Article

Mandatory Criminal Record Checks in Sweden: Scandals and Function Creep

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Abstract

Over the last decade, more and more Swedish employers have become obliged to check jobseekers' criminal records before making their hiring decisions. The use of criminal records for mandatory checks of job candidates and staff outside areas involving national security represents an entirely novel use of the criminal record database, marking a significant breach with previous regulations regarding the database and creating a new potential for its utilization for surveillance purposes. Parallel to this development, the number of enforced subject access requests in the country has increased dramatically. In this article, I examine this ongoing function creep of the Swedish criminal record database and its direction and limits, based on the moral positions taken by the country's government in connection with the new legislation enabling the creep. Newspaper articles covering and commenting on two paedophile scandals that shook the country in the recent past are analysed to capture conflicting values around the idea of a closer vetting of childcare workers, so as to better understand the moral positions adopted. The ongoing function creep is studied in light of the 'sociology of scandals' to better understand what made it possible, and broken into its constituent elements to see what it meant in practice, what the forces were that drove it further, and how far it has progressed.

Introduction

In most Western countries, criminal record databases and the screening of job seekers are today used as a crime preventive technique, especially when it comes to childcare workers and prevention of sex crimes. The legal requirements to check criminal records and the number of employers who request criminal record information have increased during the last twenty years in, for example, Australia (Naylor 2011), Denmark (Gøtze 2011), Germany (Morgenstern 2011), the Netherlands (Boone 2011), Sweden (Backman 2012, 2011b), the UK (Thomas 2007), and the US (Jacobs 2006; Stoll and Bushway 2008). In Sweden it became mandatory in 2001 to check the criminal records of those seeking positions as childcare workers, preschool teachers, and elementary school teachers.¹ Following the 2001 act, the procedure has also been extended to, for example, other groups related to the school and preschool context (SFS 2008:53), employees of care and residential homes for children (SFS 2007:171), and registered healthcare workers (SFS 2010:659). At the same time, the number of enforced subject access requests, or cases where employers with no direct access to criminal records force jobseekers to use their right to make access requests in order to obtain a copy of their record, has increased drastically in the country. In 1995

¹ The act (Swedish Code of Statutes SFS 2000:873, *Lag om registerkontroll av personal inom förskoleverksamhet, skola och skolbarnomsorg*) was adopted by the parliament in 2000 and came into force in 2001. Throughout the article, this act will be referred to as 'the 2001 act' or the 'act of 2001'. The act was subsequently abolished in 2010, with the obligation for employers to check job applicants' criminal records today regulated through the new School Act of 2010 (SFS 2010:800 Skollag, ch. 2, paragraphs 31–33).

approximately 10,000 requests were made and in 2011 more than 177,000 requests were received by the National Police. At least 75 per cent of these are believed to be enforced subject access requests (National Police Board 2004). Sweden is a particularly interesting case for the study of changes in criminal records policy since the new development marked a distinct departure from the dominant values of ex-convicts' rights to reintegration and employment, and with previous regulation of the use of criminal records on the labour market. Prior to the 2001 act on childcare workers and teachers, employers were not obliged to check job applicants' criminal records, the number of employers who could access criminal records was low, and there was no indication that these employers exercised their right to access criminal background information (Backman 2012; SOU 1997:65). The present article analyses the shift in criminal records policy in Sweden. I examine newspaper coverage of and commentary on the evolving debate, as well as the government bills introduced in the legislative process that led to the new act of 2001 and the related acts that followed. I show how two paedophile scandals that came to light during the late 1990s changed the general climate in Sweden surrounding criminal record checks and the exclusion of ex-convicts from the labour market, and paved the way for the coming 'function creep'.

The kind of development witnessed in Sweden is commonly referred to as 'function creep', a process in which a procedure designed for a specific purpose ends up serving another purpose for which it was originally not planned to perform (Dahl and Sætnan 2009; Fox 2001). The broadening use of mandatory criminal history checks beyond the areas of national security that has taken place during the 2000s effectively conferred a novel function on the country's centralized criminal record database, notably extending the possibilities through which it can be legitimately used for surveillance purposes. In this case, criminal records data ended up being used for a crime preventive purpose it was not initially gathered for, *de facto* 'extend[ing] and intensify[ing] surveillance and invasions of privacy beyond what was originally understood and considered socially, ethically and legally acceptable' (Surveillance Studies Network 2006: 9). To make criminal history checks mandatory for employees had new social effects (cf. Dahl and Sætnan 2009): it meant broader sharing of criminal records, (potentially) better protection of children, and adaptation by both employers and jobseekers to the requirements and consequences of the new practice.

Dahl and Sætnan (2009) explain why function creep happens with reference to two conditions: first, surveillance techniques are information systems which tend to be highly flexible and open to interpretation as well as imagination of new areas of use, and, second, 'the moral terrain shifts' once a new function has been introduced, and it is seen to be wasteful not to use it 'to the fullest acceptable limit' (Dahl and Sætnan 2009: 88f.). In Sweden, however, where criminal records have been kept secret from employers, and employment of ex-convicts has been seen as protection against recidivism, the introduction of the 2001 act on mandatory criminal record checks for childcare workers and teachers required an initial shift in values. Below, I identify and analyse the conflicting values involved in the public discussions about criminal history checks and mandatory jobseeker vetting in Sweden from the late 1990s onwards, along with the moral positions taken by the government. I argue that the paedophile scandals were important since they highlighted the value conflict and changed the moral terrain surrounding criminal records. Furthermore, I show how this shift in the moral terrain was reinforced after the implementation of mandatory criminal record checks for childcare workers and teachers in 2001, which made it possible to extend the new practice to further groups of jobseekers. I discuss the limits to the creep and then conclude by proposing a developed understanding of the elements and process of function creep.

Sociology of Scandals

In the sociology of scandals (Jacobsson and Löfmarck 2008), news reports on events that are deemed scandalous can serve as a methodological tool for analysing the moral fabric of society, given that they frequently trigger moral outrage and public debate on how to understand and deal with norm

transgressions (see, e.g., Lull and Hinerman 1997; Thompson 1997). Crime news in general has been described as a ‘daily moral workout’ (Katz 1987: 70), since they render readers or viewers ‘witnesses’ of the event in question, making it part of their experience. Crime news speaks of the potential risk of becoming oneself confronted with a similar crime (Will there be a paedophile at my child’s preschool?), of the general state of society (Is it holding together? Does anyone care about children being abused?), and of how citizens ought to behave in light of what has transpired (Should criminal record checks be introduced?). However, not all crime news is scandals. Scandals are normally defined as events that represent a transgression of a dominant social norm, consist of actions that can be considered as intentional and based on desire, involve actors that show little or no empathy for their victims, and result in an outcry by the media and/or the public against those responsible (cf. Lull and Hinerman 1997). In some cases more than one scapegoat will be sought, for example when the case is seen to be about an institution with an organizational culture that promotes transgressions (Thompson 1997). Crimes that meet the definition of a scandal will attract more news coverage than ‘average’ crime news, and evolve more around the issue of scapegoats and what should have been and will be done.

Since we live in a society with conflictual norms, scandals and reactions to scandals are always ‘polysemic’ and tend to trigger a competition between conflicting norms (Lull and Hinerman 1997: 17; Cottle 2006; Durkheim 1984). Because of this, scandals offer useful material for reflecting upon questions of morality, as cases par excellence for analysing how such conflicts are resolved and how certain norms become dominant. In the two paedophilia cases used in this article, the conflict evolves around what should be considered as proper responses to it and what precautions should be taken in order to prevent future cases of the same kind. Accordingly, the ‘scandal’ response may be best understood as both a ‘ritual’ through which society, using the means of public witnessing and the media, can express its anger and sadness so that the dominant norm is reinforced (Durkheim 1995: 415), and a way to negotiate conflicting norms regarding what types of sanction are needed and what constitutes good precautionary measures.

Methodological approach and materials

This study draws upon newspaper articles to help capture the key features of the two scandals while outlining their outcomes, and upon legislative documents (government bills) revealing how the conflict was officially settled. Other relevant documents such as commission reports, memoranda, and government committee terms of reference were included as well.²

A strategic selection that covers most aspects of daily newspapers on the Swedish market was used to collect a material representative for the variety of views held. Two nationwide newspapers, both dailies—one morning paper (*Dagens Nyheter*, *DN*), one evening paper (*Aftonbladet*, *AB*), more tabloid in style—and one regional newspaper for the area in which both of the two scandals took place (*Nerikes Allehanda*, *NA*) were chosen. The two nationwide papers have the largest circulation in the country in their own category. They also represent opposing ends of the political spectrum: *Dagens Nyheter* remained ‘independent’ until 1998 when it became ‘independent liberal’,³ while *Aftonbladet*, which was openly ‘social democratic’ until 1998, today identifies itself as an ‘independent social democratic’ publication. *Nerikes Allehanda* has been labelled ‘liberal’ all along. My aim, however, has not been to perform a media

² Government bills: prop. 1999/00:123; prop. 2004/05:133; prop. 2006/07:37; prop. 2007/08:28; prop. 2009/10:176; prop. 2009/10:210. Official government reports: SOU 1998:69; Ds 2004:42; SOU 2005:65; SOU 2008:77; SOU 2008:117; SOU 2009:44. Committees’ terms of reference Dir. 1997:69; Dir. 2004:83; Dir. 2004:107; Promemoria 2004-02-03; Dir. 2006:55; Dir. 2007:57. Governmental documents are publicly available in Sweden and I have retrieved the documents either from the library at the University of Gothenburg or, when available, from the Government’s webpage.

³ In the Swedish context, the term ‘liberal’ is used to denote ‘neo-liberal’ and conservative standpoints rather than ‘progressive’ (left-liberal) ones.

analysis or to focus on differences in how the newspapers framed the scandals and news on criminal record checks. The study covers the time period 1997 (when the government's expert committee was appointed) through 2010. To find out how any discussions on the issue before this time period were shaped, also articles from the period 1995 to 1997 were searched for. Only six articles related to the topic were found, however, compared to, for example, 29 articles from 1997 and 23 from 1999.

The articles were accessed through the database *Mediearkivet* that contains the *Aftonbladet* and *Dagens Nyheter* issues from 1994 onwards, along with the *Nerikes Allehanda* issues from 1997 onwards. The search words used were: *pedofil** (paedophile), *straffregister**, *brottsregister**, *kriminalregister** (all three Swedish synonyms for 'criminal records'), and *registerkontroll** (record/background checks). In total, 143 articles were found.

Swedish preschool paedophile scandals

Usually Swedish newspapers report on children being molested by their parents, foster parents, childcare workers, or teachers without any of the characteristics of a scandal. The typical article about such cases consists of a short notice of the arrest made and a brief background of the suspect (e.g., TT 1998). The reporting is normally 'objective' in tone, focusing on the basic facts. In the late 1990s, however, two incidents involving paedophiles employed at preschools were discovered that became framed as public scandals.

In the first of the two scandals, in September 1997, a child at a preschool in a middle Swedish town told his parents about sexual violations by an employee who subsequently was arrested and confessed to having sexually abused six children. Apart from the number of the children involved, also the fact that suspicions about the employee had already been raised a few months before he was actually arrested and the preschool principal had at that time simply fired him without filing a report to the police, contributed to making the case into a scandal (e.g., Hedström, *DN* 1997; TT, *NA* 1997). By the time the first scandal began unfolding, the Swedish government had already in April 1997 commissioned an expert inquiry to look into the possibility of mandatory criminal record checks for childcare and school staff (Dir. 1997:69) in response to a report by the country's ombudsman for children (1997) that had pointed out that other countries had this kind of legislation. Although the process had then already been initiated, the scandals spurred the debate further, providing a useful methodological instrument for analysing the otherwise not so easily detected norm conflicts unfolding around the function creep. Neither the report by the ombudsman for children nor the appointment of the expert committee had attracted much attention before the scandal broke in September, provoking a vivid debate about whether or not mandatory criminal record checks were the right way to go—whether they would be too intrusive of individual privacy and whether indeed they would provide an effective means for the protection of children.

The second case came to light in March 1999 just two months before the government submitted its bill to parliament; it, too, involved an employee at a preschool who had molested children. The man had videotaped his assaults, based on which 12 children were identified as victims, including two of his own live-in partner. The social services already had a file on the family, having been investigating it for over a year by the time, but the man was only caught during an unrelated police raid on an internet child pornography ring which revealed evidence of his assaults against the children. Besides the 12 child victims, the videotaping of the abuse, and the dissemination of the tapes on the internet, what made the case into a public scandal was then the inability of the city's social services to take action despite at least one anonymous tip received (e.g., By, *DN* 1999; Varför upptäckte, *NA* 1999).

The reporting of the two cases differed from most other paedophile cases reported in Sweden in that they prompted further articles and commentary, including in-depth coverage that narrated the story behind and around the 'news'. Concerning the first of them, a total of 101 articles were written in Swedish

newspapers during the four-month period between the arrest and the commencement of the trial. In the second case, a total of 76 articles were found that related to the case during the first four months following the initial report.

Conflicting Values in the advent of Scandals

The Swedish National Criminal Records Registry was set up in 1901. Its purpose was to function as a reliable national service for the courts regarding defendants' past offences, while at the same time keeping individuals' criminal history information secret to other actors, and employers in particular (Backman 2012). Up until the 1990s, criminal record checks during recruitment in Sweden were broadly considered to be an intrusive method that should only be resorted to in exceptional cases. Even if some employers had been given access to the centralized records, an attempt had always been made to restrict this access as much as possible (see Backman 2011a). In general, criminal records were regarded as sensitive information, and any disclosure of the information contained in them was seen as jeopardizing the convicted individuals' prospects for re-entry into society and the workforce. Traditionally, the 'work approach' has been central to the country's overall culture, and employment has been viewed as an elemental aspect in the welfare state project as well in correction policy (Hörnqvist 2007). Although there is a common belief in Sweden that people who have atoned for their crimes should have the right to start over without any social punishments, employers have long searched for a means of acquiring the criminal history information of job applicants (Backman 2011a). Until the 1990s, the state upheld the values of reintegration and privacy and used legislation to keep employers from reaching criminal history information (Backman 2012). The immediate impact of the two paedophile scandals above, however, was to allow for a construction of a real threat against children in schools and preschools and of insufficient protection, which then brought to focus the norm of protecting children as an interest that came into competition with the hitherto dominant values of privacy protection and re-integration of the ex-convict into the labour market. Similar legislation had been previously introduced in other countries following much-publicized incidents of crime against children, as in the UK after the Colin Evans case in 1984 (Thomas 2007) and in Norway following the controversial Bjugn child abuse case in 1993 (Lindahl 1997).⁴

Criminal Record Checks as Necessary

In the newspaper material, the duty to care for and protect children stands out as the dominant norm relied on by those in favour of mandatory criminal record checks for childcare workers and pre- and elementary school teachers (Gustavsson, *AB* 1995; Renström, *AB* 1997). The obligation to protect children from being hurt derives from the construction of children as vulnerable and dependent (cf. Meyer 2007). Descriptions of child victims of sex crimes highlight the circumstances that leave them silent and unable to tell about the assaults on them, either because they are scared, feel ashamed, feel loyalty to the offender, have disabilities, or are too young to be able to articulate their experiences (Gustavsson, *AB* 1995; Trädgårdh and Weigl, *AB* 1997; Sundbaum Melin, *AB* 1999). Since children cannot tell, they are unable to draw attention to offenders.

The description of children's silence also provides a picture of the offender: 'The paedophile demands a vow of silence. May threaten to kill himself. Or that the kid will end up in prison' (Trädgårdh and Weigl, *AB* 1997). Besides descriptions like this one where the offenders are implicitly pictured as nasty and immoral because they, in addition to abusing children, also lie to them, the offenders are described as individuals who appear to be 'normal' and are therefore impossible to recognize and single out in advance. For example:

⁴ All the suspects in the Bjugn case were eventually acquitted. Even though opinions differ as to whether they were actually innocent, the case has been frequently spoken of as both a 'witch hunt' and one of 'moral panic'; see, e.g., Førsund 1997; Wiig and Brøgger 2003.

The individual taken into custody is a male employee [of the daycare centre] who has worked there for two years. According to the director of the centre, 'He came with a solid background and good references; we had no idea of his inclination....' The incident is yet another one in a string of cases where male childcare workers or preschool teachers have been accused of sexual assault against children. In most of these cases it has come as a complete surprise to the rest of the staff that their co-worker had a sexual interest in children. (Hellden and Renström, *AB* 1998)⁵

When the paedophile is described as someone who silences his victims, is invisible and has no distinctive features, as a person who is 'just like any other person' and can thus be found everywhere, he becomes dangerous (cf. Collier 2001). The case is also referred to as 'yet another one in a string', which gives a feeling of a highly present and continuing threat towards children in daycare. A study of UK newspaper discourse on paedophilia showed the same mix of 'human appearance' on the outside and 'evilness' on the inside (Meyer 2010). It is this construction of an ever-present yet diffuse threat (cf. Flyghed 2002) that makes it possible to portray criminal background checks as a necessary technique to help identify likely paedophiles and keep them away from children before they can commit their crime.

Criminal Record Checks as Ineffective and Part of a Control Society

When criminal record checks became questioned in the evolving Swedish debate on child safety and protection against established and potential sex offenders, it was not because of the low likelihood of children becoming molested in daycare or in schools. While, indeed, sexual assaults against children were also described as a crime that usually occurred in the home (Sundbaum Melin 1999, *AB*) the scepticism was rather due to the low likelihood that paedophiles had a previous record that then could be brought to light from official sources (Karlsson, *DN* 2000, Kontroll för, *NA* 2000). In the following newspaper editorial, the usefulness of criminal record checks as a crime prevention technique is thus openly doubted, based on the fact that the offender in the case in question (the 1997 scandal) had no prior conviction:

Once you scratch the surface of the issue, it quickly becomes apparent that what is now proposed, if it ever becomes a law, will for the most part have no effect whatsoever. Even if these requirements had been in place when the 27-year-old childcare worker applied for his job at the Karlstad preschool, they would not have prevented the incidents from taking place that now have come to light. No criminal-record check would have yielded anything to make one suspect the perpetrator of being a paedophile, since no previous record of such offences was there to be found for him in the first place. (Editorial, *NA* 1997)

The same editorial went on to also criticize the ongoing debate as 'unbalanced' and 'hysterical' and as unfairly casting suspicion on all men, especially those who have chosen to work with children. The values underlying this criticism centred on the right of individuals not to be falsely accused of a crime (e.g. Editorial, *AB* 1997) or judged based on group belonging, that is, all men do not pose a threat to children just because some men do (cf. Hodgetts and Rua 2008). The critique did not terminate with an identification of negative consequences for men. Instead, the point was made that men's likely reaction to the unjust suspicions would be to opt out of careers in childcare, which would then negatively affect children by depriving them of male role models (e.g. Götell, *NA* 1997). The Children's Ombudsman claimed in one article that 'to have men in preschools is extra important' because there are more single mothers today than twenty years ago (Brundin, *AB* 1997). Children's need for male role models was not considered to trump their right to be safe; the reservations expressed, as in the above quote, were rather based on the understanding that criminal background checks did not offer an *effective* prevention technique. Those opposed to them did not in any way downplay the risk of children becoming sexually

⁵ All translations from the original Swedish by the author.

abused or the children's need for protection; they merely doubted the value of criminal history checks as an effective method of jobseeker screening.

Besides the argument that criminal record checks would be ineffective, also voiced in the debate was the traditional view of seeing criminal record checks as intrusive and the right to privacy as fundamental for limiting state power. The introduction of mandatory criminal record checks was linked to the coming of a 'control society' or to an Orwellian 'Big Brother'. If the new prevention technique of staff background checks was implemented, the fear was expressed that it would sooner or later be bound to spin out of control and become extended to more and more groups of individuals in society (cf. Editorial, *NA* 1997; Karlsson, *DN* 2000).

The Government's Moral Position Taking

The conflict between the constitutional rights of individuals, in particular their right to privacy, and the duty to protect children was addressed and 'resolved' by the government in its bill of 1999 (prop. 1999/00:123). Towards this end, the government employed a two-fold strategy. First, it made children's vulnerability and the state's duty to protect them the centrepiece of its own justificatory arguments in favour of mandatory criminal record checks. Second, through a series of moves, it neutralized any claims regarding likely breaches of legal rights if criminal history checks became reality.

The Vulnerable Child

The bill made much of the vulnerability of children and their inability to defend themselves that left them dependent on adults in the good and the bad. This vulnerability and dependence was cited as the main reason for why mandatory criminal record checks were necessary, as shown by the following excerpt from the bill:

The younger the children are, the less able they are to defend themselves against assaults. Their need for protection is therefore particularly pronounced when it comes to young children. Children of preschool age are wholly dependent on adult care. Also children in lower primary school and in after-school care are heavily dependent on adults around them. There is, accordingly, good reason to have prospective employees in these sectors undergo criminal record checks to that way enhance the protection of children in these environments. (prop. 1999/00:123: 21f.)

The 'vulnerable child' argument (cf. Meyers 2007) did not just depict the child as someone in need of protection; it also posited the state as the entity responsible for children's wellbeing. The child has the right to be safe in preschool and parents need to be able to trust their children's caregivers. In the quotation below, taken from the same proposal text, the fact that education is compulsory in the country and the children are thus forced to spend time in the school environment was used as a justification for criminal record checks of jobseekers:

The educational system must strive to provide a safe and secure environment in which young people are protected and can grow up to become harmonious individuals capable of actively taking part in the development of society. Every child in the country is subject to compulsory school attendance.... Such activities should self-evidently offer a safe environment where no one is exposed to the risk of assault or harassment. (prop. 1999/00:123: 12)

By first reaffirming that all children should 'self-evidently' be safe without risk of being subjected to abuse and assault, and then presenting criminal record checks as something that enhances their protection, the checks are thus confirmed as an integral part of the protection of children.

A Conflict of Values Neutralized

The government's proposition gave due recognition to the liberal values regarding maximum freedom for individuals and the division between public and private realms. It stated, for instance, that regardless of whether the subject of the check actually had a criminal record, criminal record checks always constituted a breach of privacy since they represented 'an intrusion into a sphere that everyone has a rightful claim to have protected from intrusions' (prop. 1999/00:123: 12).

A number of justifications were, however, used to legitimate the very breaches now proposed. First of all, criminal record checks were claimed to be less intrusive for the majority of jobseekers who lack previous convictions. Second, by making the jobseekers responsible for requesting a copy from the national police board, they, the jobseekers, and not the employers who would not be able to access criminal record information without the applicants' knowledge and consent, were claimed to be able to maintain control over the information about themselves. In theory, a jobseeker who does not wish to provide a copy of her or his record to the employer requesting it can indeed also choose not to do so; yet, in practice, this would be a decision equivalent to withdrawing the application. Third, when it came to those who did have convictions on their criminal record, the government's stated position was that '[c]ertain crimes, however, are of such nature as to require careful consideration of whether or not individuals convicted of those crimes should be allowed to work with children and young people' (prop. 1999/00:123: 14). In such cases, the argument went, the breach of privacy could be justified by having the individual's criminal record excerpt only list convictions for this type of crimes. The 'victims' in this case, or the individuals with a criminal record, are presented as morally deserving of the violation of their privacy owing to the kind of crimes they have committed.

Further Controls: New Groups and New Crimes

Moral position-taking, such as the government's, in value conflicts that are brought to light by scandals has implications for future function creep. For instance, such position-taking may lead to the introduction of a new way of using existing information (as when, in the case in consideration, childcare workers began to be subjected to criminal background checks) or to a situation where new organizations and entities are allowed to use the technique in question that so far has been limited to only certain users (as was the case when, for instance, the procedure was extended to employees of care and residential homes for children). After the initial introduction of mandatory criminal history checks, the function creep thus consisted mainly in the inclusion of new groups in the category of those designated as 'vulnerable' and 'dependent' people. At the same time, however, it also consisted in the simultaneous, significant broadening of the number and types of crimes that were considered to provide relevant information and were perceived as a particular threat to those vulnerable groups. The bill that preceded the new act in 2001 has influenced every new act on mandatory criminal record checks. When it concerns children, the same arguments about children's safety—the need to prevent unlikely risks, and to adhere to the UN convention on children's rights—have been used (cf. prop. 2006/07:37). To legitimize invasion of privacy by making the jobseeker responsible for requesting the criminal records, information was copied when mandatory checks of insurance intermediaries (prop. 2004/05:133), staff at care and residential homes for children (prop. 2006/07:37), and children's personal assistants (prop. 2009/10:176) were introduced.⁶

From Vulnerable Children to Vulnerable Groups in General

Dahl and Sætnan (2009: 88f.) have argued that one of the reasons why function creep occurs is that it becomes wasteful not to use a new technique once it has been approved. Since the main justification for the 2001 act in Sweden was the protection of 'vulnerable' children, there was no logical reason for

⁶ By tradition, governmental bills in Sweden are created through 'copy and paste' and thereby consist more or less of the same text as a previous bill. One way of judging how influential a bill has been is therefore to analyse how many bills in the same area have been made up using text and arguments from the bill in question.

limiting this technique to schools and preschools only. By drawing upon parallels to vulnerable children, it was possible to extend the measure to other groups as well that could be said to be similarly vulnerable. One such group was patients. The National Medical Association took the initiative in this case by demanding the government to take action after two court rulings in 2007 had given two convicted physicians a right to continue their practice of medicine. In response, the government set up an expert committee to investigate the issue (Dir. 2007:57). The chair of the National Medical Association compared patients' vulnerability with children's and stressed that patients should not have to be afraid when they go and see their doctor (Swedish Public Radio 2007).

Precisely as in the case of childcare workers, a scandal broke out just when the investigation was being carried out. In 2008, a person convicted of murder applied to a medical school after his release from prison. The news of his acceptance into the programme prompted a moral outrage. The principal at the university in question brought up the act on mandatory criminal record checks of childcare workers and teacher and demanded an investigation on whether or not such a solution could be used for medical students as well (Svantesson, *DN* 2008). The Minister of Health went on to assure that the already ongoing investigation on patient safety would propose mandatory criminal record checks for all healthcare and medical workers practising under licence, and stated that he did not want to have murder-convicted people working as physicians (Bankel, Ewenfeldt and Gunér, *AB* 2007).

Unlike in the debate following the first paedophile scandal, this time there was hardly anyone opposed to the introduction of mandatory criminal record checks. Instead, by the end of the decade, it had already become possible to frame the need to have both teachers and physicians included in the scope of the background checks as something self-evident:

The same way that paedophiles do not belong to our preschools, schools, and after-school programmes, neo-Nazis that have murdered others for their differing opinions have no place in Swedish medical schools. (Editorial, *DN* 2009)

In the end, it was not employers who obtained the right to check criminal records of licenced healthcare and medical professionals; instead it was the National Board of Health and Welfare that was given a right to access criminal records as part of its licencing procedure. Individuals could, consequently, be denied licence to practice if they had been convicted of a crime if it could be said that by committing their crime they had demonstrated themselves to be 'clearly unfit to practice the profession' (prop. 2009/10:210; SFS 2010:659). The new act made this a question of whether the crime in question was likely to erode trust in the person, and subsequently, in the institution of healthcare.

From Sex Crimes to Crimes that Erode Trust

The initial debates and discussions on child safety and children's need for protection had revolved almost exclusively around their risk of becoming victims of sex crimes. In its bill of 1999, however, the government spoke not just about sex crimes but more in general about assaults and crimes where the offender shows 'ruthlessness' and 'lack of compassion':

Of people who are guilty of murder, manslaughter, aggravated assault, aggravated robbery, or kidnapping it can be said that they have demonstrated gross indifference to the life, health, and personal integrity of other people. Knowing that a person has committed such crimes is therefore of importance in protecting children and young people against non-sexual assaults as well. Including information on these types of crimes in the criminal record excerpt enhances, in the opinion of the Government, the protection of children and young people against assaults. (prop. 1999/00:123: 14)

Extending the range of crimes to be included in the excerpt to cover also other (non-sexual) crimes that presumably demonstrated lack of compassion then opened up a discussion about whether criminal record checks should be extended to concern even more types of crimes. Many of the agencies and bodies to which the law proposal was sent for consideration held the definition of crimes that could be taken as indicating lack of compassion and ruthlessness to be too narrow; it was proposed, for example, that hate crimes, drug crimes, robbery, and assault also be included (prop. 1999/00:123: 27). These latter types, however, were not included in the final act as adopted by the parliament.

Nevertheless, in the government's subsequent bill on mandatory criminal record checks for jobseekers at care and residential homes for children (prop. 2006/07:37), these very same crimes reappeared as part of the government's own proposal text. It was no longer a question merely of what posed a threat of sexual assault or a more general threat to children's physical health; the relevant crimes now also included less particular forms of violation such as, for example, luring children into criminality and, in especial, drug use. In the excerpt below from the government bill, drug-using care and residential home staff is not presented as posing a risk for children in terms of their becoming hurt or being not properly looked after; instead, the threat is identified as a risk that children, too, will become drug addicts. It is worth noting that drug addiction is here described as an already existing problem for many of the children in question. At the same time, hate crimes, too, are described as relevant since the children in these homes come from many different ethnic backgrounds and religions while they all 'have the right to be treated with respect':

Addictions of various kinds form a serious problem for many of the children in HVBs [care and residential homes for children and young persons]. There is a manifest risk that individuals working with children who have addictions of their own or deal in addictive substances can have a detrimental influence on the future development of socially exposed children, in the worst case even helping to breed addiction among the children.... HVBs accept children from different ethnic and religious backgrounds. These children have the right to be treated with respect regardless of their ethnic origin or religious background. Lack of respect in this sense constitutes an unacceptable violation of their rights, for which reason the mandatory criminal record checks should also cover convictions for agitation against a national or ethnic group and unlawful discrimination. (prop. 2006/07:37: 18)

While it is difficult to see those risks as something particular to children's care and residential homes only, and not, for example, relevant to schools or preschools as well, this was an argument that had not been put forward earlier even if it had been suggested by several of the agencies and bodies commenting on the government's 1999 law proposal. One reason why it was presented now could then be related to the fact that 'the moral terrain shifts' once the contested first implementation of a technique is completed (Dahl and Sætnan 2009). When the 1999 bill on childcare workers was submitted, there was still much resistance against the type of formal control system proposed. As noted above, it was considered too intrusive and as something likely to drive men away from childcare professions. To meet this criticism the government argued that only the most relevant severe crimes would be included. By 2006, when the proposal about screening job applicants at children's care and residential homes was drafted, this debate had become one in which inconsistencies in the present regulation and the lack of sufficient protection for children were the dominant themes (TT 2004, *NA*; Brattberg, *DN* 2007; Strid and Grundberg-Sandell, *DN* 2007; Lundqvist, *DN* 2008; Uhlin, *NA* 2009). Very little was heard any more about privacy for adults or the need for restrictions to the policy, hence it became possible to argue that it was relevant and defensible to screen for more types of crime.

When criminal record checks became part of healthcare professionals' licencing process, the discussion about what counted as relevant crimes for screening purposes remained surprisingly placid. The

government no longer argued, as had been the case with the previous acts, for which crimes to be included and why. Instead it was stated that:

The main purpose of the licencing procedure is to ensure a certain level of knowledge and skills among practitioners and to establish that the applicant is worthy of the trust and confidence of the public and the authorities. The licencing procedure has been looked upon as fulfilling an important information need, not only for the public as a ‘product label’ disclosing the practitioner’s qualifications, but also for state and municipal authorities who must be able to rely on practitioners in matters like prescriptions, certificates, reports and notifications to the municipal social welfare committee and the like, and for the local public health authority to prevent the possibility of hiring individuals who subsequently prove themselves clearly unfit to practice the profession. (prop. 2009/10:210: 159)

In the Criminal Records Registry Ordinance (SFS 1999:1134) the government then gave the National Board on Health and Welfare, which is the licencing authority for regulated healthcare professions in Sweden, a right to access criminal record information on a wide range of offences. These included, for example, all kinds of physical assault, forgery, endangering the public, as well as violence or threat to a public servant, and excluded any sentences of fine only.

Function creep had thus taken place in the use of criminal background checks, extending their initial area of application— occupations involving care of vulnerable and dependent children—to also cover areas not originally envisaged by the lawmakers or the debating public: fields where vulnerable and dependent patients are encountered. There had been a shift in what was conceived to constitute a threat and how this threat could manifest itself, be detected and removed, and new types of crimes were thus seen as relevant to criminal background fitness determination through criminal record checks. In the case of licenced healthcare and medical practitioners, the risk was not just about patients becoming physically hurt or injured: the question was now also formulated as a matter of trustworthiness vis-à-vis the state, the municipality, and the local public healthcare authority.

Yet, even if the issue of criminal record checks seemed to have become framed differently in the course of the ten-year time span from the outbreak of the paedophile scandals to the breaking of the story of the murder-convicted medicine student, and even though criminal record checks appeared to have now become normalized as a control and prevention technique, there were limits to how far the function of criminal record checks could this way creep, as will be noted in the following section.

Limits to the creep

The function creep in the use of the criminal record database in Sweden had inherent limits that had to do with two distinct circumstances. First of all, the neutralization techniques that the government employed to demonstrate that, despite its position regarding whether or not the checks ought to be extended, it still stood for the liberal rights to privacy and individual freedom, made it imperative for it to frame the background checks as ‘optional’ for the individuals concerned. During the comment phase of the government’s 2007 bill on the inclusion of more occupations within schools and preschools beyond teachers and childcare workers, several of the bodies consulted expressed their desire to have still further groups to be covered, such as family members of childminders taking care of children in their homes and employees transferred by their employer from a position where they had no contact with children to one where they encountered children (prop. 2007/08:28). Even though the government in its 1999 law proposal had stated that the privacy violation that the criminal record checks entailed was negligible in the case of those with no criminal record, it still drew up a condition for the inclusion of any such new groups: that the individuals have an option to avoid having a background check conducted on them, for instance

by not applying for the job or by not enrolling in certain educational programmes. Those sharing a household with childminders working in their own homes and those transferred to another position by their employers did not have that option, and could therefore not be included in the scope of mandatory checks (prop. 2007/08:28). The same argument was used with regard to parents involved in school activities:

As concerns parents participating in activities that involve their own children, consideration of their right to privacy is of particular relevance. Everyone has the right to become a parent and involve themselves in their children's schooling without having to prove their fitness [for these roles]. The Government finds that the consideration of an individual's right to privacy in these cases carries such great weight that criminal record checks ought not be conducted. (prop. 2007/08:28: 7)

It might be worth noting that not 'everyone' in fact has such an unrestricted right to parenthood that the government seems to assume in this passage: those, for instance, who apply for adoption are carefully vetted by the social services, with a blemish on their criminal record disqualifying them from consideration.

Secondly, the obligation to conduct criminal record checks has been extended only to employees involved in state funded activities that can be described as mandatory in nature (children, for example, must by law go to school, one sometimes must visit a doctor to avoid endangering one's life, and children and young people may sometimes be placed in public care facilities by court order or forced there by threat of court order should they refuse to comply with the social services' decision), and where the state has been said to have a special responsibility for those taking part in these activities (cf. prop. 2006/07:37). A number of private-sector actors, too, have requested permission to conduct criminal background checks on their employees and volunteer staff, without, however, receiving any response from the government; among these are the Swedish Scout Association and the Swedish Sports Confederation (Strid and Grundberg-Sandell, *DN* 2007; Lundqvist, *DN* 2008). The organizations that have not (so far) received a right to conduct criminal history checks have thus far all represented non-public sector activities that are not mandatory to attend. Their claims have been met with the argument that adopting criminal background checks in their cases would mean enhancement of an invasive 'control society'. In spring 2011, for example, a nationwide morning newspaper scrutinized the 'nanny business' that has expanded heavily in Sweden thanks to a recently enacted tax deduction for household services. A story was brought forward of a convicted paedophile who had set up his own company offering babysitting services (Hernadi and Hanson 2011), prompting a demand by a member of the parliament for criminal record checks on all employees who in one way or another come into contact with children (Hernadi 2011a). One of the parties in the coalition government supported the proposal, but the Minister of Justice considered it out of the question since, if adopted, the broadened use of criminal record checks would create a 'control society' where everyone becomes checked, and in any case it was up to the parents to ensure that their children are safe since no one else can 'guarantee that everything is OK' (Hernadi 2011b). The position taken by the Swedish government differs in this matter from those taken in Denmark (Götze 2010) and the UK (Criminal Records Bureau 2012), where criminal record checks are mandatory for more or less all public, private and volunteer employees who come in contact with children under the age of 15. The question of what causes these national variances in criminal records policy difference is important and deserves to be investigated further. One possible hypothesis is that both Denmark and the UK have a tradition of involving more volunteers in school and after-school activities, which increases the paedophile threat.

Conclusions

Even though resistance to the idea of mandatory criminal record checks on jobseekers persists in Sweden, and while far from every demand for broadened access to criminal record information has met with

success, the technique has effectively become normalized, having been gradually introduced for more and more categories of workers in the Swedish labour market. A similar development has taken place in countries such as Denmark, the UK and the US, with an even further expansion of the use of criminal records. The process constitutes a typical function creep: the procedure of criminal record checks has come to serve a new purpose—to check jobseekers and prevent crimes—and invasions of privacy have been extended beyond the initial limitations. After the initial addition of a new purpose to the keeping of criminal records, the surveillance continued to be intensified and the privacy intrusion was extended still further. Function creep needs therefore to be described as consisting of (any or all of these) three elements: (1) new applications or targets are created for an existing technique, which in the present case meant the use of criminal record information for a new purpose—mandatory criminal history checks in addition to the old function of handing criminal history data to the courts and optional criminal record checks for certain occupations; (2) new institutions are allowed to use an existing technique for its new purposes, as in the present case when new groups of employers were obliged to check jobseekers' criminal history records; and (3) new data is considered 'relevant' for the function of the technique and included in its scope, as, for example, when in the above Swedish case new types of crimes were included in the criminal record excerpts.

This paper has argued that scandals appear to play an important role in initiating such processes because they bring new values to the centre of the discussion. Developments in countries such as Norway, the UK and the US show a similar pattern, with new legislation promoting employers', and even the public's, access to criminal records after news on sex crimes against children that meet the definition of a scandal (Backman 2012; Finn 1997; Logan 2009; Thomas 1986, 2007). While these findings suggest that scandals play a role in setting off a function creep, future studies should aim to cover more areas.

Although the use of criminal record checks for vetting jobseekers has seen a significant function creep in Sweden, not every organization that has requested the right to adopt the practice has been granted it. What made some demands for extended criminal background checks successful and others unsuccessful can be understood in light of the arguments offered by the government in the bill on mandatory criminal record checks of childcare workers and teachers that marks the beginning of the creep. The process can be described as a feed-back loop. The arguments used were not created by the government or made up in a vacuum. On the contrary, the conflict of values that the government had to address and 'solve' was present in the general vocabulary of motives—here represented by the newspaper material—that followed on the first paedophile scandal, which in turn was influenced by other countries' decisions to use criminal history information for crime prevention purposes. The moral standpoint taken by the government in the bill fed back into the general vocabulary and strengthened the norm regarding the need to protect children since they are vulnerable and dependent. It also legitimated ways to justify the privacy intrusion arguments directed against the broadened use of criminal records information. One effect of the moral position taken by the government was the normalization of criminal record checks as part of the recruitment process and the acceptance of the privacy intrusions they cause, which is visible for example in the increasing numbers of enforced subject access, and in the request by private-sector, volunteer organizations and interest groups to receive permission to conduct criminal background checks of employees or volunteers (see also Backman 2012).

Paradoxically, since it was precisely the state that introduced criminal record checks as a crime prevention technique for employers in the first place, it may well be that the only obstacle standing in the way of the further normalization of the technique and its continued function creep in the private sector today is the state's steadfastness in refusing to authorize its expanded use in additional contexts; at least as long as there is not a new scandal, which could subsequently trigger its continued expansion.

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