



Constitutional reform

After many years a democratic system of government finally became a reality in Sweden.

In the wake of the first world war both the executive and the legislative branch were reformed.

A parliamentary system of government became permanent in 1917.

And in 1922 the introduction of universal and equal suffrage meant that the first women entered parliament.

But these profound changes in the political system were hardly visible in the constitution.

Only minor changes were made in the written text.

The Riksdag Act, which was a fundamental law and so part of the constitution, was amended as little as necessary – so the right to vote was now granted to every man and woman.

But the transformation from royal power to a parliamentary system of government left no mark in the constitution.

The Instrument of Government from 1809 was retained.

Article 4 still read: "The King alone shall govern the Realm" while the King in actual practice was reduced to a symbolic figurehead without any political power.

The 50 year period which followed after the democratic breakthrough was marked by a rapid modernization of the Swedish society.

The Social Democrats were in power for most of that time. This particular combination of democratic governance and a universal welfare state became known as "the Swedish model".

But this development took place outside the constitution. In fact, this period has been called “the constitution-less half-century”. The old constitution became increasingly obsolete and did not play any significant role. New important principles developed outside the constitution, but they never had any formal recognition. It was noted at the time: In the public debate it has almost become ridiculous to refer to the letter and spirit of the constitution. So there was a widening gap between the written text of the constitution and the “unwritten constitution”, the set of informal rules that in actual practice regulated important parts of the political system, such as forming a government.

In the years following the crisis of European democracy and the trauma of the second world war Sweden slowly started to realize that it lacked a properly functioning constitution. As is common when Sweden faces a problem the cabinet set up a parliamentary commission, including politicians and experts. The commission started its work in 1954 and the directives called for a comprehensive review of the problems of democratic governance and, based on this review, a proposal for modernizing the constitution.

The constitutional commission faced two alternatives. One was to modernize the text within the framework of the old 1809 Instrument of Government. This was what Norway had done, and still does. Norway has kept its venerable constitution from 1814 and has amended and revised the text to keep it up to date. The other alternative was to scrap the the old constitution and begin from scratch.

The Swedish commission chose the second and more radical alternative. After a closed meeting in October 1958, in a hotel in the small city of Falkenberg, the commission announced that Sweden was to have a new constitution. The news passed almost unnoticed. No one seemed to care. Only several years later, when the commission had finished its work and presented the draft for a new constitution, the debate became more lively.

After some delay the Constitutional commission finally presented its draft for a new text. First, the old title was kept: The Instrument of Government (in Swedish: regeringsformen). Then, the old system with several fundamental laws was also retained. So The Freedom of the Press Act and The Act of Succession remained as they were. Finally, the purpose was never to change the working of the political system.

On the contrary, the explicit purpose was only to codify accepted practice.

But writing down unwritten rules turned out to be much harder than anticipated. The commission was not able to present one comprehensive draft. Instead it laid out alternative solutions.

The controversial parts were quite central to the constitution, and there were several of them.

Would the parliament continue to have an upper house and a lower house or should it be replaced by a unicameral system?

How would the proportional election system be designed to ensure that parliament became representative but not too fragmented?

What to do with the monarchy?

What rights and freedoms should be included in a bill of rights?

In the end, this constitutional commission was a failure. The draft was never enacted, not even presented as a bill in parliament.

So, the constitutional debate continued.

A few years later, the political parties agreed to proceed in two steps.

First a partial reform would create a new election system and codify the parliamentary system of government within the framework of the old 1809 Instrument of Government.

Then one would proceed to redesign the rest of the constitution.

The first step was the introduction of a unicameral parliament and the formal recognition of the parliamentary system of government.

The first election to the new Riksdag took place in 1970.

The new parliament had 350 members, but this even number was soon to be lowered to 349.

The proportional election system had a 4 percent threshold in order to exclude minor parties.

The election period was reduced to 3 years but was later changed back to 4 years.

The old upper house was indirectly elected by regions and cities. In order to keep a connection between the different levels of representation a system with simultaneous elections was introduced. From 1970 Sweden elects the parliament, regional assemblies and local assemblies on the same occasion.

So for a few years in the early 1970s Sweden was governed under a partially revised version of the 1809 constitution.

The old article which stated that the King alone rules the realm was simply deleted and a new article recognized the possibility for the Riksdag to remove the cabinet, or individual ministers, by a vote of no-confidence.

These new articles became permanent and were included in the new constitution to come.

A proposal for a new constitution was presented in 1972. It was enacted in 1974 and came into force the following year.

The 1974 Instrument of Government didn't differ much from most modern constitutions in democratic societies today.

It starts by formulating the foundations of the political system.

The first sentence stresses popular sovereignty as the overarching principle: "All public power in Sweden emanates from the people".

The new constitution contained separate chapters on fundamental rights and freedoms, the parliament, the head of state, the cabinet, legislation, financial power, international

relations, administration of justice and general administration, parliamentary control, and, finally, a chapter on war and danger of war.

So Sweden had a new fundamental law but not a new political system.

On the contrary, the idea was only to codify the unwritten constitution.

Some constitutions are normative, in the sense that they want to create or change a system of government.

But Sweden aimed for a descriptive constitution.

The aim was to write down how the system worked in order to ensure that it continued to work that way.

One should be able to read the constitution as a textbook about Swedish politics.

The legitimacy of the system was based on the sovereignty of the people.

Proportional representation was the established principle, rather than the majoritarian/winner-take-all form of democracy.

Concentration of power, not the separation of power, was another distinguishing trait.

These aspects of the political system became the founding principles of the new constitution.

The deliberation process within the framework of the parliamentary commissions had ensured that a broad political majority stood behind the new fundamental law.

Politicians were united in their support for a descriptive view of the constitution.

They had enacted it and they wanted to keep control of it.

They also acknowledged that the constitution would need to be amended frequently, adjusting it to new demands.

As one member of parliaments phrased it: the constitution should be kept fresh.

In this way, one would reduce the need for judicial interpretation.

If questions arose about how to interpret the different articles of the constitution, the question would be referred back to parliament, possibly leading to a new amendment.

Again, it soon became clear that writing down unwritten rules is a difficult exercise.

Everyone agreed that there should be a bill of rights but opinions differed on exactly which rights and freedoms should be included and how they should be protected.

The new constitution was soon amended, not just once but in a series of decisions that expanded and modified the bill of rights.

Each decision was preceded by the whole process of a constitutional commission, hearings, legal scrutiny, government bill and parliamentary debate.

Moreover, constitutional amendments were also triggered by the incorporation of the European Convention on Human Rights and Sweden becoming a member of the European Union in 1995.

So rights and freedoms were amended but also other parts of the constitution went through both major or minor modifications.

Some amendments were motivated by external events, such as the EU accession. But many changes had to do with the internal deficiencies of the new constitution.

The unicameral system combined with proportional representation and short, 3-year election cycles led to a more unstable system. As a consequence, the election period was changed back to four years.

The whole chapter on war and danger of war was ill thought-through and had to be rewritten.

Amendments to the Swedish constitution are made by parliament by two identical votes with a general election in between.

The new constitution was changed at every election during its first quarter century.

The constitution-less period of modern Sweden had suddenly been replaced by a period of constitutional frenzy.

Finally it was time for a general renovation of the 1974 constitution.

A new constitutional commission was set up, made up of politicians and experts. Their proposal was enacted in 2010.

Although the major principles were left untouched a great number of minor changes resulted in a almost completely rewritten text.

Some substantial amendments were also introduced.

The bill of rights was expanded further.

The independence of the courts of law was strengthened.

Courts of law and public administration, which had been treated in one chapter, were divided into separate ones.

A new chapter on local self-government was added.

Three lessons can be drawn from Sweden's experience of constitutional reform.

First, codifying is not an easy thing. Writing down unwritten rules soon lead to questions, problems of interpretation and divergencies of opinion.

Second, codifying reality may change reality. For example, under the old constitution the king was formally responsible for the formation of a new government, except in reality it was the duly elected parliament that decided. With the new constitution the king would not even be involved as a formal symbol of the head of state. Instead, the speaker of the house would lead the process of forming a government. The voting procedures introduced to confirm a new prime minister has lead to complications that has changed the actual working of the parliamentary system.

And third, good intentions may have unintended consequences. The politicians back in the early 1970s wanted to strengthen democracy by giving Sweden a modern constitution based on the will of the people. But soon the constitution began to take on a life of its own. The change from an unwritten to a written constitution amplified the juridification of the political systems. Legal arguments became more important as soon as they could be based on interpretations of a written constitutional text.

The question whether political systems works better or worse with a written constitution must be left open. But what is clear is that going from an unwritten to a written constitution has changed the political system of Sweden.

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