eligible for getting his/her indefinite time sentence transformed into a definite time sentence.
After having outlined the specific legal changes as implemented by the 2006 reform, the question that remains now is to examine what the reform’s impact has been so far. In the final chapter of this paper, the reform will be evaluated based on four different criteria: its effectiveness regarding public safety, political acceptability, the impact it has so far had on the life-time incarcerated offenders themselves, and its impact on public opinion.

7. Evaluation of the 2006 Reform Based on Four Evaluative Criteria

7.1 Laws’ Effectiveness: The Impact on Public Safety

Although the time since the implementation of the 2006 reform has been short, the first conclusions can be drawn about the law’s effectiveness. First, some general statistical developments need to be examined. 2007 marked the first year after the implementation of the new law. Swedish statistical data have excluded the lifers since 2007, whose applications were granted and their sentences changed into definite terms. This meant that the number of life-time incarcerated remained stable at 159 inmates between 2007 and 2011, although a total of 47 new offenders were incarcerated for life (Swedish Prison and Probation Services, 2012). This shows that more people have been sentenced to life in the most recent years. In Sweden, an average of 14 new lifers per year was admitted between 2007 and 2009, while between 1996 and 2006, the average was only 11 (Swedish Prison and Probation Service, 2012).

The most recent statistical data provided by the Swedish Prison and Probation Service (15 February 2012) reveals that 122 lifers have applied to get their sentence changed into a definite time sentences since February 2007. From these 122 applications, 32 applications have been accepted, 69 rejected, and 21 have been dismissed (Swedish Prison and Probation Service, 2012). From the 32 accepted applications accepted, nine of these inmates are still incarcerated, as they have to serve the remainder of their sentence. What is different though is that they now know about their exact release date, which they did not before their application.
Although these statistics show that the law reform has so far not reduced the number of lifers in Swedish prisons and therefore not posed a likely challenge for public safety (by releasing “dangerous” criminals too early), it is still difficult to evaluate the law’s impact with this criterion for various reasons. First, there is no data available on recidivism rates for these type of offenders. Second, the time period is with less than six years since the reform too short to notice any real trends on what exactly the reform means in terms of public safety. However, the criterion of public safety to evaluate the 2006 reform is a strong illustration of what Glueck was referring to as his first principle of the rational penal code: society should use every scientific instrumentality that is available for its self-protection (Glueck, 1928, p. 481). This means that society not only wants to maintain security but that it also is interested in the welfare of every single individual, also of those that have shown the “most anti-social” behavior and were therefore sentenced to life. For that reason, rehabilitation becomes a primary tool in the penal regime of a state.

7.2 Political Acceptability

With the exception of the early 1990s when the government was led by conservatives for a few years, crime policy has never been a “hot” political topic in Sweden. Consequently, the conditions regarding life-time incarcerated have not been widely discussed by politicians and the preparation and implementation of the 2006 reform has not led to any major political debates (Personal Communication, 2010b). By and large, the Swedish government has a lot of discretion in shaping prison policy. While the Ministry of Justice is responsible for establishing prison policy, the Swedish Prison and Probation Service manages the daily work of the prisons both centrally and regionally. This agency is headed by a government appointed Director General (Lindström & Leijonram, 2007, p. 562).
So far, the 2006 reform has been perceived well by political actors in Sweden. There has lately been a small debate on the side about abolishing the life sentence at all, such as neighboring Norway did in 1981, but it has not been very vivid. Currently, there are three out of eight parties in the Swedish parliament, the Christian Democratic, the Green and the Left Party that are in favor of abolishing the life sentence, but these parties are rather small and do not have major governmental influence right now (Personal Communication, 2010b).

The year 2010 saw many applications of lifers that have captured major media attention. One of them, the application of Jackie Arklöv, who was sentenced to life in prison for killing two policemen in 1999, led to some political debate in Sweden in October 2010 (Personal Communication, 2010b). The main reason for this was that Arklöv had barely served ten years in prison for his crimes, but the current regulations allow him to apply after having served ten years behind bars only. Staffan Danielsson, a parliamentary representative of the Center Party, posed a formally written question to the Minister of Justice, Beatrice Ask from the Swedish Moderate Party, on 13 October 2010, asking her if she intended to look over the legal procedures about the change of a life sentence. Ask responded to Danielsson on 20 October (Svar på skriftlig fråga 2010/11:8), arguing that the 2006 law has so far worked well, with the Court examining every case individually following a set of criteria. Ask also stressed that a lifer may not be released before having served a minimum of 18 years, the longest definite time sentence currently in use in Sweden. In other words, Ask does currently not see any reason for changing the law.

In the *Rational Penal Code*, Glueck mentions that

“a person who has profited by institutional or extra-mural treatment and gives reasonable scientific promise of permanent rehabilitation, will be given his liberty after a comparatively short period” (Glueck, 1928, p. 460).

In fact while being in prison, Arklöv seemed to have been doing really well. He obtained two master’s degrees, one in history and the other in sociology, and started working on his
doctorate. He has further put effort into getting rid of his Nazi ideology by working with the project “Exit” of the non-profit organization Fryshuset which aims at supporting those who wish to leave nationalistic, racist, or nazi-oriented groups and movements (Fryshuset/Exit, 2012). Finally, his risk of relapse was deemed low although he only had eight guarded furloughs and no unguarded ones at the time of his application (Tures, 2010a).

Despite these efforts, Arklöv’s application was rejected by the district court in December 2010 with the argument that both of the murders committed require a punishment of at least 24 years in prison. The nature of Arklöv’s crime was therefore the determinant factor in rejecting his application.

6.3 Impact of Legal Reforms on Lifers

The case of Arklöv shows that the 2006 reform provides lifers with a new tool for getting their indefinite life sentence transformed into a definite time sentence. Lifers therefore appear to be the main beneficiaries of this reform for several reasons. First, the reform provided them with legal safeguards that are absent in the traditional clemency process. As Glueck’s fourth principle holds, individual rights become protected by provisions against arbitrariness of the treatment board (Glueck, 1928, p. 481-2). Prior to the reform, the only possibility for lifers to get released was to apply for clemency from the government. With the Swedish working group of the Ministry of Justice raising the concern in 2002 that the government might have political interests when deciding about a release, the more complex procedure of the Court added more guarantee for the lifer that a variety of clearly-defined legal criteria would be taken into account when examining an individual application.

Second, lifers themselves have been given the opportunity to appear in court. They may make a statement about why their sentence should be changed into a definite time sentence. As one example, Mattias Flink, who was sentenced to life in 1994 for shooting seven people, applied
for the second time to get his life sentence changed in spring 2010. At the court hearing, Flink was questioned by his attorney and the prosecutor about his past (the 1994 crimes), his feelings of remorse, his life in prison, his personal relationships and his plans if he was released (Dagens Nyheter, 30 June 2010). The court eventually decided to set Flink’s life sentence to a term of 32 years in prison, which would mean that he would get released in 2015. (Flink would then have served about 20 years, which would equal about two thirds of his initial sentence.)

Another example is Tommy Zethraeus who was sentenced to life in prison in 1995 on charges of murder, attempted murder, and armed robbery. In fall 2010, Zethraeus applied for the second time to get his life sentence changed into a definite time sentence. As Glueck’s second principle states, periodical reviews of the progress that the offender has made under treatment should be put in place. As such, lifers have had the possibility to reapply to get their sentence changed once every year. When Zethraeus appeared in court in October 2010, his attorney mentioned, among other factors, the university degree in psychology that Zethraeus obtained while being incarcerated. In reference to that, a member of the Court asked Zethraeus if “he was still a psychopath” to which Zethraeus responded:

“I am quite narcissistic and lack some control over my emotions. But I deal with that by focusing on the person I talk to and let this person speak as well. Plus, I have not been charged with any physical assault in six years. Yet, I still tend to throw out stupid comments, but this is something I still want to work on” (Tures, 2010b).

Despite his personal development and the good behavior in prison, Zethraeus’ second application was rejected on 25 October 2010. The reasons as laid out by the Court were the nature of his initial crime and the difficulty to assess Zethraeus’ risk of relapse (Dagens Nyheter, 25 October 2010). This decision, such as the outcome of the earlier mentioned Arköv application, illustrates for now what Glueck wrote on the Rational Penal Code:

“on the basis of the seriousness of the contemplated offense...it is conceivable that a socially-dangerous personality may remain incarcerated for life” (Glueck, 1928, p. 460).
6.4 Impact on Public Opinion

In Sweden, there has long been no open discussion on crime and punishment (Svensson, 2004, p. 65). It was mainly due to the political left that has been in power for the most part of the 20th century, that not much attention to law and crime issues had been paid to. However, a change was recognized in the early 1990s. Back then, a movement towards more “law and order” appeared, even though this movement was rather small in Sweden compared to other countries. It was the conservative government that got into power in 1991, that during its election campaign pushed the issue of “law and order” more into the public’s eye. It launched for example campaigns against criminals with such slogans as “Keep them locked up, so we can go out!” (Leander, 1995, p. 169).

As such, life-time incarceration has long been absent from public debates and media coverage. However, with more offenders sentenced to life in the past two decades, life-time imprisonment has become a hotter and more frequently addressed issue in the media. The general public is now basically aware of that a life sentence does not mean staying in prison for the rest of an inmate’s life. However, there has not been any major public debate towards making sentences longer or stricter. This can also be seen in connection to the absence of a major political debate on life-time imprisonment. If the general public were in favor of harsher punishment, some political players, in particular some of the two countries’ many political parties, would be likely to quickly pick up that sentiment.

The Swedish media has recently played a major role in transmitting the message about the actual conditions surrounding life-time incarcerated. Since the 2006 reform, all the major nationwide Swedish newspapers, Aftonbladet, Dagens Nyheter, and Svenska Dagbladet have reported extensively about the possibilities lifers have to apply for getting their life sentences changed into definite time sentences: these newspapers tend to report in detail about the various aspects of the
judicial application process, from the first appearance of the lifer in court, the various statements and evaluations made by the main actors to the final decision announced by the Court. The interest of newspapers in that topic became particularly obvious, when the main Swedish tabloid, Aftonbladet, ran a big story on 25 October 2010 with pictures of 15 lifers. The story was titled “The Lifers in Sweden – They are too dangerous to be released”, referring to those whose applications have so far been rejected.

Moreover, the main Swedish television news channels, the public station SVT and the private station TV4, have shown interviews and news-clips about several of the lifers’ application processes. 2010 alone saw reports about the applications of Mattias Flink, Annika Östberg, Leif Axmyr, Jackie Arklöv, John Ausonius and Tommy Zethraeus. As one example, Annika Östberg, who was sentenced to life in prison in California for a double murder in 1981 and was eventually transferred to Sweden in 2009 where she got her life sentence changed into a definite time sentence, was invited to the popular program “Summer Talk” on the Swedish public radio after which a TV show followed, in which Östberg was interviewed while being on a cruise around the Stockholm area. Previously, Östberg’s life was documented in a 1999 film “Ett brott, ett straff, ett liv” (“A crime, a punishment, a life”) that was broadcasted on Swedish television SVT2 and made her life story known in Sweden.

Similarly, the well-known Swedish talk show “Debatt” ran a half-an-hour program on Jackie Arklöv’s application on 21 October 2010. Not only was his attorney interviewed and questioned about his character, but one of his victims’ family members sat in the audience during the show and was also asked about her opinion about a possible change of the sentence.

In other words, many of these lifers have almost been treated as “celebrities” by the Swedish media, causing them to become a common household name. Meanwhile, the general public has become well informed about the legal safeguards that are currently available for lifers.
8. Conclusion

The Swedish criminal justice system has traditionally been characterized by a philosophy of minimizing harm and rehabilitation. In contrast to the United States, where prison sentences rather serve the purpose of a mix of retribution, deterrence, and incapacitation, prison terms in Sweden are treated as a punishment of last resort and primarily aim at preparing the offender for a successful reentry into society. This understanding of punishment has to be seen in the broader context of the Swedish welfare state, its social democratic ideals, and its specific egalitarian-oriented culture. Although the Swedish welfare state eroded somewhat in the late 1980s and although the country’s criminal justice system shifted towards slightly more punitiveness, reflected by higher incarceration rates and longer prison terms, it by and large maintained the rehabilitative ideal. As this analysis has shown, this view also applies to the country’s most heinous criminal offenders, those sentenced to life in prison.

The Swedish criminal justice system values each individual by trying to match the punishment with the individual characteristics of the offender rather than the type of offense. The 2006 law reform regarding release procedures for lifers is a strong indicator for this understanding of punishment that was theoretically laid out by Sheldon B Glueck in 1928 with his “Principles of a Rational Penal Code”. This paper shows how the judicial application process can be conceived as an “individualized” review of the original sentence by taking into consideration the offender’s development while being incarcerated. As such, the Swedish criminal justice system relies on a variety of scientific tools from different academic fields. However, this analysis has also faced several limitations. The evaluation of the 2006 reform based on four different criteria (the impact on public safety, political acceptability, the impact on life-time incarcerated themselves and the impact on public opinion) has shown these. First, the time period since 2006 is still short in order to draw any strong conclusions about the impact the
reform has had on both the lifers and the criminal justice system in general. Longer-term statistical data is necessary to show what the reform really has changed in this respect. Second, there is no data available to show if released lifers have reoffended after their release from prison. A more substantive qualitative analysis could be conducted that would compare those lifers released through the government’s clemency process and those through the judicial release mechanism to show if any differences in reoffending exist. Finally, although the legal changes of 2006 so far seem to have worked well, its implications for other countries are questionable. Sweden has a very low number of lifers, which makes such individualized reviews possible without adding too many costs. For other countries with bigger lifer populations, cost/benefit analyzes would have to be conducted in order to show if such individualized reviews would have cost-saving benefits for prisons by only keeping those lifers behind bars that pose security risks.

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