

REPORT FROM  
THE DEMOCRATIC AUDIT  
OF SWEDEN  
2004

*A New Constitution for Sweden*

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SNS Förlag

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SNS – the Swedish Center for Business and Policy Studies – is an independent network of leading decision makers from the private and public sectors who share a commitment to social and economic development in Sweden. Its aim is to improve the basis for rational decisions on major social and economic issues, by promoting social science research and stimulating public debate.

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# Preface

The Democratic Audit of Sweden was started in 1994 by SNS – the Swedish Center for Business and Policy Studies, a Stockholm-based research organization. It was intended to be a parallel to the long-standing SNS Economic Policy Group reports, which have been providing independent assessments of Sweden's economic situation and of economic policy annually since the early 1970's. The idea was that the Democratic Audit would provide similar assessments in the area of Swedish politics and political institutions. The task set itself by successive Democratic Audit Groups has been to contribute to a constructive, objective debate on the workings of Swedish democracy by highlighting different aspects of the Swedish political system. The group is variously composed each year, but it is always made up of four to five independent social scientists.

This year's Democratic Audit report, which is summarized in English here, differs from the earlier ones in that it is also the final report from SNS research program on constitutional design. This research program has produced a series of studies on the effects of constitutional design and of institutions more broadly. It has involved researchers from constitutional law, political science as well as economics. This year's report concludes this research program and presents some of the main conclusions that the authors draw from it. The report also proposes some major constitutional reforms in Sweden.

The interdisciplinary approach of the research program is reflected in the make-up of this year's Democratic Audit Group. The chairman of the group, as of most of the earlier groups, is Olof Petersson, professor of political science and research director at SNS. The other members are Lauri Karvonen, professor of political science at Åbo Akademi, Finland, professor

Eivind Smith, professor of constitutional law at the University of Oslo, Norway, and Birgitta Swedenborg, Ph.D. in economics and research director at SNS.

The Democratic Audit Group takes collective responsibility for the analysis and conclusions in the report. SNS as an organization does not take a stand on policy issues.

The SNS constitution project has been funded by SNS members and the Knut and Alice Wallenberg Foundation.

# A New Constitution for Sweden

## Summary

Can democratic governance and public policy in a mature democracy like Sweden's be improved through constitutional reform? Can widely perceived problems in the political life of such a country, including growing popular mistrust of the political establishment, be remedied by changing the rules of the political game?

These are some of the questions addressed in the 2004 Democratic Audit Report published by the Center for Business and Policy Analysis (SNS), the Stockholm-based research organization. The report draws on a series of studies produced as part of a research program on the effects of constitutions. Researchers have contributed perspectives from constitutional law, political science and constitutional political economy and the report's authors themselves represent the different fields. The Democratic Audit Report presents the main conclusions that the authors draw from this research and proposes some major constitutional reforms in Sweden. The reforms concern the role of the constitution in a constitutional democracy, the role of local self-government in a unitary state like Sweden and various ways that accountability and governance can be improved in Sweden's parliamentary system. One proposal is to return to a bicameral system, which Sweden abandoned in 1970.

## Problems in Swedish democracy

There is growing concern that all is not well in Swedish democratic life. It is symptomatic that a few years ago a Minister for Democracy was appointed to the Cabinet. This year the govern-

ment has said that it will appoint a government committee to evaluate the Swedish constitution and assess the need for more fundamental constitutional revisions. The SNS constitutional project, initiated five years ago, also reflected concern with the rules of the political game.

The perceived problems include declining voter turnout in elections, admittedly from a high level by international standards, rapidly declining membership in political parties and growing voter mistrust of the political establishment. The fact that around seventy per cent of voters think that politicians are only interested in people's votes, not their views, may not be remarkable by international standards, but it is the result of an unparalleled decline.

Popular discontent is linked to the perceived inability of the welfare state to deliver on its promises and the fact that the country, despite one of the highest tax burdens in the world, is failing to adequately provide basic government services, such as public safety and basic health care. Analysts point to policy failures in dealing with such problems as unemployment and sick leave. There is also concern that accountability is weak in a country which has been ruled by minority governments in most years in the last decades and where one-party dominance is a long-standing feature.

The report seeks the solution to some of these problems in constitutional reform. By combining the perspectives of constitutional law, political science and political economy it seeks a broad understanding. The different perspectives sometimes yield different answers but mainly they complement one another. The legal perspective is normative and insists on a hierarchy of legal principles, where the constitution is, or should be, the highest law. The political scientist focuses on how constitutional rules affect the political process and the exercise of political power. The economist is interested in how this translates into policy outcomes, which can be evaluated in welfare terms.

The main topics dealt with are, first, the role of the constitution in Swedish politics, second, the division of responsibilities between the different political levels in a multi-level democracy,

third, the electoral system and the organization of parliament. A final chapter discusses the process of constitutional reform.

### **The peoples' constitution**

In order for the constitution to be the supreme law of the country, the law for making other laws, it has to meet a number of criteria. It must be normative, it must be more difficult to change than other laws and it must take precedence over ordinary legislation when there is a conflict. It must also be considered legitimate by the citizens. Ideally, citizens should view it as a long-term contract, which they themselves have entered and approved of.

The Swedish constitution does not meet these criteria. The Instrument of Government is only one of four constitutional laws. It is a descriptive and lengthy document, a handbook describing the way Sweden is currently governed. As a handbook it needs to be updated as practices change. Revisions are therefore frequent. Since it came into effect in 1974, almost half of its articles have been revised. If a proposed law comes into conflict with the constitution, it is more often the constitution that is changed than the law. That is not to say that there are not durable procedures and constraints on Swedish governance. Nonetheless, Swedes have sacrificed the general stability and normative guidance that a constitution can potentially provide.

Another peculiar feature of the Swedish constitution is that it rarely involves the citizens. The constitution is changed by the Riksdag. All that is required is a simple majority in parliament with an intervening election. In actual practice, a very broad consensus in parliament is normally sought for constitutional change. Such broad compromises, however, mean that each group often demands a detailed provision, exception or vagueness to protect their particular interests. Furthermore, the process means that the politicians, in effect, own the constitution and write their own rules of conduct.

A third feature is that Sweden does not have a strong tradition of judicial review. In Sweden the constitutionality of ordi-

nary legislation will be tried by the courts only if the violation is “obvious”. That means that the Swedish constitution has weaker protection in Sweden than EU law or the European Convention of Human Rights, where such a proviso does not exist.

Having diagnosed these problems the report proposes a number of reforms that would make the Swedish constitution a constitution for the people and by the people. It proposes that a new constitution should be shorter, more normative, include fewer details and compromises. It also proposes that constitutional amendments should require a qualified majority in parliament (or consent by two chambers, if a second chamber is introduced) and, thereafter, approval in a popular referendum. Finally, it calls for a number of reforms that would strengthen constitutional control, including judicial review (without the proviso of “obvious” violation) and increased independence of the courts.

### **Self-government in a multi-level democracy**

Most countries organize political governance at several levels in order to take advantage of the benefits of both centralization and decentralization. In Sweden voters elect representatives at four different levels: local, county, national and European Parliament level respectively.

Multi-level governance often means an intertwined and non-transparent decision structure, which weakens accountability. This is particularly true in Sweden with its unusually large public sector and its combination of centralized decision-making and decentralized financing and administration. The EU level increases complexity further but is not addressed directly in the report, since this problem cannot primarily be addressed at the level of the Swedish constitution.

The economic theory of federalism (fiscal federalism) provides a framework for analyzing how functions should be assigned to different political levels in order to assure accountability and efficient (welfare enhancing) decision-making. It makes a strong case for decentralization in that decentralization

allows adaptation to divergent preferences at the local level, experimentation and institutional competition between jurisdictions and facilitates citizen involvement in the decision process. Centralization, however, is called for when there are geographic spillovers between jurisdictions, which need to be internalized for efficiency reasons by the decision-maker. It also allows income redistribution without creating incentives for people to move to jurisdictions with lower taxes or higher benefits, potentially creating a “race to the bottom”. Finally, stabilization policy is best carried out at the national level.

In general, the power to spend and the responsibility to finance should be assigned to the same level, which should also be the level where voters can hold their representatives accountable. This link is important to assure that voters are able to assess that they get the government services that they are willing to pay for.

Judged by these criteria it is clear that multi-level government in Sweden fails to reap the benefits of a federal system. Local governments are charged with the responsibility of supplying most welfare services, such as daycare, schools, health care and care of the elderly. About 80 per cent of their expenditures have been mandated by the central government, but the central government only contributes 20 per cent of the finance. The rest is financed by local governments, mainly through local income taxes. In order to guarantee equal rights to these entitlements across the country, there is also a far-reaching, and potentially highly distortive, scheme for redistributing income and compensating for cost difference between jurisdictions. As a result, there is hardly any link between the power to spend and the responsibility to finance. The voter dissatisfied with a service or the tax cost does not know whom to hold accountable. Political representatives at the local level have, to varying and uncertain degrees, been reduced to local administrators.

The report’s reform proposals address these problems. First, it proposes that income redistribution, including the financing of national welfare entitlements, should be the responsibility of the central government. This responsibility includes supervising

that national goals are met. Furthermore, as long as the central government mandates a high degree of uniformity in the provision of these services, the central government should also provide them. If, however, the central government can accept local variation, actual provision of the service can be left to alternative providers, private and public. Local governments do not necessarily have a role to play, however. The report argues that equal entitlements and access to services can better be guaranteed directly to individuals through the use of a voucher system. Such a system allows individuals to vote both with their feet and with a ballot.

Local governments would have a much clearer but reduced role in providing services. They would only provide those services which local citizens demand and are willing to finance and the central government is not seeking to regulate. The local income tax, which today is over 30 per cent of taxable income, would be reduced to 5-10 per cent. The need for equalizing central government grants will all but disappear.

Finally, to assure local self-governance and citizen involvement in local affairs, the report proposes a widened role for popular initiatives and referenda at the local level.

### **Voters and representatives**

Sweden is a parliamentary democracy, where political representatives are elected on the basis of proportional representation. It is characteristic of proportional representation (PR) systems that they allow for many interests to be represented and normally many political parties and, as a result, coalition governments. The drawback is that the latter makes for less accountability, since it is hard for voters to assign responsibility among coalition parties. Plurality voting, on the other hand, often leads to a two-party system and majority governments. Accountability is clearer, but voter preferences are represented less faithfully.

In Sweden the problem of accountability is accentuated by the fact that the country has been ruled by minority governments since 1981. The report raises the question of whether this

would motivate changing the electoral system in the direction of plurality voting. One possibility would be a Mixed Member Majoritarian (MMM) system, which combines features of PR and plurality systems. A calculation of what this would entail for Sweden reveals that the Social Democratic Party would completely dominate the Riksdag and control 65 per cent of the seats, even assuming that the parties to the right would merge to form one opposition party. The reason is that the Social Democrats are so strong across the entire country and would win in most single-member districts. Although realignments between the two blocs may occur over time and eventually lead to two parties of similar size, the risk that this would mean one-party dominance for a long time is very real.

The report concludes that changing the electoral system might create more problems than it would solve. It goes on to consider other ways of strengthening the chain of delegation from voters to representatives, in particular, whether this can be done through reforms of parliament. The Swedish parliament can be criticized for being overly occupied with details. For example, members are busy writing thousands of bills, 98 per cent of which are subsequently voted down, instead of being concerned with the larger, and systemic, policy issues, with critically examining government proposals and the effects of ongoing programs. Constitutional issues and issues relating to the transfer of competencies to the EU are also neglected.

A second chamber in parliament could, the report argues, be the solution to many of these problems. Sweden moved to a unicameral system in 1970. Modern research suggests, however, that bicameralism has many attractive properties, including the possibility of more varied representation and of more stable policies. A new second chamber, a senate, could be designed to fill a number of functions. The report proposes that, first, it should be a small chamber, with 60 members elected on their personal merits (through approval voting), for six-year terms (a third renewed every second year), which would ensure a more long-term perspective. Second, it should be given special responsibilities and co-decision rights in some areas. For exam-

ple, it should have initiative and veto power on constitutional issues, it should approve government appointments to high offices, be responsible for controlling that the subsidiarity principle is respected in EU legislation and respond to reports of the National Audit Office. It should have a suspensive veto in ordinary legislation and on the overall government budget (not on individual items).

The government would only, as today, depend on the support of the lower chamber, the current Riksdag. With a second chamber, the Riksdag could be reduced in size (from 349 to 249 members), however.

In order to strengthen the government's accountability the report also proposes that the current system is replaced by a parliamentary system which encourages majority governments. Today, the government remains in power as long as a majority of parliament is not against it. The change would mean that a majority would have to be actively for it. Another reform proposed is that Sweden introduces the system of *constructive vote of no confidence*, which means that a government can only be forced to resign if the opposition can actually form a new government.

Further suggestions include a requirement that parliament must not only select a head of government but also a leader of the opposition in parliament. That would force the fragmented opposition to behave more like a shadow cabinet and give voters a clearer choice between government and opposition.

One of the most important functions of parliament is to critically examine government proposals and policies. To do that effectively it has to have access to independent and qualified analyses. Today, parliament lacks the resources to perform this important task. The report proposes that parliament creates its own Office of Analysis and model it after the United States Congressional Budget Office (CBO). The office should have a professional staff, be non-partisan, both subservient to and (professionally) independent of parliament. Its analyses should be made public. Arguably, this would raise the quality of public debate, both inside and outside parliament.

## **The process of constitutional reform**

Constitutional reform can help solve many of the present problems in Sweden's democratic life. A normative constitution, approved in a referendum, could provide stable and broadly supported rules. A more transparent and efficient assignment of policy tasks and matching financing responsibilities between the local and national level would make governments more accountable to the citizens. Direct democratic rights in the form of popular initiatives and referenda would reduce voter alienation and distrust of the political establishment. A strengthened and more focused role for parliament might also help lessen voter dissatisfaction with the political system.

But how will such reforms come about? According to classical thinking and modern constitutional research, the constitution should be seen as a long-term contract between citizens, where they agree on just rules for collective decision making. Ideally, this contract should have very broad support. In order for that to happen, citizens need to behave as if they were "behind a veil of ignorance" as to what their own interests are. Only then would they be able to disregard group and partisan interests and agree on their long-term common interest.

In practice, decision-makers are not behind such a veil. Constitutional issues are decided by politicians, in the same forum as everyday politics. This is particularly true in Sweden, which lacks many of the special rules that might set decisions on constitutional issues apart from ordinary legislation. The last several decades of constitutional reforms give ample evidence of tactical and highly partisan maneuvering. Consistently, it bears out that "where you stand depends on where you sit". It is the reason that Sweden has a weak constitution.

There are various ways to try to remove the constitutional reform process from everyday politics. The report ends by proposing that a new constitution for Sweden should be worked out by a constitutional convention, with broad and knowledgeable representation of varied interests, allowing an open debate with citizen involvement. The final proposal should be approved by the citizens in a referendum.

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