

The Veil of History:
On the Significance of the
Constitution of Norway
200 Years later

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«... full of provisions that no longer have any real substance»

- «On the other hand, it may be argued that Article 106 does no harm, and that the Constitution is full of provisions that no longer have any real substance anyhow, without nevertheless having been removed»

(NOU 2996:12 Staten og kirken [The State and the Church] p. 156)

«The ‘Grunnloven’ is a National symbol and an important source for understanding ‘Norges statsforfatning’ [= the Constitution?]. In itself, the text of ‘Grunnloven’ is of little use for enlightening our present ‘statsskikk’ [= form of government?]. State practice has supplemented [‘utfylt’] ‘Grunnloven’ and set [some of its] provisions aside».

(The publisher’s netpage presentation of Fliflet’s ‘Grunnloven – kommentarutgave’ (most certainly written by the author himself)

- **Why then concern ourselves with the text of the Constitution?**

The wide-spread impression that the Constitution belongs in a museum

- Some reasons that seem likely (C = Const.)
 - The images of 1814 and Eidsvoll (the seat of the constituent assembly) in themselves
 - The impression that C has «always been like that»
 - The old-fashioned language (1903)
 - Some «outdated» provisions
 - The idea that provisions about «the King» count among those
 - The idea of «grunnlovs-konservatisme»
 - The idea that C is never amended

Impressions and ideas on trial

- 1814 – point of departure towards «the World's best society»
- The old-fashioned language may have come to an end
- C is not «amended only when necessary»
- More than 2/3 of the provisions amended at least once
- Increasing frequency of amendment proposals and adopted amendments
- The «outdated» provisions are very few
- On «the King»: Recall the amendments of 1911 and 1913 (articles 31 and 112)!

Grunnloven as story-telling?

- Hernes (1980): «if you want to know how Norway is governed, Grunnloven is the last document you should read»
- C does not provide a fiable description of the way Norway is governed
- But Hernes himself (after having served as a minister) has taken a step back
- More importantly: The distinction between description and (legal) norm
- Grunnloven: No textbook on «how the country is governed»

Grunnloven as a frame

- Many countries have lengthy constitutions (among them: Sweden)
- C counts among the World's shortest
- So what?
 - A constitution is best understood as a frame for the political life *lato sensu* (the judiciary included)
 - Its aim *is not* to answer every possible question
 - It *ought not* have such an aim
 - Regularities within the framework are just facts (not constitutional or otherwise legal norms)
 - The equilibrium between const. law and democracy

Social peace or unrest?

- The practical implications of C as a frame for political/constitutional life is easily forgotten in a (globally) peaceful society like Norway
- The practical implications of C as a frame is easily forgotten in a constitutional system where most of the actors take the main norms for granted
- The same goes because the debate over possible needs for reform is rather limited

What implications of C?

A few examples

- The parliamentary system: Minority governments
- «Royal prerogatives»: not an arena for fighting between king and parliament, but selected powers conferred directly upon the executive
 - Who decided on the bombing of Libya?
 - Comparative normality
- C as the basis for international cooperation (and some limits)
- «Separation of powers» (judicial review included)
- Human rights
- Glue in an increasingly heterogeneous society?

And soon: 2014

- The value of history
- But: the strong presence of History's veil
 - We should focus more on the importance of today's constitution as a basis for Norwegian democracy
 - We should focus more on its future development
- In many ways, C is a modern constitution
- C is certainly not a perfect constitution
- But who holds the key to perfection?
- Hence: The need for understanding and debate

«... provisions that no longer have any real substance»: What happened next?

- Supreme court plenary verdict of 2010 (Rt. p. 535)
 - One of the judges referred to the 2006 quotation with approval
 - noting that article 106 (that has remained unamended since 1814) was outdated
 - and concluded that it could therefore not be maintained as a limit to the power of the legislative branch.
 - In many ways: true that the provision is outdated
 - Most of the judges nevertheless declared the relevant statute provision unconstitutional
 - explicitly stating that the majority in Parl. had got it wrong
- Had C no real substance?

A few suggestions for further thought

- Key questions:
 - Who changes the substance of the constitution?
 - Who ought to do?
- C is a «law» (even if of a particular character)
- The text of C should – anew – be taken as seriously (as a point of departure) as the text of any other statute
- If so (in itself and as the superior law of the land):
- It will strengthen C's function as a tool for making political choices come through