2 The rise and fall of the quasi-bicameral system of Norway (1814–2007)

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Norway in a Scandinavian context

The constitution of Norway remains primarily a national phenomenon, despite having borrowed important features from (international) political philosophy and foreign constitutions. National experiences must be understood in their social and historical context. In a number of important respects, Norway's context is Scandinavia, where geographical and linguistic proximity and the presence of comparatively strong welfare states contribute to enhancing the impression of Denmark, Norway and Sweden as a relatively homogeneous group of countries. Constitutionally, their common label as constitutional monarchies contributes to underpinning the impression of wide-reaching homogeneity. Even the presence of purely unicameral parliaments may appear to further confirm the impression of a strong cross-border community.

On the other hand, a closer look at the relevant constitutional systems uncovers a number of reasons for warning against the temptation to ratify the impression of Scandinavian homogeneity. Learning about the systems of government that emerged in the two historical centres (Copenhagen and Stockholm) would provide a good starting point for those who strive to understand a number of differences between the three national systems in the field of constitutional law (Krunke & Thorarensen 2018). As a matter of fact, the position of Denmark and Sweden as two dominant and opposing powers since the late medieval period paved the way for important differences between the three western states that appeared later (Denmark and Norway, followed by Iceland) and the two eastern ones (Sweden, followed by Finland).

With the exception of the replacement of the absolute monarchy by a constitutional one introduced by the constitution of 1814, Norway never aimed at completely abolishing key institutional patterns inherited from the absolute Danish-Norwegian monarchy (1661–1814) once its full statehood was re-established. In the eastern part of the realm, the new state of Finland adopted a similar position regarding its Swedish heritage. Here, that position was even strengthened by the new state's resistance to Russian influence within the framework of the newly created Grand Duchy (1809–1917), with the tsar acting as grand duke. This way, Scandinavia ended up with two overarching

systems of public law, albeit with internal differences between the states that have grown considerably over time.

The absence of any common Scandinavian heritage is patent even when it comes to these countries' former bicameral (or similar) parliaments. In Denmark-Norway, the presence of an absolute monarchy left no room for a representative assembly. In Norway, that situation changed after 1814, but in Denmark it remained until the king finally curtailed his own absolute powers by 'giving' the country its first modern constitution in 1849. A bicameral parliament formed a key part of the new institutional apparatus in Denmark but changed its character over time. During a short period, the members of both chambers were elected according to relatively inclusive norms with regard to the right to vote. According to the second constitution (1866), adopted in the aftermath of Denmark's military defeat against Prussia (1864), the major part of the members of the upper chamber (*Landsting*) was chosen by an electorate dominated by high-income groups, including the still powerful landowners, and twelve out of sixty-six members were appointed by the king (Christensen et al. 2016). Had the electoral turnout in the subsequent mandatory referendum been sufficient to satisfy the constitutional requirements of the time, the conservative upper chamber would have been abolished by the new constitution adopted by Parliament in 1939. By contrast, the constitutional text on which Parliament voted (1953) in the aftermath of the Second World War passed the test of the mandatory referendum because of both positive support and sufficient turnout. Its main contribution to the institutional landscape was the establishment of the lower chamber (*Folketing*, meaning people's assembly) as Denmark's single-chamber Parliament (cf. Christiansen, this volume; Skjæveland, this volume).

On the eastern shores of Øresund, royal power was less absolute. Sweden entered the nineteenth century with the inherited system of estates composed of not just three but four chambers (nobility, clergy, bourgeoisie and peasantry). The 1809 Instrument of Government kept this pattern until constitutional amendments (1866) replaced it with a bicameral system whose upper chamber was elected by and among the members of the county and city councils for eight-year terms. From 1905, each of the two chambers was housed in two almost identical semicircular halls within the new Parliament, where the interaction between the members of the two chambers was further facilitated by architectural features such as a monumental corridor linking the two halls. Together with the existence of joint committees and, even more importantly, the emergence of a modern system of political parties, such features inevitably paved the way for the ultimate abolishment of the bicameral system. The current unicameral Parliament (*Riksdag*) has been in place since 1971 (cf. Nergelius, this volume; Nilsson, this volume).

Chronology alone is sufficient to demonstrate that no Danish model was at hand when it came to the design of the new Parliament of Norway, nor did the 1814 Constituent Assembly consider the age-old Swedish 'model' of four estates. How, then, did modern Norway's bicameral system come about?

How did the Norwegian bicameral system come about?

In the aftermath of the battle of Leipzig, the king of Denmark-Norway, an ally of Napoleon, was forced to hand over the kingdom of Norway to the king of Sweden by virtue of the Treaty of Kiel, concluded on 14 January 1814. From the Swedish side, the main architect of the arrangement was not the old and childless king himself but Jean Baptiste Bernadotte, Napoleonic *maréchal* of France and elected crown prince of Sweden under the name Karl Johan (Charles Jean). The motivation for his wish to take over Norway was at least partly to compensate Sweden's loss of its eastern provinces (now known as Finland) to the tsar of Russia (1809), without having to start new wars against the Russian Empire.

As a consequence of the king's relinquishing his Norwegian realm, a group of prominent Norwegians considered themselves freed from their allegiance to the institution that they had considered as their legitimate head of state. Opposing the treatment of Norway as royal property to be handed over to the country's hereditary enemy, they argued on the basis of the increasingly strong ideas about popular sovereignty and convinced the residing governor, Prince Christian Frederik of Denmark-Norway, to call a Constituent Assembly. Consisting of indirectly elected members from all over the country, the assembly (*Riksforsamling*) gathered in April 1814 at Eidsvoll, north of Oslo, and unanimously adopted the Norwegian constitution six weeks later (17 May). Norway's declaration of independence was enshrined in the very first article, separate chapters inspired by the new philosophy of enlightenment dealt with the *trias politica*, and a number of citizen and human rights were included in the *corpus*, not just in a preamble or as additional text, like in the French and US constitutions.

By virtue of the norms enshrined in the constitution, the assembly elected the residing prince as the first constitutional king of Norway. Among other functions, he was the commander of the Norwegian armies during the short war following the Swedish attack led by Bernadotte in July–August. According to an armistice concluded in August 1814, King Christian Frederik convoked the country's new Parliament for an extraordinary session, handed over his powers and abdicated in October of the same year. He returned to Denmark, where he later became the last king to remain an absolute monarch for his entire reign. In fact, King Christian VIII died the year before his successor accepted the first modern constitution in 1849. Rather ironically, the young prince who called the Constituent Assembly of Norway, inspired by new ideas about popular sovereignty and was elected as king of Norway accordingly, refused to take a similar step before he died as king of his own homeland, Denmark. The armistice also required that the Norwegian constitution be amended in order to establish a kind of personal union between Sweden and Norway. By virtue of the amended text, the Parliament elected the king of Sweden as the king of Norway in November. The monarchy remained constitutional within the relatively unchanged institutional framework that had been established by the original constitution of 1814.

A key element of the constitution was the clause in Article 49: 'The People exercises the legislative power at the National Assembly, consisting of two sections,

viz. the Lag-Thing and the Odels-Thing'. In Norwegian, the text adopted by the Constituent Assembly explicitly spelled out the name of the plenary chamber (*Storting* or great assembly). As the common denominator of these three names is a word inspired by the name given to Norse medieval regional and local assemblies (*thing*), it should be regarded, of course, as an element of the post-1814 Norwegian nation-building efforts based upon real or invented historical traditions. At present, we may leave aside that the provision about the legislative power in the hands of 'the people' was – and formally remains – inappropriate. That power does not belong to 'the people' alone but is shared between Parliament and the king in council. In fact, royal approbation is still required for a legislative text to become law (Article 78). Until 2007, the constitution vested the legislative power in one assembly split in two. The system has later been qualified as modified unicameral (cf. Hoff 1951).

The Constituent Assembly had little time at its disposal to establish a new *fait accompli* before the probable arrival of the Swedish army. This contributes to explaining why no complete minutes exist for the deliberations. Nevertheless, a number of key elements are known, including several private draft constitutions submitted to the assembly. The bicameral system proposed by the most influential of these draft constitutions, written by lecturer Johan Gunder Adler and Judge Christian Magnus Falsen (Adler & Falsen 1814), was clearly inspired by 'The constitution for the United States of America'. The importance of this draft was enhanced by the fact that Falsen himself acted as chairman of the Constituent Assembly's committee charged with drafting the new constitution, and he sometimes served as president of the assembly itself. Those who supported the idea of a bicameral system as part of the new state apparatus needed to address, however, the fact that Norway nurtured no federal or regional elements even slightly similar to those underpinning the bicameral element of the US Congress. Since Norwegian nobility was already very limited and would, in any case, soon be abolished by the very same constitution, the idea of establishing something akin to the British House of Lords did not surface during the deliberations regarding the Constituent Assembly.

With few other credible external criteria at hand for the composition of an upper house for Norway, the Adler-Falsen draft constitution subsequently proposed a single assembly composed of representatives designated by common elections organised biennially. Once gathered, the assembly would elect one-fourth of its own members to sit in an upper chamber (*Lagting*), with the remaining MPs staffing the lower chamber (*Odelsting*). Seeing that members of the *Lagting* had six-year mandates, while two years was the general norm, they would not stand for election at the end of each ordinary electoral term. Despite its ingenuity, the Adler-Falsen proposal was not broadly supported at Eidsvoll, where many preferred a purely unicameral solution, which could potentially better ensure that the will of the majority was not hampered or delayed by a small group of more or less self-confident senators. Supported by a majority of fifty-four to fifty-two, the final outcome became a modified version of the Adler-Falsen model. According to the adopted rules, all members of the Parliament would be elected by virtue of

identical electoral rules, eligibility and geographical distribution. Once elected, however, the assembly would select one-fourth of its own members to sit in the upper chamber (*Lagting*). The three-year electoral mandate, however, applied to all. After a constitutional amendment adopted in 1938, the mandate was extended to four years.

It has been suggested that the solution was inspired by the 1801 constitution of the Batavian Republic (Stevens, Porier & Berg 2008), which was one of the texts considered by the leading figures during the preparation of the constitution for Norway. In addition to the US constitution, the list of foreign examples included the French 1791 constitution, the Batavian and Cadix constitutions, the Swedish 1809 form of government and some of the North American state constitutions. According to Articles 49–52 of this short-lived republican text, a unicameral Parliament would select a minority of its own members to sit in a separate chamber. Institutionally, this feature may seem close both to the Adler-Falsen draft and to the final solution. When it came to the functions of the two ‘modified unicameral’ parliaments, however, the connection between the Batavian and Norwegian solutions is considerably more distant. As a matter of fact, it seems as if the twelve members of the upper chamber of the Batavian Republic were selected in order to discuss legislative bills, while the plenary assembly was left with the task of approving or rejecting the texts subsequently submitted by the upper chamber (Article 50) (cf. Oddens, this volume). In fact, this solution appears to be much closer to a modern system of parliamentary commissions charged with the preparation of parliament’s final deliberations than to a system in which two sub-chambers are bestowed with more or less equal powers in legislative affairs.

In comparison with the Norwegian system, the twelve Batavian ‘senators’ were tasked with duties that resembled those of the lower chamber (*Odelsting*) much more closely than those of the upper chamber (*Lagting*). In legislative affairs, the *Lagting* intervened after the lower chamber and was constrained to discussing and voting on bills that had already been adopted by the lower chamber. With regard to the latter, it had the choice between accepting them in their entirety or rejecting them, after which the final say was given to the plenary formation.

The sub-chambers as parts of Parliament

When it was originally adopted, the system was probably thought of as one in which most of the affairs that the constitution has vested in Parliament should be carried out by the sub-chambers, not in plenary sittings. However, the only subject matter for which the constitution clearly provided for deliberation by the sub-chambers was ordinary statutes. For a bill to become law, it had to be approved first by the lower chamber and subsequently by the upper chamber, before finally being submitted for royal assent. In cases of disagreement between the two chambers, a second *navette* was to be carried out. If the two chambers still disagreed, the *Storting* would have the final say but could only adopt a bill with the support of a two-thirds majority.

During the first decades of the new constitution, coinciding with the reign of *maréchal* Bernadotte as king of Norway (1818–1844), the royal veto power was used rather frequently. For a Parliament that grew increasingly opposed to the king, it thus became important to seek out new ways to avoid the need of obtaining royal assent. It gradually appeared that the best way would be to get around the sub-chambers, to which the requirement of royal assent incontestably applied. The statutes (*lov*) for which this procedure was required were poorly specified in the constitution, which was one of the reasons that it was possible to exclude politically important matters, such as taxation and budgets, from the field of *formal* statutory law, where both the consent of each sub-chamber and royal assent were needed. Instead, such issues were eventually deliberated in plenary sittings, thus avoiding the risk of a royal veto.

As part of the overall institutional picture, this development added to the fact that the power of constitutional amendment always belonged to the plenary assembly. Politically, if not in strictly legal terms, even the fact that the commissions charged with the preparation of the affairs to be deliberated in the successive assemblies were essentially common to the entire Parliament paved the way for enhanced coherence across the sub-chamber divide. Throughout the nineteenth century, the *Storting* thus gradually became the key political element within the national assembly. As soon as ministerial responsibility emerged in parliamentary practice, even questions of non-confidence were systematically voted on in plenary sittings.

Only in one field did the constitution keep the functions of the two sub-chambers entirely separate – criminal proceedings against ministers, members of Parliament and of the supreme court for their conduct *ex officio* had to be adjudicated by a special court (*Riksretten*, the national court). In such cases, it was up to the lower chamber alone to decide whether to initiate proceedings. Once proceedings had been initiated, the members of the upper chamber sat on the bench together with members of the supreme court in a three-to-two ratio. Moreover, the president of the Lagting, not the supreme court, acted as president of the national court. The national court was thus a strongly politicised institution. It was no surprise, then, that the majority in the parliament, in several of the eight cases adjudicated so far, made deliberate use of the possibilities that the system offered for ensuring that the verdict followed the preference of the majority. We will later discuss the most prominent of these cases – one that had a direct and rather dramatic bearing on the constitutional position of the Norwegian monarchy.

A solution shaped by the crisis?

The internal organisation of a parliament is a key part of any effort at drawing up a constitution. Two centuries ago, the question of bicameralism became part of those considerations. The answer given by the Constituent Assembly of Norway was nevertheless close to being negative, and the solution that was ultimately reached represents nothing more than the most careful version of a bicameral system. As such, the outcome looks more like a somewhat modified unicameral

system than a genuine two-chamber parliament. Why did the assembly nevertheless bother to adopt elements of bicameralism at all?

One option could be to see it as a product of Norway's existential crisis, which gave rise to the Constituent Assembly itself, a crisis that continued to develop during the deliberations of the assembly. In fact, a military attack with the aim of ensuring respect for the Treaty of Kiel was expected once the Swedish army had had the time to return from the European continent after the end of the campaign against Napoleon's armies. In retrospect, we know that the attack actually came in late July.

The deputies were perfectly aware of the overall political situation. As a consequence, their main preoccupation during the deliberations at Eidsvoll was deciding whether to simply declare Norway's independence or to explore the best possible union with Sweden, an outcome that influential groups among the deputies regarded to be unavoidable anyway. By contrast, the assembly's primary aim in drawing up a new constitution for Norway was not fundamentally questioned. In any case, a great number of the items regarding the shape of that instrument had little or nothing to do with the ongoing political crisis. In particular, nothing indicates that the crisis itself influenced the various positions in favour of or against a kind of bicameral parliament. There are no indicators that the narrow outcome in favour of the weak form of bicameralism that actually found its way into the institutional apparatus of the new state had any visible bearing on the choice between full and limited independence.

An upper chamber in defence of the monarchy?

Another possible explanation might be that the bicameral solution was chosen as a kind of protection of the monarchical government that would soon be adopted. However, formally retaining the monarchy in the constitution was not seriously questioned at Eidsvoll or in society, which suggests in itself that the very idea of having recourse to a form of bicameralism in defence of the monarchy did not occur during the deliberations.

The resident prince, who issued the call for the election to the Constituent Assembly and later accepted his election as Norway's first constitutional monarch, lived amid this turmoil. Residing in a part of the manor house where the assembly met, he regularly invited its members to his table without distinguishing between nobles, merchants, military men or peasants. Although he did not directly take part in the assembly's deliberations, he took great interest in the ongoing constitution-making process. Nothing seems to substantiate, however, that he took any particular interest in the bicameral question that was discussed literally next door.

Taking a different approach, it may also be worthwhile recalling that the imminent possibility of some kind of union with Sweden imposed on Norway *manu militari* was present in the minds of the members of the Constituent Assembly. This raises the question of why the majority would want to include enhanced institutional defence for a monarchy it did not want in the constitution of a reborn

Norway. In November 1814, the very first Storting actually adopted the revisions to the May constitution needed in order to provide for the personal union with Sweden, as foreseen by the August armistice. The fact that the modified unicameral system established by the Constituent Assembly was not touched adds further support in favour of the suggestion that the bicameral solution, though a moderate one, was reached in relative isolation from the question of the monarchical government.

In any case, the modified unicameral system, in which all members of the Storting were elected simultaneously and according the same rules, did not leave any space for the Lagting as an actor with a radically different political agenda from that of the Odelsting. The ultimate test of this proposal came as political divisions between the traditional political elites (supported by the monarchy) and the growing liberal opposition crystallised towards the end of the nineteenth century. An important battleground was provided by the opposition's increasingly urgent quest for constitutional change in order to give ministers access to Parliament with the right to speak but not to vote. This would actually represent a first step towards the emergence of a system with governmental responsibility towards the Storting, as such a system cannot exist if it is not possible for ministers to discuss political options, defend bills and respond to criticism during parliamentary sittings. The executive understood well that giving ministers access to Parliament would provide it with strong supplementary instruments of control towards the executive.

When the Storting amended the constitution in 1880, the king, supported by his council (the government), declined to give his assent. This was the third time that this amendment had been vetoed, despite the fact that the Parliament had already adopted an identical version of the amendment twice with general elections interposed. The text of the constitution was silent, however, on the executive's role in the process of constitutional amendment. This gave rise to the opportunity to crystallise the conflict with regard to ministerial access to the Storting into a debate about the correct interpretation of the constitution: did the king have the right to veto constitutional amendments in the first place? If so, would a veto be absolute? Or would it simply be suspensory? The latter position could be supported by analogy to the explicit rules concerning vetoing power with regard to ordinary legislation, which gave the king the power to veto bills adopted by the Parliament in identical terms twice, with general elections in between. If the same text was approved after voting for the third time after the next general elections, however, it would become law even without royal assent.

The executive, supported by the conservative groups in the Storting (and by the Faculty of Law), regarded the constitution as a kind of pact between the king and the people and argued that, as such, it could not be amended without the consent of both the legislative and the executive powers. Unsurprisingly, the liberal opposition favoured the suspensory veto option. At that time, the most radical option (no veto power at all) gained no substantive support. Until the amendment met its third veto in 1880, the constitutional question regarding the extent of the veto power had never become that urgent. Now, it could no longer be avoided: if the

Storting accepted the king's third refusal of the same text, it would entail more than just the failure of what was regarded to be a politically important reform. Even more fundamentally, parliament's surrender would imply accepting the conservative view of the existence of an absolute veto power against constitutional amendments adopted by the Storting according to otherwise uncontested procedural standards.

The situation sparked intense political debate. The liberal party-to-be (*Venstre*, the Left) was as in favour of the constitutional amendment as it was opposed to the doctrine of absolute veto in the hands of the executive. In the 1882 general elections, it obtained an overwhelming majority in the Storting (83 out of 114). This numerical strength was used to pack the upper chamber with the party's own followers, while still ensuring a number of seats in the Odelsting that would be sufficient for making sure that the Odelsting would adopt a subsequent proposal to prosecute the members of the sitting government for not having formally protested against the royal veto, according to Article 30, paragraph 3 of the 1814 constitution. As two-thirds of the members of the national court would *ex officio* be chosen among the members of the upper chamber that all belonged to the liberal opposition, it came as no surprise that the verdict given in 1884 led to the ministers losing their seats. Nor was it a surprise that the majority on the bench outnumbered the supreme court judges that made up the remaining one-third of the votes within the national court.

In the absence of today's parliamentary tools, the national court was actually used as a kind of impeachment mechanism. More fundamentally, however, it functioned as a kind of constitutional court in the sense that the verdict could not have been reached if the court had not interpreted the constitution as establishing a suspensory veto power rather than absolute power. From then on, this became the only possible interpretation *de facto*, if not *de jure*. Notwithstanding rumours about an imminent military coup, the king finally accepted his defeat and appointed the leader of the liberal opposition as the new prime minister. Later in the same year, the Storting adapted the controversial amendment of the constitution in order to avoid any further discussion about its legal validity. As the amendment was now regarded as valid *eo ipso*, no quest for royal assent was issued.

For reasons already suggested, the amendment represented an important first step towards the subsequent emergence of parliamentary government in Norway through lasting political practice. The path was not linear, and the principle itself did not gain global acceptance by both sides of the political spectrum before the personal union with Sweden was finally broken up and a separate Norwegian dynasty was installed, which we will return to later. In fact, the legal obligation for the government and individual ministers to offer their resignation in case of parliamentary non-confidence was included in the constitution only in 2007 (Article 15).

Regarding the history of bicameralism in Norway, however, the main point is that the 1883–1884 crisis provides a dramatic testimony to the absence of any credible function of the upper chamber as one in defence of the monarchy (or the monarch). On the contrary: the modified unicameral system, in combination

with the special court for judging ministers and other top officials, proved a most efficient tool for combatting the monarch's opinions in cases where they stood in the way of solutions preferred by a majority in parliament.

A conservative chamber?

Rather than reflecting particular concerns for Norway in the spring of 1814, it seems as if the Constituent Assembly handled the particular question of the overall organisation of the parliament-to-come in relative isolation from the immediate political context. The influence that current political philosophy and knowledge of foreign constitutions exerted on leading members of the assembly seems much more important. One underlying line of reflection may thus have been that even independent Norway should embrace an element so common in pre-Eidsvoll foreign constitutions as a bicameral parliament. Which arguments may have determined the Constituent Assembly's choice for a modified unicameral parliament?

From a comparative perspective, the idea of a conservative upper house provides one possible answer. If we trust the authors of the most influential private draft constitutions, however, it clearly appears that they insisted on separation of powers between Parliament and the executive as the prime safeguard against acts likely to threaten the constitutional equilibrium between the two branches of government (Adler & Falsen 1814). They do not mention the modified unicameral system that they proposed as an instrument in relation to this key aspect of the constitutional system. It is worth mentioning that even if the Adler-Falsen proposal of a six-year mandate for the members of the upper chamber had been adopted, it would have led to two considerably different chambers when compared to the model finally adopted by the Constituent Assembly.

In any case, it is hard to see why one would want to provide those selected to sit in the upper chamber with tools for radical resistance against the opinions prevailing in the larger of the two sub-chambers and even in the future Storting. The 1883–1884 Riksrett case already provides an illuminating, albeit probably unintended, example of the consequences of the opposite choice, even with regard to the position of the monarch.

A chambre de réflexion?

In the light of comparative experience of that time, the notion of the future upper chamber as a *chambre de réflexion* appears to be a more convincing answer to the question of what convinced a narrow majority at Eidsvoll to adopt any kind of bicameralism at all.

It is true that the constitution itself did not establish criteria for parliament's selection of MPs to sit in the upper chamber. Instead, the selection of all the members of the great assembly took place according to the same rules on eligibility and the right to vote, the duration of the mandate, etc., regardless of which of the sub-chambers the future representatives would sit in. In principle at least, the electorate could neither know nor influence the likely status of a given MP within

parliament once elected. Nevertheless, it seems that, on average, the number of representatives with legal training was considerably higher in the Lagting than in the Odelsting (Nordby 2004). In 1814 and 1824, as much as 65 per cent of its members had been through this kind of higher education, while only 15 per cent of the members of the lower chamber had a similar background. This pattern fits well with the notion of the upper chamber as a chamber of reflection, intended to take upon itself the task of reviewing decisions made by a lower house packed with the bulk of MPs who had little or no higher education – most farmers included.

After 1850, however, the percentage of ‘educated’ members became roughly equal in both chambers, and eventually it declined in the great assembly as a whole towards the end of the century. With the establishment of political parties in the modern age, from the 1880s onwards, the overall *de facto* norm gradually became to distribute the MPs between the two chambers according to the parties’ proportional strength in the elections, as reflected by their presence in the plenary chamber. In combination with the increasing prevalence of party discipline, this development curtailed any possibility of substantive political influence for the upper chamber. Instead, the members of the upper chamber would normally act according to the party divides, as already reflected in the discussions and votes in the lower chamber, rather than as agents of independent reflection or wisdom.

This development contributes to explaining why, during the last years of the bicameral system, presumably influential MPs were sometimes assigned to the Lagting rather than to the politically more important Odelsting. The purpose was not to enhance the prestige or political importance of the upper house, but such instances rather reflected the fact that those seats were the less burdensome. This was due to the fact that a member of the Lagting could never be tasked with the preparation of the final report of the relevant standing committee on matters to be presented first in the Odelsting. Instead, the relevant MPs would be free to devote more time to party matters, etc.

The final decay

The Bernadotte dynasty relinquished the throne of Norway after a unilateral Norwegian move in 1905, which was later ratified by a bilateral treaty. The constitution was rewritten in order to eliminate the traces of the personal union with Sweden, which had been the main outcome of the events of August–November, 1814. The institutional changes thus essentially involved getting rid of a monarch with two crowns and replacing him with one whose only realm was Norway. No other reshuffling of the constitution took place. Instead, the Norwegian state apparatus, which was in many ways actually very different from the constitutional apparatus in Sweden, continued to function more or less as it had during the last decades of the nineteenth century. Politically, however, it profited greatly from getting rid of the more or less constant struggle with regard to the future of the Norwegian-Swedish union of the previous decades.

By virtue of the constitutional norms to that effect, the new king of Norway was to be elected by the Storting. The election did not take place, however, until after a consultative referendum – held upon its own demand – had ensured almost

80 per cent support for the proposed pretender. After the new king of the present dynasty – the second son of the Danish king Frederik VIII – had presented his oath to Parliament in November 1905 under the historically relevant name Haakon VII, any foundation for a continued struggle between the monarch and Parliament disappeared. Simultaneously, the idea of a possible role for the Lagting in defence of the monarchy as such or in any other kind of discussion about the form of government lost its *raison d'être*.

In order to understand the functions of the modified unicameral system during the last century of its existence, however, the general acceptance of ministerial responsibility towards Parliament that soon followed is even more important. This development is intimately linked, of course, to the solidification of the political parties throughout the twentieth century. That process even led to the firm, though informal, confirmation of a system of proportionality between the parties with regard to the distribution of MPs between the sub-chambers (as in the standing commissions). In both chambers, party discipline ended up prevailing to such an extent that the upper chamber lost all relevance as an influential or at least meaningful part of the political decision-making apparatus.

In the last decades of its existence, the upper chamber met only because its concurring vote was formally needed for making bills pass before the executive made them law. In general, the meetings lasted only a few minutes. Once the quorum was satisfied, the president's sole task became to state that nobody had asked for the floor, that no vote was needed because nobody had the intention to vote against the texts already adopted by the Odelsting and that the meeting had come to an end (Smith 2007). With very few exceptions, this became practice even in cases where the preceding vote in the Odelsting revealed sharp political disagreement.

By constitutional necessity, the system nevertheless continued to function until an external event provided the pretext for finally allowing the formal *coup de grace*. This happened as part of a move towards a reform of the national court in order to make it more independent from parliament. Some even regarded a similar reform as a contribution to reinvigorating the national court as an instrument of some practical use: even if the possibility of criminal conduct could not be completely excluded, the different mechanisms for ministerial responsibility provided by the century-old parliamentary system of government made it appear obsolete.

As already noted, the constitution assigned different roles to the sub-chambers with regard to the system for penal responsibility. The authors of the reform proposed having Parliament retain the power to initiate proceedings against ministers, MPs and members of the supreme court by transferring the role initially assigned to the lower chamber to the plenary. At the same time, excluding MPs from the bench was supposed to make the Riksrett more court-like. The political relevance of the division of Parliament into sub-chambers for legislative matters had long faded away. If its role regarding the national court was eliminated by constitutional amendment, no convincing *raison d'être* for maintaining the system would subsist.

The bill on this constitutional amendment was finally submitted to Parliament in 2007, and it was framed in accordance with the previously mentioned considerations. In the new system, people selected by the great assembly in the aftermath

of each general election among non-acting members of Parliament take care of the 'political' element within the national court. So far, Parliament has chosen former MPs according to the political distribution of seats after the last elections. Moreover, members are given six-year terms rather than being selected for particular cases. On the bench, the members of the supreme court are still outnumbered by those elected by parliament but have seen their relative share increased to five out of the court's eleven members.

The package of constitutional amendments adopted in 2007 included the formal elimination of the modified unicameral system and the corresponding reform of the system of penal responsibility for ministers, MPs and members of the supreme court. By virtue of an explicit provision to that effect, the sub-chambers nevertheless continued to function until the end of the relevant electoral term (2009). Norway has since been among the Scandinavian countries with pure unicameral systems (Smith 2008).

At a few crossroads, the initial version of the national court showed its importance, and it has survived in a revised form. By contrast, Norway's modified unicameral system lacked any clear or compelling purpose and rarely played a political role of any importance. After the reform, the only formal relic of that system is that the great assembly, no longer its sub-chambers, must adopt statutes twice and in identical terms at an interval of a minimum of three days before submitting the text for executive assent. So far, however, even the occasion for further reflection that this delay might provide has lacked any political significance.

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