

# Games of life and death: The judicial uses of dice in eighteenth and nineteenth-century Sweden

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## ABSTRACT

Gambling studies should take a broad view of the field and consider activities that are not strictly gambling but similar to it, such as cleromancy and secular uses of drawing of lots, to give us perspective on societal and cultural aspects of gambling. This paper presents historical data on judicial uses of throwing dice in eighteenth and nineteenth-century Sweden. The focus is on cases of manslaughter with multiple perpetrators who were considered equally guilty and were forced by the criminal court to throw dice to determine who should be executed and who should receive lesser penalties. Three principles are distinguished in judicial uses of throwing dice—cost-effective deterrence, lottery of pardon, and guilt-revealing cleromancy—and similarities and dissimilarities to present commercial gambling are discussed. It is argued that the polythetic notion of family resemblance is useful in gambling studies since it does not impose fixed conceptual boundaries between activities that share many elements.

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The multidisciplinary field of gambling studies is concerned mostly with present-day commercial gambling—lotteries, gaming machines, casinos, sports betting, Internet poker, etc.—and its consequences for individuals and society. However, over millennia and across cultures, gambling has taken many forms, commercial gambling being just one (Binde, 2005; Schwartz, 2006; Wykes, 1964). There are also practices that resemble gambling in various ways but do not involve placing bets, such as cleromancy, sortition, and drawing of lots, as well as contemporary activities such as trading on the stock market (Hertz, 1988; Kellaway, 2013) and social gaming on the internet (Gainsbury et al. 2014; King, Delfabbro, & Griffiths, 2010). Studying such practices as well as non-commercial forms of gambling gives us a broader understanding of the multifaceted phenomenon of gambling (Bernhard, 2010; Raento, 2011).

This paper contributes to this broader understanding by presenting and discussing historical data on the judicial uses of throwing dice, a topic apparently not previously the specific subject of modern academic study. The paper builds mainly on factual information extracted from a Swedish essay published in 1935, “Tärningkast på liv och död” (*Throw of the dice for life and death*) (Wedberg, 1935a). The essay examines how dice games in eighteenth and nineteenth-century Sweden were used in criminal cases in which several people were found guilty of manslaughter, to decide who should be executed and who should receive lesser penalties.

The author of the essay, Birger Wedberg, was a highly placed jurist, writer, and member of the Swedish Academy. The essay is included in a volume of his works on Swedish legal history (Wedberg, 1935b). While the essay presents much factual information, it is not well organized and demands a great deal of today’s readers because of its old-fashioned language and lengthy citations from old juridical texts. Nowadays, the essay seems almost completely forgotten, and has apparently been cited only once in recent years (Wessberg, 2012). That citation spurred the interest of the present author who, in this paper, wishes to bring the empirical facts compiled in Wedberg’s legal study out of obscurity and offer some thoughts about how they can be viewed in the context of modern gambling studies.

This paper first gives a brief orientation about divination, casting of lots, and related practices, including a sub-section on judicial uses of lots and dice in various parts of the world at various times. A section then follows presenting Wedberg’s findings on judicial uses of throwing dice in Sweden, complemented with material from other sources. The third section discusses the Swedish historical material and distinguishes three separate principles underlying the judicial use of dice throwing, i.e., cost-effective deterrence, lottery of pardon, and guilt-revealing cleromancy;

similarities and dissimilarities to present-day commercial gambling are also discussed. Finally, a concluding discussion considers the definition of “gambling” and the usefulness of the polythetic notion of family resemblance versus monothetic definitions that require that all attributes of a set be present.

### **DIVINATION, DRAWING OF LOTS, AND RELATED PRACTICES**

To gain perspective on the Swedish historical material, this section briefly introduces divination, cleromancy, secular uses of drawing of lots, and judicial uses of lots and dice in various parts of the world at various times.

#### **Divination and cleromancy**

Divination is an ancient practice known from many cultures around the world (“*Divination*”, 1908) and still widely practiced in some of them (Peek, 1991; Stein Frankle & Stein, 2005). By observing and interpreting naturally occurring events or the outcome of specific procedures, the diviner is supposed to obtain insight into what will happen in the future, guidance as to what action to take in important matters, or knowledge of the will of gods or other supernatural beings.

Naturally occurring events to be examined in divination might include the flight of birds, the shapes of animal entrails, and astronomical phenomena. The specific procedures used typically produce random outcomes that must be interpreted. This interpretation can be *ad hoc* and impressionistic, such as discerning telling images or patterns in the ash of burnt objects. The interpretation may also follow a specific formula, often taking the form of questions asked of supernatural beings and the outcome of the divinatory procedures understood as answers (such as “yes” and “no”) to these questions. This form of divination, which is called cleromancy, may use techniques and implements similar to those used in gambling, notably drawing of lots and dice throwing. For example, in the Book of Proverbs (16:33) it is written that “The lot is cast into the lap: but the whole disposing thereof is of the Lord,” which is just one of at least thirteen mentions in the Old Testament of the will of God revealed through drawing of lots. Cleromancy was widely practiced in ancient Rome, where dice often were used (Schwartz, 2006; Toner, 2009). Martin Luther considered lot casting to be “a real act of faith” and maintained that the lot represented God’s decision (Sommer, 1998). In more recent times, the Moravian Brethren, a protestant denomination dating back to 1722, regularly drew lots to reveal the will of God in a wide range of matters (Sommer, 1998).

## **Cleromancy and gambling**

The use of similar techniques and implements in cleromancy and gambling led scholars of the past to speculate that gambling evolved from divination (e.g. Tylor, 1871, pp. 80–82). Although there is little evidence either for or against this theory, it appears today as an outdated social evolutionary theory assuming a law-governed progression from primitive to advanced cultures and from superstition to reason. It is clear that on one hand, however, gambling games and equipment have been used for cleromancy in many cultures and, on the other, that gambling has been perceived to be influenced in various ways by magical, supernatural, and divine powers (Binde, 2007a). Still today, gambling has such components and associations, which may perhaps be most obvious in some non-western cultures (Holbraad, 2010; Parish, 2005; Yu, 1997, ch. 7). However, also in contemporary western societies gamblers use magical procedures in the hope of winning, people buy lottery tickets when they feel lucky, and individuals who have won at gambling may believe that they are lucky at the moment and proceed to do other fateful things (Joukhador, Blaszczyński, & Maccallum, 2004; Teed, Finlay, Marmurek, Colwell, & Newby-Clark, 2012; Wohl & Enzle, 2002). In the stories of tabloid newspapers and urban legend, top prize lottery wins are often mythologized as suggestive of mystical and occult forces (Binde, 2007b). Gambling and magico-religious beliefs and practices have affinities, and that is because they have common elements: the unknown, mystery, fate, luck, destiny, and the idea of being blessed with something very valuable.

### **Secular uses of drawing of lots**

Drawing of lots and dice throwing have historically been used outside of gambling not only for divination but also for secular decision-making of many kinds (Dowlen, 2009; Hicks, 2009, ch. 20; Stone, 2011). Examples include selecting political and juridical officials, making political decisions in associations and representative bodies in the case of tie votes, selecting students for admission, picking citizens for military draft, and distributing land to prospective farmers. Some political scientists regard drawing of lots for political and administrative purposes as recommendable in cases when social justice is paramount, when circumstances preclude well-informed rational decisions, and as a radical measure to prevent corruption and nepotism (Duxbury, 1999; Goodwin, 2005; Lewis, 1997).

### **Judicial uses of lots and dice**

Probably the best-known use of drawing of lots to make judicial decisions is that of decimation in Roman military penal law (Watson, 1969, pp. 119f). Decimation was practiced when an entire troop had mutinied or displayed cowardice in battle. In principle, all soldiers in the troop should be executed, but in practice that would considerably reduce

the numbers of soldiers and thus lessen army power. Therefore only one out of ten (or twenty) in the troop was executed. Usually the troop was divided into groups of ten, one soldier in each group was selected by lot, and the other nine in the group were commanded to club or stone him to death. This procedure was considered a punishment in itself because until their individual fates had been decided, all in the troop felt the fear of death.

Decimation has been used in European military law over the centuries since Roman times. There are reports of the practice from fifteenth-century England (Boynton, 1964; Kishlansky, 1982) and seventeenth-century Sweden (see below). In more recent times, decimation is supposed to have been practiced, for example, by the Soviets in the battle of Stalingrad (Beevor, 1999, p. 117).

As to the main topic of this paper—the judicial uses of dice throwing in civilian criminal law—little seems to have been written, at least not in modern academic literature. The present author conducted thorough Internet searches using relevant search terms such as “dice,” “lot,” “judicial,” “law,” and “equally guilty” and found only two works touching on the topic. Such a literature search is certainly far from exhaustive since it can be assumed that on a topic like this there are old texts and archival material that have not been digitalized and made available on the internet, as well as texts in languages other than English. However, the limited resources available for writing this paper (no specific funding was received) did not permit archival research.

The first work found through the internet search is an English book on criminal law, published in 1774, telling that throwing of dice was sometimes used in criminal cases in England to mitigate capital sentences and set deterring examples (Dagge, 1774, p. 256f):

Similar to this [i.e., decimation in the Roman army] and founded on the same laudable principles of sparing effusion of human blood, in as far as the safety and indispensable discipline an army can admit, is the modern practice among us, in mitigation of capital sentences passed on a number of equally guilty, when a permission granted for them to throw dice or to draw lots for their lives, with the destination of only one, or a small proportion, to suffer execution; and as this degree of pardon is usually concealed until the criminals are at the very point of being executed, and they are often put to so dreadful a decision, the deterring example, without doubt, strikes as if the whole of them were implacably sacrificed: and, with regard to the unhappy wretches, it is an observation too remarkable to be here omitted, that while those gaining life seldom escape

fainting away on drawing their lots, the other deemed to die, usually show little or no change from their former state and appearance. How great then must have been their fixed despair and stupefaction?

The second work found through the Internet search is a social history of multicultural alliances in early America, 1580–1660 (Van Zandt, 2008). Part of the book describes interactions between Dutch colonialists and African slaves on the North American east coast. An exceptional criminal case is recounted in which lots were drawn to decide who of nine slaves, all found equally guilty of slaying a man, should be executed. This practice is said to have been alien to ordinary Dutch law, according to which all the malefactors would have been punished equally harshly but not by death. The detailed account of the case makes clear that the lot drawing was seen as divination revealing who was the guiltiest. The juridical council responsible for the trial “prayed that God would reveal the guilty individual in the choice of lots” and it considered the one who had drawn the fatal lot to have been selected “through the providence of God.” However, when the man selected by lot was to be hanged, both ropes broke (two were used in case one should fail) and he survived. The assembled crowd believed this to be a divine intervention indicating the man’s innocence. The judicial council pardoned him, apparently since they interpreted the failed execution in a similar way. The author of the book notes that the entire judicial process was imbued with ceremony and symbolism, and suggests that the unusual drawing of lots to determine guilt was appropriate in the context of west–central African slaves, who came from cultures where trial by ordeal was widely practiced. Such ordeals are known in many parts of the world. In Medieval Europe, for example, an individual suspected of a crime was forced to perform acts such as walking on hot irons, dipping his or her hand in boiling water to grab a stone, or ingesting poison (Bartlett, 1986). If little or no harm was suffered, the individual was thought to be innocent and therefore protected by God.

## **JUDICIAL USES OF DICE THROWING IN SWEDEN**

### **Decimation in the army**

In 1613, the King issued an order that every tenth out of about 600 deserters in the Dalarna region should be executed by hanging (Wedberg, 1935a, pp. 11–14). Decimation was included in the military penal laws of 1621, 1683, and 1798. Although various sources claim that decimation had occasionally been practiced, Wedberg found no evidence that these laws had been applied in any major case involving whole troops. There were, however, a few cases in which dice throwing decided who of several army deserters were to be executed and one case that involved flogging, rather than execution, of one soldier out of 30 who had participated in a regional

uprising. Decimation was repealed in the military penal code of 1868.

### **Dice throwing in cases of collective disorderly conduct and rebellion**

From 1710 to 1713, there was an outbreak of plague in Sweden. The government ordered that the corpses of those who died from the epidemic were to be buried immediately at locations remote from human settlements. Despite this decree, the citizens of Selö village buried local plague victims in the parish church's cemetery (Wedberg, 1935a, p. 14f). The authorities considered this an offence but deemed punishing all the citizens too harsh a measure. Several alternatives were discussed in the concerned court, which finally decided that the citizens would be divided into groups of ten, each of which should collectively pay a fine of RD 50 (Riksdaler, an old Swedish coinage); if a group could not pay, then its members should throw dice and the one who scored lowest would be imprisoned for 14 days and fed only water and bread.

The penal law of 1734 introduced a regulation involving decimation among civil citizens. The law concerned mutiny and rebellion, and stipulated that one tenth of the guilty, selected by throwing dice, should be punished by death or, in less severe cases, flogging (40 pairs of strokes) or one month's imprisonment during which they would be fed only water and bread. This regulation was applied in a case in 1811 involving 60 men who had escaped drafting into the army, one tenth of whom were sentenced to death. However, a higher court changed this decision so that all were punished, although not by death (Wedberg, 1935a, pp. 15f).

### **Dice throwing in cases of manslaughter: regulations and examples**

Wedberg's essay focuses on cases of voluntary manslaughter, which, in the history of civil Swedish law, is the only crime against individuals in which the throwing of dice had judicial use in deciding who, among several equally guilty perpetrators, should be executed and who should receive lesser penalties. Throwing of dice was never used in cases of involuntary manslaughter (without malice) or murder, where there is planning before the lethal attack.

Although the procedure in the source texts sometimes is described as "casting of lots" it is clear that a regular pair of gambling dice was always used (Wedberg 1935a, pp. 27f). The offenders were forced to throw dice one after the other and the one who scored lowest was sentenced to execution. If the first round ended in a draw, they continued to throw the dice until one of them won and the other lost. The throwing of dice took place at least some days before the execution, so the criminal to be executed would have sufficient time to prepare spiritually for death, with the assistance of a priest. The procedure that included the throwing of dice is in the source texts sometimes described as a game – participants "played against each other", there were winners and losers in the "game", it was a

“game about life”, a “game about life and death”, and an individual could “through the game be liberated from death penalty” (translations from Swedish).

The first regulation about throwing of dice in cases of voluntary manslaughter appears in a Royal Directive from 1724 (Wedberg, 1935a, pp. 16–19). The terms “Royal Directive” and “the King” refer in this context to juridical decisions made at the state or governmental levels, for example, by the Supreme Court or a juridical committee entrusted with lawmaking.

The Royal Directive of 1724 was occasioned by a 1721 case in Finland, then part of Sweden. Two young men had brutally beaten a peasant to death, and the local court determined that both of them should be executed. The case was appealed, but the court of appeal could not agree on a decision and asked for advice at the governmental level, where the issue was given to the juridical deputation of the Riksdag of Estates (a deliberative assembly corresponding to a parliament). The deputation stated that both offenders were equally guilty of killing the peasant and could thus be executed. However, from the standpoint of retributive justice (i.e., that the punishment should be proportionate to the crime), the deputation argued that since one man had been killed only one man should atone for it and be executed. The deputation further argued that in the future there could be cases in which three, four, or even more individuals had together committed manslaughter, in which case it would be even more wrong to execute them all. The deputation decided that the two offenders should throw dice and the one who lost the game should be executed while the other should suffer a lesser penalty. This decision formed the basis for the 1724 Royal Directive on the judicial use of dice games in cases of manslaughter of which several were guilty. The final decision in this particular case was that the offenders should throw dice, the loser in the game should be executed, while the one who “by the dice was liberated from death” should—taking into account his three years of confinement since he committed the crime—only be punished by running the gauntlet seven times and publicly confessing his guilt and declaring remorse before the congregation in the parish church.

A new Royal Directive of 1752 updated that of 1724 (Wedberg, 1935a, pp. 19f, 28). The main addition was that the courts of appeal were explicitly allowed to independently decide whether or not to employ dice throwing in cases of manslaughter with multiple perpetrators. This addition was motivated by these courts’ regularly referring such cases to the King. The Royal Directive of 1752 was occasioned by a 1751 case in which two farmhands had beaten a third to death. The three of them had spent the day clearing away snow. Having finished the work, they got drunk and started to fight, with the result that one of them was beaten to death by the others with iron-shod snow shovels. The rural court sentenced

both offenders to death but this decision was overturned by the court of appeal, which recommended that they should throw dice and that the loser should be decapitated while the winner should be punished by being flogged with forty pair of strokes. However, the court interpreted former Royal Directives as requiring a request to the King to review the decision in such cases—hence the new Directive that this was not necessary. In this particular case, the two offenders threw the pair of dice. One threw four and the other threw seven, and the punishments were delivered as decided by the court. The fate of the executed man was related in a popular ballad comprising no fewer than fourteen verses, which was reproduced and spread around the country.

Despite the Royal Directive of 1752, courts of appeal continued to ask the King for advice in cases of manslaughter in which throwing dice was an option for deciding punishment. For example, in a 1754 case that attracted much public attention, a husband and wife were sentenced to throw dice to determine who would live and who would die (Wedberg, 1935a, pp. 20, 29f). The couple were peasants who became involved in a fight with a neighbor, whom they accused of letting his horses graze on their land without permission. The wife hit the neighbor hard on the head with a log while her husband dealt the severely injured man another heavy blow on the head with a fence pole. The neighbor died from these injuries. The court considered both members of the couple equally guilty of manslaughter and sentenced them to throw dice to determine who should receive the capital punishment. The wife lost the game to her husband and was executed.

The case that probably attracted the most public attention in its day, since it was part of an exciting criminal story about smuggling and police detective work, occurred in 1774 (Wedberg, 1935a, pp. 30f). Crofter Carl Hindrichsson Hjort and peasant Erik Jakobsson had together slain an assistant domestic customs duty officer. In the morning of 21 November 1775, they threw dice in the presence of the Swedish Chancellor of Justice and the county governor. Using two dice in a wooden cup, both offenders scored nine on their first throws; on their second throws, Jakobsson scored seven and Hindrichsson Hjort ten. Jakobsson accordingly received the capital punishment, and was executed on 10 January 1776 by first having his right hand chopped off, then being decapitated, and finally having his body broken on the wheel.

This macabre event inspired a 21-verse popular ballad that spread the fame of the case. Three of the verses are reproduced by Wedberg (1935a, pp. 30f). A rough translation of these verses by the present author, which does not render the meter and rhymes of the Swedish original, is the following:

17. Here we have Erik Jakobsson

and crofter Carl Hindrichsson  
playing dice, not for profit,  
but for the severity of their punishments.  
Here the throws of dice are about a life,  
while among others it is a pastime.

18. Think about this all of you who vainly gamble  
and in the game use deceitful tricks,  
if not you do as much wrong as they  
and should be punished for your mischief.  
They used violence, you used cunning,  
both of you lack virtue and morals.

20. When virtue and righteousness are employed,  
and law-abidingness looks for confidence,  
then criminals must throw the dice,  
to settle the matter of wretchedness  
that involves them both,  
about how their punishments shall differ.

The moralistic and educational tone is typical of this genre of popular ballads, which in folklore and musical history are known as “broadsides” or “broadsheets” since the text was printed on large sheets of paper that were distributed widely and sold at a cheap price (Jersild, 1975). It may be noted that the dice game of life and death is compared with dice gambling, portrayed as a “pastime” and that a warning is made for the deceit, mischief and cunningness that such gambling may involve. At this time, in the second half of the 18<sup>th</sup> century, large parts of the Swedish population gambled intensely, despite prohibitions that were intended to curb the gambling fever that had spread over the country (Lindqvist, Lundström & Maechel, 1994; Wessberg, 2012).

The case is described in fictional form in the 1958 Swedish novel *Tärningarnas dom* (*The judgment of the dice*) (Sahlberg, 1958). The novel includes some passages based on texts from juridical archives and attempts to tell a story true to the period. The jurists involved in the case are described as having various ideas about the dice game: some considering it a rational way of granting pardon, others old-fashioned superstition, and still others a way for God to identify the most guilty person; finally, some thought that it was wrong to force God to reveal the truth through the throwing of dice. Since such ideas are described also in Wedberg’s (1935a) historical essay, it seems plausible that the author of the novel elaborates on actual historical material relating to this or similar cases.

As a final example of the judicial use of dice games, the Vånsjö case of 1782 (Wedberg, 1935a, pp. 32–33) should be mentioned because the documentation includes some interesting data not found in other cases and since it has made its way into world literature (see below). Four offenders were brought to trial. They were considered the most active in a crowd that, in a wild nocturnal turmoil at a local inn, assaulted a group of governmental inspectors of vodka distilleries, four of whom were killed. Since four people had lost their lives and four offenders had been brought to trial, one member of the court argued that all four should be executed while another suggested that two would suffice. However, the court's final decision (we are not informed about the underlying reasoning) was that only one of the four perpetrators, to be decided by throwing dice, should receive capital punishment.

When the four men had been brought from prison to the court of appeal, they stubbornly refused to throw dice. According to the protocol from the event, the Supreme Court secretary tried to call them to order. He stressed the gravity of their crime and condemned their obstinacy, but added that God would decide the outcome of the dice game, so those with lesser guilt need not fear:

The King has, in his usual inclination towards mildness and pardon, wished to proceed as mildly as possible with the offenders, in that the blood that they have shed and which calls for retribution will be atoned for by only one life; they have learnt from religion and Christianity that God in his providence governs the fates of even the lowest individuals, and as they therefore certainly can expect the same providence to govern the imminent throwing of lots, they ought not doubt that its outcome will be what each of them deserves with regard to their respective guilt and participation. (Author's translation.)

Having heard this and other reprimands, and been threatened with torture and more severe non-capital punishments, one of the men finally threw the dice and the others followed. In the first round of the game, two offenders scored eight and two scored nine. A second round was therefore played between the two who had scored eight, and both of them scored six. In the third round, there was a winner scoring nine and a loser scoring seven. Eventually, the loser of the game was pardoned from capital punishment by the King and sentenced to flogging (40 pairs of strokes) and imprisonment with hard labor for life. The three other offenders were sentenced to an equally severe flogging but only six years of imprisonment with hard labor.

The Vånsjö case inspired Nobel Prize laureate Selma Lagerlöf to let a judicial dice game play a key part in one of her most famous novels, *The Löwensköld Ring* (Lagerlöf, 1925), published in 1925. She knew of the dice game from a story in the memoirs of salon hostess and writer Malla Silfverstolpe (1910); however, Silfverstolpe's story differs in some respects from the known facts of the case.

Lagerlöf often incorporated Swedish folklore motifs into her literary works. In the absence of authentic ethnographic data, we may view her fictional story as representing an informed idea about how folklore might have treated judicial dice games. In the dice game episode in *The Löwensköld Ring*, three men are wrongfully accused of having killed in order to gain possession of the valuable and fateful ring once owned by General Löwensköld and stolen from his grave. A local court forces them to play “a frightful game of life and death”, believed to reveal God's judgment about their respective guilt or innocence. This belief is held not only by the authorities (as in the actual Vånsjö case) but also by the accused themselves and local people. However, the locals simultaneously believe that the ghost of the general knows who possesses his ring and might interfere supernaturally in the game. In a dramatic scene, the three throw the dice, one man after the other, each of them scoring pairs of sixes. The crowd interprets this as a sign from the general's ghost that all three men are innocent. The local court is amazed by the result of the game and orders no further round of dice throwing. It leans towards the opinion that all three are innocent, but refers the case to the King, who decides that the draw means that all three men are equally guilty. The men are executed, which the local people consider a great injustice.

#### **Throwing dice in cases of manslaughter: general observations**

In all, Wedberg found twelve cases between 1724 and 1776 in which individuals found guilty of manslaughter were executed after having lost in a dice game of life and death. Apart from these cases, he mentions several others, in this period or a few decades thereafter, in which the lower court decision to use dice throwing was overturned by a higher court, or in which the perpetrator was reprieved from capital punishment after the throwing of dice, escaped, or died of natural causes before the execution. However, Wedberg overlooks at least one case. In 1806, three people who had beaten a rag-and-bone man to death in a tavern were sentenced to throw dice to determine who should be executed (Nilson, 1997). Two of them were married to each other; in the final round of the game, the husband scored lower than his wife and was executed.

The prerequisite for considering use of throwing dice in the case of manslaughter was that there were multiple perpetrators who appeared to be equally guilty. The rationale was that if one life was taken, then it should be atoned for by only one life—not two or more. In

principle, throwing dice was a method for deciding who should be granted pardon from capital punishment (Wedberg, 1935a, pp. 23–27). There was, however, at least one case (in Finland) in which the judicial problem was to decide which of two suspects was the killer: in this case, the victim had been killed by a single rifle shot, both of the accused men denied firing the shot, and it could not otherwise be determined who did it (Wedberg, 1935a, pp. 20f). One of the men was obviously guilty of manslaughter and the other was not guilty. In this case, it was decided that the two accused should throw dice for their respective punishments. This judgment departs from the favored view in juridical reasoning of the eighteenth and nineteenth centuries that throwing dice in no way revealed who was in fact guilty.

Furthermore, according to Wedberg, the idea was not alien to authorities and the public, that the outcome of the throwing of dice was guided by God who, in his omniscience, pointed out the one who was the most guilty. An obvious example of this is found in the documentation of the Vånsjö case described above.

The judicial use of dice in cases of manslaughter was abolished in 1841 (Wedberg, 1935a, pp. 25ff). At that time, it was perceived to be an outdated judicial method for granting pardon (and possibly deciding guilt), involving the risk of criminals getting off lightly with relatively mild punishment. One critical jurist at the time of abolishment argued that dice throwing was incompatible with enlightenment and justice, as it relied on chance to decide in the important and delicate juridical question of the guilt or innocence of people charged with manslaughter (Wedberg, 1935a, pp. 25f). The jurist further argued that the practice was a primitive one originating in the trials by ordeal of the Middle Ages.

## **DISCUSSION OF THE SWEDISH HISTORICAL MATERIAL**

Three separate underlying principles can be distinguished in the old Swedish judicial uses of throwing dice. These may be called the principles of cost-effective deterrence, lottery of pardon, and guilt-revealing cleromancy.

### **Cost-effective deterrence**

Decimation was included in the military penal code and also in the civilian penal code in cases of collective disorderly conduct and rebellion. The rationale underlying military decimation in Sweden was the same as in the Roman army: although in principle all offenders should be equally harshly punished, in the case of capital punishment that would mean a mass slaughter out of proportion to the deterrent function of the penalty. Therefore, only a tenth of the offenders should be executed, their fates warning others what would happen if they committed similar crimes.

This is the *principle of cost-effective deterrence*. Since every soldier has a value to the army, it can be assumed that the deterrent effect of capital punishment on the troop scale yields diminishing returns as the number of executed soldiers increases. Executing one in ten has evidently appeared to military law-makers over the centuries to be a sufficient proportion: only ten percent of the soldiers are lost but the deterrent effect of the punishment is adequately strong. In terms of dramatic impact, ten percent amounts to a terrifying number of executed soldiers in the case of troop-scale decimation. As is clear from the above quotation from the old English law book, refraining from executing all soldiers could be described by the lawmaker in less instrumental and more humanitarian terms as based on the “laudable principles of sparing effusion of human blood,” to be weighed against the “safety and indispensable discipline” of the army (Dagge, 1774, p. 256).

Soldiers who consider deserting the army or disobeying orders to engage in battle thus had to think about the dangers of disclosure and being subject to decimation, and thereby of facing a relatively high risk (ten percent) of execution. Whether this risk is greater or lesser than the probability of being killed in battle is impossible to answer in general. However, soldiers can be assumed to make intuitive estimates of the risks and consequences of decisions that include numerous factors—not only the probability of individual survival in battle versus decimation, but also a sense of duty as well as commitment to ideologies and religions.

Although decimation had a completely different function in society compared to present day commercial gambling, some of the cognitive aspects are similar. In commercial lotteries, consumers also intuitively estimate the probability of possible consequences, but with other input values. For a minor stake, lotteries offer a very small chance of winning a huge and life-changing jackpot. Many people enter lotteries because the imagined wonderful consequences of the win are more salient than the minuscule mathematical chance of winning (Kahneman & Tversky, 1979). However, ideology and religion may deter people from participating in lotteries (Lam, 2006). While modern commercial lotteries offer a small chance of becoming a happy and rich top prize winner, decimation was a kind of lottery that imposed a relatively high risk of being executed on a soldier who had chosen to take a bet on not partaking in a different kind of highly dangerous gamble, that is, engaging in battle. Just as the act of decimation was typically performed publicly to inspire other soldiers with fear, modern lotteries prefer to advertise jackpot winners publicly to inspire consumers with hope.

### **Lottery of pardon**

As described, the throwing of dice was judicially used in cases of voluntary manslaughter in which all offenders were considered equally guilty. The typical case was a sudden and violent fight among several people, often drunk, resulting in the death of one of them.

The basic principle is that one life taken should be atoned for by one life. This excludes lesser crimes when non-lethal harm is done to an individual or property is stolen or destroyed. Sentences for such crimes were fines, corporal punishments, or imprisonment, not execution. Such punishments could be meted out with more equanimity, and if it was later discovered that they had been wrongly imposed, the wrongly convicted individual could be acquitted and compensated for what he or she had suffered.

It is also clear why the throwing of dice was not used in murder cases. A murder is preceded by planning; if several people are involved, the court has a much better possibility than in manslaughter cases of determining their individual burdens of guilt.

It may be asked why a dice game between the guilty was preferred to some other way of making a random decision. Why not simply let a court notary draw lots? For example, if there were two perpetrators, there could be two lots bearing their names and the first lot to be drawn would indicate who should be executed. That would have been easier.

One possible reason for preferring dice throwing over drawing lots is that it connects with the use of dice games in older times to decide matters between men, sometimes as an alternative to physical fighting. The symbolic meaning of using dice would then be that, as it is the guilty who have done wrong and slain someone, it is between them that the matter should be settled and therefore they must throw the dice themselves. The members of the court do not infer in the procedure and afterwards need not to worry about having done, or being accused of having done, something that influenced the outcome. In that the winner of the game causes the death of the loser, the judicial dice game resembles trial by combat in the Middle Ages, which involved two individuals and was a kind of court-sanctioned duel in cases when guilt could not be determined. This would then amount to still another example of how gambling games have symbolically substituted for physical duels (Binde, 2005). Furthermore, throwing dice in a kind of game where someone loses and others win resembles gambling, which had connotation of moral depravity and criminality—a theme clearly expressed in the popular ballad cited earlier that compares a judicial dice game of life and death with gambling for money using “deceitful tricks”. That the criminals brought to trial should engage in something that resembled gambling was thus consistent with symbolic connotations of gambling.

In cases of manslaughter in which several guilty were forced to throw dice, the limits of knowledge and rationality had been reached and evidence-based decisions were impossible. Nevertheless, a decision had to be made: out of several guilty, one had to die and the others could be granted a degree of pardon and live. This is *the principle of lottery of pardon*. As suggested by the political scientists cited in the introduction to this paper, in such a situation a lottery may be preferable to making a decision based on insufficient knowledge and limited rationality.

However, to admit that reason is insufficient for decision-making can be perceived as surrendering to ignorance. In Sweden, this was a main criticism of the practice of throwing of dice in cases of manslaughter: facts and reason, not chance, should decide the punishment. It is probably no coincidence that at the same time as the judicial use of dice throwing was abolished (1841), the Swedish parliament prohibited all kinds of lotteries (1840). This was occasioned not only by the social harms that lotteries were perceived to cause, but by a growing perception that participation in lotteries was irrational and that it was morally wrong to distribute wealth randomly (Husz, 2002). This perception was part of a general trend in Europe at that time to criticize gambling from a “rational” point of view; often this critique was directed particularly against the lesser educated parts of the population and their perceived excessive gambling (Barnhart, 1992; Reith, 1999). Even today, a prevalent criticism of commercial lotteries is that they incite people to engage in an irrational activity that costs them money that could be spent more wisely (Casey, 2003; Clotfelter & Cook, 1989). Irrational beliefs are, furthermore, commonly regarded as an important factor in problem gambling (Lund, 2011; Miller & Currey, 2008). However, just as some political scientists advocate using drawing of lots in political decisions because they counteract rigid power structures and social injustice, it has been argued that commercial lotteries are inherently egalitarian and antithetical to rigid socioeconomic divisions whereby some individuals are in practice born into wealth and high position (Caillois, 1961; Campbell, 1976; Tec, 1964). As one writer put it, “In lotto games where no player has a particular advantage, Americans may have found an ultimate democracy” (Smith, 1996, 110).

### **Guilt-revealing cleromancy**

The third principle of the judicial use of dice games is that of *guilt-revealing cleromancy*, a principle that appears explicitly only in the Vånsjö case. However, Wedberg informs us that in other cases in which the throwing of dice decided who should be executed, the public perceived that the guiltiest individual was singled out by the dice and that God guided the outcome of the game so that true justice was attained. The presence of such beliefs is also suggested by the folklore-inspired novel *The Löwensköld Ring* (Lagerlöf, 1925) and the semi-fictional novel *The Judgment of the Dice* (Sahlberg, 1958).

The notion of guilt-revealing cleromancy suggests still another reason for why the courts preferred dice throwing, rather than a simple drawing of lots performed by a court notary. Casting the dice is an ancient symbol for surrendering decisions to chance and supernatural powers. An example is the mythological dice game in A.D. 1020 between the kings of Norway and Sweden over the possession of Hising Island in Götaland (Sturluson, 1844); the Swedish king threw two sixes but when the Norwegian king threw the dice, one of them broke in half and he scored thirteen, which was considered to be an intervention of “God Almighty”. Dice also evokes gambling, with all of its associations to luck, fate and supernatural powers.

The perception that God governs the fall of the dice is not surprising since it follows logically, at least in a naïve sense, from the assumption that God is omniscient and almighty. Theologians have historically adopted varying positions on this matter (see Binde, 2007a). Some have argued that God indeed governs the fall of the dice, but that it is wrong to occupy him with such trivial matters, so one should not gamble. Others have argued that it is not God but the Devil that guides the dice to incite discord between gamblers. Still others have argued that God’s omnipotence means that he can choose when to interfere directly and what to leave to the physical laws that he has created.

The principle of guilt-revealing cleromancy is evident in drawing lots to determine the guiltiest of ten suspects in the case from the North American Dutch colony described in the introduction—God was believed to have indicated who was to be executed. More generally, the idea that supernatural agency guides fateful events recurs in cultures worldwide and persists in our own time. In *The Löwensköld Ring*, a ghost connected to the crime is suggested to be involved in the fall of the dice. Since a prominent motif in Swedish folklore is that the ghosts of slain people take revenge on their killers, such ideas were likely held in relation to judicial dice games of life and death.

The same basic idea, that events that in reality are random are influenced by occult and supernatural powers, underlies innumerable past and present superstitious beliefs held by gamblers worldwide. While the unlucky fates of those losing a dice game of life and death in Sweden in past centuries were the subject of popular ballads, today the lucky fates of top-prize lottery winners are the subject of frequent newspaper reporting. In both cases the public is fascinated by how fate and luck change people’s lives and by the possibility that there is some hidden meaning or divine intention.

## CONCLUDING DISCUSSION

This paper focuses on the judicial uses of throwing dice in eighteenth and nineteenth-century Sweden; its factual information is extracted mainly from one text in law history (Wedberg, 1935a). The aim of the paper is to bring out of obscurity a judicial practice of interest to gambling studies and offer a preliminary discussion. Ideally, additional archival and comparative judicial, historical and ethnological material with a bearing on the topic should have been searched for, both in Sweden and in other countries, and considered. However, the small scale of this study has not permitted that. Since similar practices seem not to have been the specific topic of modern academic study, it has not been possible to build on earlier research. Thus, this paper has limitations with regard to source material and information about the judicial, social, historical and cultural contexts in which the practices discussed were situated.

Three separate principles can be distinguished in the judicial uses of throwing dice in eighteenth and nineteenth-century Sweden: cost-effective deterrence, lottery of pardon, and guilt-revealing cleromancy. The first principle guided the laws about decimation and similar practices, while the two other principles applied, respectively, to the official rationale for and to the unofficial beliefs about the throwing of dice to decide punishment in cases of manslaughter with several perpetrators.

The judicial dice games of life and death were not gambling in the proper sense of the term, as the players were forced to participate. The games, however, resembled gambling in other respects: dice were used, a game was played according to particular rules, there were winners and losers, and while the winners gained something of value (reprieve from execution) the losers lost something of value (their lives). Furthermore, perceptions of risk and chance were evoked, the issue of rationality in decision making was raised, and notions of luck, fate, and supernatural power were evoked. More generally, just like modern commercial gambling, the judicial dice games caught the interest of the public, stimulated the popular imagination, and were contested politically and ideologically.

The empirical material and analysis presented in this paper raise the question of how to define and conceptualize gambling. Like all other multifaceted sociocultural phenomena, it is difficult to formulate a simple and clear definition that includes everything perceived to be gambling and excludes everything that is not gambling. Nevertheless, many general texts about gambling start with a definition (e.g. Devereux, 1968, p. 53, Newman, 1972, p. 1; Productivity Commission, 2010, p. 1.4). Such definitions usually state that gambling is a voluntary activity with several participants who agree to the rules of the game and stake something valuable on the uncertain outcome of a specific event; depending on the

outcome of this event, some of the participants will lose while others will gain more than they staked. At the fringes of the concept of “gambling” are activities such as day trading on the stock market and multiplayer online role-playing computer games. In a metaphorical sense, the term “gambling” can be used to denote virtually any human activity that includes a chance element and the prospect of either making a significant gain or unsuccessfully spending time, money, and energy.

Definitions are many times useful or necessary for delimiting the scope of what to study and discuss. Empirical research has limited resources and often aims at answering specific research questions; without defining key concepts this cannot be done efficiently. However, it is also essential for research to challenge established conceptualizations. This is especially important with respect to gambling, which is a highly adaptable activity that can take many forms and serve widely differing functions; it can be embedded in society and the economy in many different ways. Furthermore, the meanings that people attribute to gambling branch out in a multitude of directions extending far beyond the pure monetary domain of bets, wins, and losses into the realms of culture, symbolism, religion, morality, and the existential.

As argued in the introduction, in order to gain perspective on the societal and cultural aspects of gambling, and thereby be better equipped to explore them, gambling studies should take a broad view of the field and also consider activities that, while not strictly gambling, have similar functions and components. As the philosopher Ludwig Wittgenstein observed, games (such as board games, ball games, and children’s games) are an apt illustration of the notion of *family resemblance*—the connection between things defined not by one single shared feature but by overlapping similarities (Wittgenstein, 1953, §§ 66-67). However, as to the subset of *gambling* games, chance emerges as a shared feature while stakes, rules, and contexts vary. This is an argument first proposed by Roger Caillois (1961) in his distinction between four categories of play: *agon* (competition), *mimicry* (simulation), *ilinx* (vertigo), and *alea* (chance).

To conclude, often it is useful in gambling research to define what gambling is and is not; this helps to keep focus in empirical investigations and demarcate research areas. Such definitions are *monothetic*, that is, all of a set of attributes need to be present. The *polythetic* family resemblance conceptualization—that many but not necessarily all attributes are present—does not impose fixed boundaries between activities that share some elements but differ in others. This conceptualization is fruitful when analyzing gambling as a social and cultural phenomenon, being member of a larger family of games and having many “brothers”, “sisters” and “cousins”, such as the judicial dice games of life and death described in this paper.

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