THE NEW SWEDISH CONSTITUTION

BY

OLLE NYMAN

THE BASES OF THE SYSTEM OF GOVERNMENT

The purpose of the extensive reform work within the sphere of constitutional law during the 1960s and 1970s was to bring about a thorough modernization of the Swedish Constitution by so regularizing constitutional law that it would be seen to serve its purpose and also fulfil all the requirements of a modern age. The discrepancy between actual constitutional practice and the written Constitution must be eliminated.

The most important stages in the reform work in question were the great partial constitutional reform of 1969—the changeover to a one-chamber Riksdag instead of the earlier two-chamber system with one chamber indirectly elected, the introduction of a new electoral system based on proportionality on a national scale which gives parties a fairer representation of seats in the Riksdag in relation to the total number of votes they have polled throughout the country as a whole, as well as the third element, the inclusion in the Constitution of certain parts of the parliamentary system of government—the complete revision of 1973–74 with the adoption of a completely new Instrument of Government (*Regeringsformen* 1974), and the two partial constitutional revisions of 1976 and 1979 that amounted to a successive extension of the legal rights regularized by the Instrument of Government.

According to the 1974 Instrument of Government the Swedish Constitution is the fundamental norm of the legal system and rests on the principles of democracy and parliamentary government. The sovereignty of the people is established. All public power emanates from the people. Swedish democracy is based on the free formation of opinion and on universal and equal suffrage. The Instrument of Government thereby rejects a corporate system. A development towards a corporate system is incompatible with the basic principle that the decision-making bodies must consist of persons who have been elected on the basis of universal and equal suffrage.

According to the 1974 Instrument of Government Swedish democracy is implemented by means of a parliamentary system of government and by means of local self-government. Swedish democracy is representative. This means that direct democracy cannot exist other than in exceptional forms. A decisive referendum is provided for only as an optional form of decision in constitutional issues. The procedure required for a change in the Constitution is that two consecutive decisions by the Riksdag are needed with elections to

the Riksdag intervening. However, a referendum concerned with a pending constitutional proposal must be held if requested by at least one tenth of the members of the Riksdag and if the request has the support of at least one third of the members. Such a referendum must be held simultaneously with the next elections to the Riksdag. The tabled proposal will be rejected if there is a majority against it in the referendum and this majority constitutes more than half of the approved votes cast at the general election held at the same time. Otherwise, the tabled proposal will be finally dealt with by the newly-elected Riksdag. Since constitutional issues are a clearly defined category of business and are of a quite special nature it has been considered justifiable to depart from the principle that democracy must be representative. As the Instrument of Government rests on the basic thesis that all public power in Sweden emanates from the people, there are theoretical reasons in favour of giving the people an opportunity of playing a direct part in the decision-making process that aims to set forth the fundamental rules specifying which bodies are to exercise power, how these bodies are to be appointed, how power is to be divided between them and the limits that are to be fixed in respect of the public exercise of power. The theoretical reasons in favour of the referendum as a stage in constitutional legislative procedure have been strengthened in that the Instrument of Government now contains a comprehensive set of rules designed to protect individual freedoms and rights against trespass by public authorities.[1]

In matters other than those of a constitutional nature only consultative referenda may be held and then after a special decision by the Riksdag in each individual case.

One of the bases of the Constitution is also that the system of government must be a parliamentary one. The adoption of the 1974 Instrument of Government means that the parliamentary system is throughout laid down in the Constitution, even in those sections that were not included in the partial reform of 1968–69. Yet another basis is that the exercise of power must be limited by laws and norms in other respects. In the Instrument of Government this is expressed as follows: "Public power shall be exercised under the laws." The demand that all exercise of public power must be limited by law applies to the activities of all organs of state. The state legislative organ, the Riksdag, is not excepted from this requirement. The Riksdag must comply with the rules laid down in the Constitution and also with other legal enactments as long as these still apply, though it does possess the power to amend the Constitution as well as an ordinary law in the manner prescribed in the Instrument of Government.

[1] Argument advanced by the Commission on the Protection of Human Freedoms and Rights, *SOU* 1978:34, p. 152.

In the preamble to the Instrument of Government local self-government is also mentioned as an essential element in Swedish representative government. The introductory section of the Instrument of Government makes mention not only of the principal organs of state—the Riksdag, the Government, the Head of State, the law courts and administrative agencies—but also of municipalities —primary municipalities and counties—as well as of the fact that the administrative agencies are local as well as national. Local government is of such importance in the democratic order within the state, and relations between the state and the local authorities are so close and so comprehensive that it has been felt necessary to emphasize local self-government in the Instrument of Government. The provision relating to local authorities in the inaugural section of the Instrument of Government is of great importance as far as the legal position of local authorities is concerned, on the one hand because it lays down the basic structure of the system of local government: that the country shall be divided into primary municipalities and counties (a state of affairs which cannot therefore be modified without a change in the Constitution), and on the other hand in that the enactment contains a constitutional guarantee to the effect that municipalities have an original right to levy taxes in order to be able to carry out their duties. However, the Constitution says nothing about where the line of demarcation is to be drawn between the area of activity of the local authorities and that of the state. The Instrument of Government merely indicates the way in which the area of activity of local authorities is to be determined. The Instrument of Government says that instructions concerning the duties of local authorities must be laid down in a law, which presupposes a decision by the Riksdag or in certain cases by the Government with authority delegated to it by the Riksdag. The line separating the business of the state from that of local authorities may be adjusted from time to time. Examples of changes in the division of tasks are that the police system has been transferred from the municipalities to the state, that the Upper Secondary School is no longer a state school but a municipal one, and that the care of the mentally retarded has been transferred from the state to the county councils.

Generally speaking it may be said that local self-government has been paid more attention to in the 1974 Instrument of Government than in the previous Instrument of Government. It is also to be noted that the links between the state apparatus and the municipalities have become increasingly numerous. Municipalities in Sweden are responsible for a greater share of the public sector than is usual in other countries.

The common election day emphasizes the connection between political affairs at state level and those at local level, and here the local level means the municipal level as well as the regional (county council) level. The holding of elections to the Riksdag on the same day as those for the decision-making

assemblies of local authorities (municipal councils and county councils) represents a step in the direction of increasingly close ties between the activities of the state agencies and those operating at local level.

In the section of the Instrument of Government dealing with the basis of the system of government mention is also made of the Head of State as one of the principal organs of state. The King or Queen, who according to the Act of Succession sits on the throne of Sweden, is the Head of State of the Realm. In a constitutional system based on a consistent application of the principles of the sovereignty of the people and parliamentary government there can be no place for the exercise of political influence by a monarch as Head of State. The duties of the Head of State will be representative and ceremonial. The Head of State plays no part, not even a formal one, in decisions on government business, and the handling of government crises is a matter for the Speaker and the Riksdag. The administration of the realm is a matter for the Government, which is responsible to the Riksdag. In the discharge of its office the Government is dependent on the Riksdag, which has the ultimate power, though as long as it is tolerated by the Riksdag the Government must be given a real opportunity to act, to function as a government and direct the affairs of state.

In this system the Riksdag occupies a prominent position, as being formally the first of the highest agencies of the state inasmuch as it is the one that is closest to the people, who hold power in the state.

The fact that parliamentarism is laid down in the Constitution means that the 1974 Instrument of Government is monistic in character in contrast to the previous Instrument of Government of 1809, which provided for a dualistic system, dualism between the Government and the Riksdag, i.e. between the Monarch assisted by his Ministers and the Riksdag, the representative of the people. Under the 1809 Instrument of Government the system of government was a constitutional monarchy, though during the past 60 years or so this had been disintegrated by practice and converted by customary law into a parliamentary democracy. The 1809 Instrument of Government was a system for the division of power and balance, whereas the 1974 Instrument of Government has established a system for the distribution of functions between different state agencies, that is to say, a uniform system of parliamentary democracy, and not one in which power is divided as under the 1809 Instrument of Government. Balance must be attained through the activities of the political forces within the framework of and in accordance with the conditions laid down in the Constitution and formal organizations. Dualism between government and Riksdag is replaced by dualism between government and opposition.

However, by the side of the political organs are the courts of law, and their independence is clearly expressed in the Instrument of Government. The

relative independence of the administrative agencies, to an extent that is unique as far as Finland and Sweden are concerned, is also retained.

It has rightly been pointed out that the difference between the old Constitution and the new one is not quite as large as the changed way of looking at things might lead one to assume. The line of demarcation between the areas of competence of various organs of state is at least as clearly marked as it was before and the rules governing their relative control still exist.[2]

However, in conformity with the monistic system which the Instrument of Government provides for, in that power emanates from the people and is expressed through the directly-elected Riksdag, the Riksdag is the sole lawmaker and the norm-giving competence assigned to the government to make rules is a power of an inferior kind and one that is outside the true sphere of lawmaking. When the Instrument of Government of 1974 says that all public power in Sweden emanates from the people, that public powers are exercised under the law, that the Riksdag is the main representative of the people and that the Riksdag enacts legislation, this means that it must be possible to derive all public power from the Riksdag and that all such power must be based on constitutional law adopted by the Riksdag or on a decision of the Riksdag made with the direct support of the Constitution.

One controversial issue that arises when modern constitutions are being framed is how far the scope of the Constitution should extend. What matters should be subject to regulation by the Constitution? Should the Constitution specify more than the formal framework for the actions of political forces, with provision also being made for a regularization of rights and freedoms that lays down guarantees for certain individual freedoms and rights and imposes definite restrictions on the public authorities' possibilities of taking action against citizens? Should the Constitution also indicate guidelines for the content of policy?

In the main the new Swedish Instrument of Government answers these questions in the negative. The content of the Instrument of Government has predominantly the character of binding legal rules that can be directly invoked before administrative authorities and thus it does not have the character of rules setting up aims which merely serve as guidelines for the actions of public agencies. The latter is the case only as regards some values or value judgments that are felt to be principles of special importance in the direction of the activities of society, and are worth emphasizing even in the Instrument of Government as declarations of aims or policy statements. What are involved here are certain values that are deemed to be fundamental to citizens but

[2] H. Strömberg, *Sveriges författning*, 9th ed. 1979, p. 62.

which, for various reasons, cannot be protected by legally binding constitutional rules, for example, what are known as social rights (the right to work, to shelter and to a satisfactory living environment). Inasmuch as the content of these rules does not possess the character of binding rules of law the question of whether the community is living up to the stated aims cannot be subject to judicial evaluation but only to political inspection.

THE RIKSDAG

To enable the principle of representative democracy to be realized genuinely in practice it is felt that a single-chamber Riksdag—in its entirety directly elected and nominated on one and the same occasion—is more appropriate than a two-chamber system. One compelling reason for changing over to a single-chamber system was the wish that the opinion of the electorate should be reflected in the Riksdag as a whole and at once. With a single-chamber Riksdag there is no need to fear having to deal with the complications for the parliamentary system that arise in that one chamber not only displays a time-lag as regards opinion in relation to the other but might also have a majority of a different political complexion from the other. There are, in addition, reasons connected purely with working procedures which favour the simpler and less long-winded system represented by the single-chamber Riksdag. The arguments for retaining the two-chamber system—the need for continuity and stability, more thorough consideration of issues and the possibility of having more competent persons as members of the Riksdag as a whole—were felt to be insufficiently strong compared with those in favour of a change.

Certain elements in the new system are, however, intended to provide to some extent effects that could replace the positive aspects of the two-chamber system. Where the Swedish single-chamber Riksdag is concerned it is not possible to point to any important factor comparable to the division of the Storting (Norway's Parliament) into a "lagting" and an "odelsting" for dealing with legislation or the special committee[3] within the Finnish Parliament with a similar function—both of which provide what amounts to a substitute for a two-chamber system. It is, however, worth noting that it has been made easier to decide to recommit to a committee for further consideration matters discussed by the full Riksdag. Even a minority amounting to at least one third of members voting can push through such a request for reconsideration, though only once in respect of each item. A similar minority right exists within

[3] Cf. I. Saraviita, "The Planned Constitutional Reform in Finland", 22 *Sc.St.L.*, pp. 135 ff. (1978).

a committee as regards decisions concerning the circulation of a matter to state agencies in order to obtain information or statements of opinion. Only if a majority feel that the delay this procedure might involve could be said to be really detrimental can the circulation requested be refused. The Parliament Act also contains a stipulation to the effect that if the votes are equal in a main vote (the final decision on an item of business) the Speaker shall move that the matter be referred back to the committee. The matter shall then be returned to the committee if at least half of those voting support the motion. The intention is that the committee shall be given an opportunity of giving the matter further consideration, and perhaps of making some modification to the proposal that might lead more members to support it.

Mention could also be made of the fact that at elections to the single-chamber Riksdag there is no rule requiring members to reside in the areas they represent. There was such a rule affecting members of the lower chamber, the directly-elected part of the former two-chamber Riksdag, but in this respect the single-chamber Riksdag has now applied the system that was in force as regards the indirectly-elected upper chamber. It is felt that the possibility of electing what are known as national candidates, that is to say, persons who do not reside in the electoral areas they have been chosen to contest, is likely to increase the chances of providing a qualitatively good choice of candidates.

The electoral system is intended to provide for complete proportional fairness when distributing the seats to all parties whose total vote reaches at least four per cent of the total votes cast throughout the country. This four-per-cent rule has been brought in to act as barrier against very small parties with the aim of preventing far-reaching division into parties. (In spite of the four-per-cent rule an excluded party can win a seat if its strength in one particular constituency is enough to give it at least 12 per cent of the votes cast in that area. In that case the party will be entitled to take part in the contest for the seats for that constituency.) All parties that surmount the barrier are guaranteed an equally good return for their votes. The largest party is not favoured at the expense of the smaller or medium-sized ones. Over-representation of the largest parties with the aim of forming a majority is not permitted. Instead priority is given to the desirability of ensuring that the real shades of opinion within the electorate will be faithfully and accurately reflected in the legislature. The basic principles are a correct distribution of seats nationally on a proportional basis and regional representation. The total number of seats for each party is decided on the basis of the party's total vote in the country as a whole. This means that when the number of seats for a party is being determined the whole country is regarded one single constituency. However, the principle of regional representation is also taken into account at the same time. For this reason the old division into 28 constituencies has been retained

and most of the 349 seats in the Riksdag are distributed over the constituencies as fixed seats. 310 seats are distributed as fixed constituency seats and the remaining 39 are compensatory seats that are distributed among the parties that have been unfairly treated in the distribution of the fixed constituency seats in such a way that each party reaches the total number of seats which it is entitled to on the basis of its total national vote. In this way the geographical structure of a party, an even distribution of votes over the whole country or a concentration in certain constituencies, no longer affects the outcome of the proportional distribution of seats. However, the compensatory seats are also distributed on a constituency basis. The fact is that a compensatory seat received by a party is assigned to the constituency where, following the distribution of the fixed constituency seats, the party has a higher comparative number of votes than in other constituencies. This is the method adopted when distributing all the compensatory seats that are to be assigned to the party in question. The compensatory seats go to the constituency in which the party temporarily has the highest comparative number of seats. This system, too, is affected by the fact that the principle of regional representation is taken into account. It would have been quite possible to fill the compensatory seats from the centrally prepared lists of candidates of the parties, but it was felt preferable to obtain also the holders of the compensatory seats from the parties' regular lists of candidates in the various constituencies. In this way it has been possible to achieve a uniform nomination procedure in respect of the seats that are won outright in the constituencies as well as of the seats that are awarded to the parties as compensatory seats. The method of distributing seats (the counting method) applied throughout is a variant of the odd number method.

The fact that the electoral period has been shortened from four years to three (the electoral period of the lower chamber, the directly-elected part of the two-chamber Riksdag, was four years) is connected with the controversial question of how the link between national and local politics ought to find expression in the Constitution. In the past there was such a link in that one part of the Riksdag, the upper chamber, was chosen by the municipal assemblies. The solution of this hotly disputed question came in the form of a compromise when the Constitution was reformed in 1969, a compromise which meant that formally there was in a technical sense no electoral link between elections to the Riksdag and municipal government. As against this, however, the same point of time (the common election day) was fixed for elections to the Riksdag as well as for municipal elections, and this established an actual or psychological link between national and municipal politics. The elections at these two levels are preceded by a joint election campaign and the parties are obliged to provide full and simultaneous accounts of their policies in respect of issues at the national, regional and municipal levels.

Prior to the reform of the Constitution the situation with a four-year electoral period for the lower chamber as well as for the municipal councils was that general nationwide elections were held every second year—once in respect of the lower chamber (parliamentary elections) and on the other occasion county council and municipal council elections. If all the elections had been fixed to be held on the same day and the four-year electoral period retained, the result would have been that general elections came only every fourth year. It was felt that this interval was too long, and so the compromise was that the electoral period was reduced to three years, which, however, is regarded by many people as being too short. It is difficult for a new political majority, whether dealing with national affairs or local ones, in the short time at its disposal to carry out enough of its intentions before the next election comes round. Above all, there is not enough time for the effects of the new measures to become fully evident and so form a basis on which the voters can really express an opinion.

The comparatively large number of members in the Riksdag led to doubts being expressed in some quarters, not least from the point of view of work. However, an effort has been made to avoid as far as possible restrictions on debates, even if the Parliament Act does contain rules on this point.

The preparatory stage is an important one in the work of all parliamentary assemblies. In the Swedish single-chamber Riksdag the system of parliamentary committees is based on the specialized committee principle, which means that each committee deals with all types of business within a certain subject area, for example, questions of law as well as budgetary matters. In the days of the two-chamber Riksdag the committees were organized on the basis of the various constitutional functions of the Riksdag with questions of law and budgetary matters divided between different committees.

The Riksdag has sixteen standing committees. Three of these—the Committee on the Constitution, the Finance Committee and the Taxation Committee—are in a special position. The Committee on the Constitution exercises on behalf of the Riksdag supervisory functions as regards the Government. The Finance Committee, among whose duties are the preparation of the budget proposals and compilation of the state budget, can together with the Taxation Committee be authorized by the Riksdag to decide provisionally concerning indirect taxation at a time when the Riksdag itself is not in session.

One significant change compared with the previous system is that the committees are now able to initiate matters on a much wider scale than in the past and now have an independent right to take the initiative. Under the Parliament Act a committee is permitted to introduce proposals on a subject falling within its sphere of competence.

THE HEAD OF STATE

The rules contained in the Instrument of Government as far as the Head of State is concerned were drawn up bearing always in mind the principles of the sovereignty of the people and parliamentarism. This has led to the Head of State being given very limited functions. As a rule it cannot be tolerated in a true parliamentary system of government that the Head of State, even if he is a President, becomes a focal point for a sphere of influence alongside or to some extent in competition with the sphere of influence of which the Riksdag is the central point. Finland and, even more clearly, France do not in this respect represent a true parliamentary system of government since they provide for an element of presidential government. In a parliamentary state with a monarch as Head of State the reasons why the Head of State must not occupy such a position as will enable the person concerned to exercise political influence are particularly strong. In Sweden this point is emphasized, since the first few lines of the Instrument of Government state that the sovereignty of the people forms the basis of power in the state and a monarchist Head of State cannot lay claim to any kind of democratic authority. The reasoning behind the stipulation in the Instrument of Government concerning the position of the Head of State is, therefore, that the Head of State must not perform such formal functions as might enable him or her to exercise political power, whether in regard to the formation of a Government or where government decisions are concerned.

The function of the Head of State is to be a symbol of the state and to represent the state at home in relation to the citizens of the country, as well as abroad in relation to foreign powers. Among the reasons advanced in support of the Government Bill for a new Instrument of Government in 1973 the point was made that it could impose a strain on the symbolic position if the Monarch were formally to participate in the initiation of political decisions.[4]

Some criticism has however been made of a system that prevents the Head of State from participation in all government decisions. The basis of this criticism is a fear that the representative function of the Head of State may suffer if he is completely excluded from meaningful contact with the machinery of state in other respects. The symbolic role to be played by the Monarch is not considered to rest on an adequate foundation if he is excluded from the administration of the realm and on the whole does not form part of the constitutional system. This criticism has maintained that the Head of State ought at least to participate in certain matters of state, such as the formation of governments, the promulgation of laws and regulations, the signing of treaties with foreign states, the granting of pardons and in matters concerned with appointments that devolve on the Government.

[4] *Prop.* 1973:90, pp. 172 f.

However, these objections did not succeed in shaking the theoretical reasons that proved decisive where the legislature was concerned, though some account was taken of the criticism since the Instrument of Government came to include certain rules that are intended to ensure that the Head of State will be kept adequately informed of the work of the Government and of matters of state. It is the duty of the Prime Minister to keep the Monarch informed about "matters of state". Moreover, more detailed information can be supplied at special information meetings of the Cabinet attended by the Monarch and members of the Government. As in the past the Monarch is the Chairman of the Advisory Council for Foreign Affairs, a body for consultations between the Government and the Riksdag on questions relating to foreign affairs. In his capacity as Chairman the Monarch is supplied with information concerning important matters relating to foreign affairs.

The section of the Instrument of Government that deals specifically with the Head of State mentions only one duty that devolves upon him—the Monarch acts as Chairman at meetings of the Cabinet held for information purposes. Certain other duties may be deduced from the provisions set out in other parts of the Instrument of Government and the Parliament Act. As mentioned, the Monarch takes the chair at meetings of the Advisory Council for Foreign Affairs. He presides at the special Cabinet meeting held to mark a change of government, following the formation of a new government which has taken place without in any way involving the participation of the Monarch. What is worth noting is that the appointment of the Prime Minister is announced by the Speaker on behalf of the Riksdag and, consequently, not by the person who holds the office of Head of State. Finally, it appears from the Parliament Act that it is the Head of State who opens the ordinary sessions of the Riksdag. Apart from this the representative duties of the Head of State are not expressed in the Instrument of Government or other constitutional law or the Parliament Act. These will be determined according to what is customary.

Among the duties to be undertaken by the Monarch as Head of State in accordance with international law is receiving the credentials of foreign envoys and signing the credentials of Swedish envoys who are accredited to foreign countries. State visits to other countries and acting as host to foreign Heads of State on visits to Sweden also fall within the category of duties. The Head of State is also the highest representative of the state from the international law point of view. From this it follows that his official foreign connections and statements must be compatible with the foreign policy of the country.

In principle there are corresponding requirements also in respect of domestic affairs. The way in which the Head of State carries out his representative duties must not indicate any opposition to or disagreement with the policy being pursued by the politically responsible state bodies.

One usual argument advanced in favour of a monarchy is that having a monarch as Head of State is a guarantee of continuity or at least as a personification of the idea of continuity and a symbol of the affinity between the present Swedish state and earlier developments and former generations. This reasoning, however, has been greatly weakened as a result of the reduction of the Head of State's functions in the 1974 Instrument of Government.

The Royal Commission on Constitutional Matters, the first major commission in the work that preceded the reform of the Constitution, declared in its statement of reasons in its final report in 1963 that compared with governments that come and go the Head of State can represent the principle of continuity in the government of the state.[5] However, as the 1974 Instrument of Government ranks the Head of State alongside the Government but denies him participation in that government, even though he is guaranteed the right to special information, this point loses much of its relevance. The Commission's argument concerning the Monarch as the guarantee that the Constitution will be observed and that the rules of parliamentarism will be faithfully adhered to is quite devoid of relevance since the Monarch no longer holds any position either in connection with government crises or in respect of the procedure to be followed when new elections are called for. The 1974 Instrument of Government has transferred these duties to the Speaker of the Riksdag and the Government respectively.

Under the 1974 Instrument of Government the Swedish monarchy, even where formal functions are concerned, would seem to be the least significant one of all, and is even more limited than that of Japan. One royal prerogative has been retained and this is the Monarch's immunity from criminal prosecution. This immunity covers not only his official acts but also his acts in his private capacity, and is justified by the fact that it is felt to be in the interests of the state that respect for the Head of State be maintained. For this reason the Head of State ought to be immune from prosecution.

However, this immunity does not mean that the Monarch is above the law. As the first citizen of the realm he is, like other citizens, obliged to obey the law of the land, though this obligation does not involve any punitive sanctions.

THE GOVERNMENT AND PARLIAMENTARISM

The Swedish system of government, for which the 1974 Instrument of Government lays down the norms, is envisaged as being characterized by a concentration and uniformity of action in preference to equilibrium and a balance of power where constitutional forms are concerned. The will of the people is to be

[5] *SOU* 1963: 17, p. 137.

made reality. This must be expressed by the Riksdag, and the governing and executive power must be firmly anchored in the Riksdag. This is achieved by making the Government dependent on the Riksdag. This finds expression, on the one hand, in the fact that the Riksdag has been given power to force a government to resign or to test its standing by calling for new elections (extraordinary elections) and, on the other hand, in the fact that the Riksdag has the final say in the formation of the Government since it decides who is to form a new government.

By adopting a motion of no confidence, for which there must be an absolute majority among the members of the Riksdag, the Riksdag can make it clear that the Government will be tolerated no longer. In principle, therefore, a declaration of no confidence is linked with an obligation to resign, as regards the Government as a whole if the declaration refers to the Prime Minister, or as regards the Cabinet Minister or Ministers who may be affected. In the latter case the declaration of no confidence has a more limited effect, and the Instrument of Government also provides for this, even if it otherwise assumes that the Government is a united collective. The practice of calling for a declaration of no confidence is an exclusive parliamentary manifestation on grounds of general policy. It need not be linked to any specific issue and the voting is not tied to any particular reason for the lack of confidence. Different motives might decide different groups in the Riksdag to support a vote of no confidence. The voting is either for or against a motion of no confidence, and is not concerned with the reason for such a motion. The Riksdag must not be placed in a position where it can express its dissatisfaction with the Government only by being able to defeat the Government in the course of debates on important Government Bills. It must instead be assured that such a decision really will result in the resignation of the Government.

However, the system of Government does provide the Government with a countermeasure against a vote of no confidence by the Riksdag. Apart from the first three months after a newly-elected Riksdag has assembled for the first time and the period when a government which has already been defeated remains in office as a caretaker government until a new government is formed, it is possible for the Government to make use of its right as laid down in the Instrument of Government to call for an extraordinary general election to the Riksdag. An extraordinary election cancels a vote of no confidence. If, within one week of the declaration of no confidence, the Government calls for an extraordinary election a decision concerning its resignation is not pursued. This possibility of nullifying a declaration of no confidence by means of a decision to hold an extraordinary election exists not only if the declaration of no confidence refers to the Prime Minister but also if it affects another Cabinet Minister.

On the basis of the principle of the sovereignty of the people it has been felt reasonable that the Government should be afforded the right to resist the authority of the Riksdag by deciding to hold an extraordinary election. The people are then called in to act as arbitrators between the Government and a majority in the Riksdag who are hostile to the Government. The outcome of the extraordinary election—which applies only to the unexpired part of the current ordinary electoral period—and the composition of the newly-elected Riksdag will be decisive as far as the parliamentary situation and the fate of the Government are concerned.

A declaration of no confidence is the most extreme way in which a Government's parliamentary responsibility can be demanded, and it is supplemented by other forms. As in the past the Standing Committee on the Constitution is charged with continuously examining the Government's performance in office. There also remains a procedure involving legal responsibility. A Cabinet Minister—or a former Cabinet Minister—who is guilty of gross dereliction of his official duties may be indicted for contravening the law in the exercise of his ministerial office. A decision as to whether prosecution will follow is taken by the Standing Committee on the Constitution and in that case the trial takes place in the Supreme Court. Under the 1974 Instrument of Government the ordinary Supreme Court has replaced the special court which tried such cases under the old Constitution.

Another form of parliamentary control of the Government is the procedure whereby interpellations and questions may be put, and this is widely used by the members of the Riksdag. In addition, the scrutiny undertaken by the Riksdag's Parliamentary Auditors (12 members appointed by the Riksdag) may be mentioned in this connection. The fact is that the sphere covered by these Auditors embraces also the activities of the Government, even if the main scrutiny is designed to supervise the administrative agencies under the Government.

On the other hand, the Parliamentary Commissioners (the Commissioners for the Judiciary and the Civil Administration) operate outside this field. These Ombudsmen—an element of Swedish constitutional law which serves as an international model—do not have the task of scrutinizing the activities of the Government, but are charged with inspecting activities at levels below that of the Government.

The 1974 Instrument of Government stipulates that it is the Speaker of the Riksdag and not the Monarch who deals with government crises, though his functions are not exactly the same. They are more limited. The Speaker does not nominate anyone to form a Government. He submits the name of a possible Prime Minister to the Riksdag and the matter is then decided by

voting. If more than one half of the members oppose the proposal it is rejected. It is not necessary for there to be a majority in favour. It is sufficient if not more than half are against the proposal. This negative form of parliamentarism is stipulated and one reason for it is that the rules ought not to make it difficult to form a Government. If the Speaker's proposal is rejected by the Riksdag the procedure must be repeated, though if the Riksdag rejects the Speaker's proposal four times the procedure for the appointment of a Prime Minister is broken off and not resumed until after a general election has been held. In such a situation the Riksdag is considered incapable of forming a satisfactory basis for parliamentary government and must therefore have its composition renewed through a new election.

Before the Speaker submits the name of a proposed Prime Minister to the Riksdag he must consult with representatives of all the parties with seats in the Riksdag, as well as hold discussions with his colleagues on the presidium, the Deputy Speakers. The reason for insisting that the Riksdag must decide by voting on the Speaker's proposal is that the Riksdag must be in a position to stop without delay the nomination by the Speaker of a person whom the majority of the Riksdag feel is not the right person to form a government. It is felt that it is not possible to ignore completely the fact that the Speaker, having been elected to the Riksdag as a representative for a certain party, may, at least unconsciously, be influenced by his special relationship to his own party.

From the point of view of the Riksdag the question of who is to form a Government is not the only important one. What is also important is the party composition and political character a new administration is intended to have. In order to make it possible for the Riksdag to arrive at a meaningful decision the practice is for the Speaker's proposal to the Riksdag to contain not only the name of the would-be Prime Minister but also an indication of the type of administration (the party composition) the proposed would-be Prime Minister intends to form.

Once the Speaker's proposal has been accepted by the Riksdag and the appointment of the new Prime Minister has been announced by the Speaker the right of decision concerning the continued formation of the Government is reserved entirely to the new Prime Minister. It is he who appoints the other members of the Government and from among these he chooses the heads of ministries and in other respects assigns the duties within the Government. The Riksdag is merely kept informed about this. The Prime Minister can remove a Minister from office and if the Prime Minister himself should resign the whole Government follows suit. This is one of a number of points in the 1974 Instrument of Government which emphasize the leading position of the Prime Minister.

When the formation of a Government has been completed the change of

regime is formally noted at a special meeting of the Cabinet with the Head of State. The Speaker is also present.

The working procedures of the Government are subject to very few restrictions under the Instrument of Government. This merely states that for the preparation of Government business there must be a Government Chancery and that this should include ministries for various fields of activity, but the number of ministries and the division of work between them is a matter for the Government. The influence of the Riksdag makes itself felt when it comes to the granting of funds for these activities. The number of Cabinet Ministers is determined by the appointments made by the Prime Minister.

The formal taking of decisions regarding Government business takes place at meetings of the Government with the Prime Minister as chairman. At least five Ministers must be present for a decision to be valid. Government decisions are therefore a collective matter and this applies to all Government business, important as well as less important, with the exception of certain matters within the sphere of the Ministry of Defence. Here it is the Minister of Defence himself who decides. There are no detailed stipulations concerning how these collective decisions are to be arrived at, for example, when there are differences of opinion among the Ministers. It is a matter for each Government itself to decide how decisions are to be arrived at. A Government must be given an opportunity freely to work out suitable working and decision procedures against the background of its own particular prospects.

One of the reasons why collective decisions in respect of all business are preferred is that a united collective form of decision-making emphasizes that Government decisions ought to be an expression of the views of the Government as a whole, and not simply of the personal views of the Ministers involved. The point made here is that on such a basis there is an element of reality in the procedure whereby all Government business is settled by the Government through decisions that are arrived at collectively and jointly. Joint responsibility for all Government decisions encourages cooperation between Cabinet Ministers—such a stimulus is especially important in coalition governments—and between Ministries.

Thus, under the 1974 Instrument of Government ministerial government—with the exception of the Defence Ministry matters mentioned above—continues to be forbidden and foreign to the system of government. Even so, the Minister for Foreign Affairs occupies a special position since the Ministry for Foreign Affairs has a twofold function in that it is a Ministry and is also the highest authority for Sweden's representation abroad. The Minister for Foreign Affairs is the head of Swedish missions and consulates abroad. Furthermore, ministerial government does exist in the sense that business is delegated

to individual Ministers by virtue of the powers conferred by laws and other statutes. These matters thereupon cease to be Government business—which is exclusively a formal concept—and become matters to be settled by Ministries.

The documents implementing Government decisions are signed by the Prime Minister or other Minister on behalf of the Government. The possibility afforded by the Instrument of Government of allowing officials within the Government Chancery to sign such documents has not been made use of.[6] Should this alternative arise it ought to be used only for matters of a routine nature.

THE REGULARIZATION OF FREEDOMS AND RIGHTS

One of the aims that a central fundamental law such as the Instrument of Government has to achieve is guaranteeing the citizens certain fundamental freedoms and rights. The fundamental law must fix the limits of the sphere of authority of the organs of the state—even in relation to individual citizens. In so doing the law must set out the limits of the extent to which the organs of state may act and intervene against individual persons. In this way the law decides and guarantees the limits of the individual sphere of freedom.

In addition, if the fundamental law proclaims—as is the case with the Swedish Instrument of Government—that the Constitution must be based on the principle of the sovereignty of the people, then certain specific results ensue. The opening lines of the 1974 Instrument of Government are an expression of the principle of the sovereignty of the people, the basic democratic value: "All public power in Sweden emanates from the people." It is also stated there that Swedish democracy is based on the free formation of opinion and on universal and equal suffrage. If these values are to be realizable and secured it is necessary for the Constitution to contain rules relating not only to the structure, powers and work of the organs of state but also rules relating to those civil freedoms and rights that are closely linked with forms of political activity, such as freedom of expression and other freedoms to express opinions, together with other fundamental rights, for example, physical freedoms and the right to personal integrity, which may be described as preconditions if the basic thesis of a democratic system of government is to be realizable.

That the Constitution ought to contain guarantees in respect of certain civil freedoms and rights need not therefore be based on opinions derived from natural law. The approach is instead that these rights ought to find expression in the system of positive law, in the Constitution, because they constitute

[6] E. Holmberg–N. Stjernquist, *Grundlagarna med tillhörande författningar* (Constitutional Laws with Associated Statutes), Stockholm 1980, p. 233.

essential conditions for the democratic system of government prescribed by the Constitution. Democracy, incidentally, is not something that can be taken for granted from the start, but the Constitution takes a positive view in favour of this system, and it having done so it follows that certain freedoms and rights must be guaranteed in the Constitution.

The shaping of the rules relating to freedoms and rights presented the legislator with a number of serious problems. During the reform work the chapter dealing with freedoms and rights was the part of the Constitution which in a legal sense proved most difficult to deal with. The decisions were taken in three stages. An initial version was included in the general revision of the Constitution in 1973–74. A considerable extension followed in 1976, partly through the introduction of material protective guarantees (the laying down of a framework which as regards its content limits the extent to which legal decisions may encroach on civil rights) and a further extension came in 1979 through the introduction of a formal protection of rights (in the event of a legal decision which limits rights this is an optional procedure which allows for a deferment of a decision for twelve months or an immediate decision with a majority of five sixths).

One reason why the arguments for and against the regularization of civil rights were so difficult to deal with is that both the motives for an extension of the regularization of rights and for restraint in this respect can find support in the same fundamental democratic principle. For it to be possible to ensure a democratic system in the state it is essential for certain civil freedoms and rights to be guaranteed. However, on the other hand, it can be maintained that a protection of rights that prevents the democratically legitimate majority from implementing important reforms will conflict with the basic principles of democracy: it will make it difficult for the will of the people to be transformed into political decisions.

An attempt has been made to avoid this dilemma, on the one hand, by strengthening the protection of rights and, on the other hand, by giving the qualified protection of rights a form that does not encroach on the majority principle. Thus, it has been decided not to insist on a qualified majority for legal decisions that limit civil rights. The majority is not prevented from asserting its will. On the other hand, a minority can bring about a deferment of the decision for one year in order to allow public discussion an opportunity of examining the question thoroughly and preventing decisions that have not been adequately considered. If the majority in favour of a decision is especially large—a majority of five sixths—and the issue must consequently be regarded as being of special urgency, then an immediate decision may be arrived at. In addition, it often happens that where there are rules laid down in appendices —in which the limitation on rights is not the main point at issue but merely a

side issue, for example, regulations concerning penalties for breaches of the rules, which constitute the true content of the decision—then these rules are not subject to the stipulations requiring a specially prescribed procedure when a decision limiting civil rights is to be taken. The reason for this is that the prescribed rules relating to the protection of rights must not be invoked too often and come to be regarded as an obstacle in the path of ordinary legislative work.

Where the regularization of civil rights in the Constitution is concerned there is an initial distinction between the rules that are legally binding as regards freedoms and rights, that is, the rules which immediately bind both the legislator and the authorities which administer the law and, on the other hand, those enactments that do no more than lay down general guidelines for the actions of public bodies. The civil rights rules that are legally binding are collected in a special chapter of the Instrument of Government (ch. 2), while the enactments that are concerned with objectives have been placed in a couple of paragraphs in the introductory section of the Instrument of Government. In one of these a number of values are set out that are to serve as targets for public activity—the fact that all people are of equal worth, the welfare and social rights of the individual, protection of individual privacy and family life, protection of the opportunities for ethnic, linguistic and religious minorities to retain and develop their own cultures and communities, the ideas of democracy as signposts within all areas of society—while in the other a general principle of objectivity is laid down: a rule of conduct for law courts and administrative agencies and others who carry out their duties in the domain of public administration—all of these are enjoined in the execution of their duties to observe objectivity and impartiality and also to bear in mind that everyone is equal in the eyes of the law.

The rules relating to basic freedoms and rights that are intended to be legally binding must provide individual citizens with a certain protection against public authorities. The rules do not on the whole apply to other individuals, nor to other individuals who combine to form organizations. When the Instrument of Government states that every citizen *in his relations with "the community at large"* is protected against being forced to divulge his political views and against being compelled to belong to any political grouping, this enactment does not for this reason amount to a constitutional ban on, for example, the possibility of trade unions collectively linking their members with a political party. The phrase "the community at large" means the public bodies which administer the law and set the norms, in other words, the law courts, administrative agencies and the Government when dealing with administrative matters, the Riksdag, the Government and the municipalities in

their capacity as setters of norms, as well as the administrative agencies in so far as these have been given the authority to set norms.

Circumstances of a practical and legal nature have been advanced as reasons why the protection of rights has in the main been restricted to relations between the individual and the public authorities and is not concerned with relations between individual citizens. A constitutional rule that generally protected freedoms and rights also against individual citizens would require the Constitution to specify in detail the kinds of behaviour the individual citizen is not allowed to display and the legal consequences associated with violations of this prohibition. In addition, problems would arise in the sphere of civil law, for example, conflicts between the constitutional rules as regards rights and the civil law rules in the spheres of contract law and the law relating to property. It is on the whole felt that the ordinary law of the land is adequate to protect civil rights against trespass by other individuals.[7]

As regards the example quoted about the collective link with a political party the aim is to avoid as far as possible legislation that may be interpreted as an intervention in the domestic affairs of organizations. However, on a number of occasions through a special decision the Riksdag has issued statements directed against and condemnatory of such a collective link and has also stated that the system ought to be voluntarily dismantled.

The binding rules relating to rights are divided into, on the one hand, those that are assured of the strongest protection of the Constitution and which therefore cannot be restricted other than through a change in the Constitution and, on the other hand, those that can be restricted but which under the rules of the Constitution are assured of a protection which, as stated above, is both material and formal.

The part of freedom of expression that is represented by freedom of the press is the subject of regularization through a special constitutional law, the Freedom of the Press Act (TF 1949). Apart from this, rights that are given absolute protection by the Constitution are freedom of religion and the negative freedoms of opinion—protection against being forced to declare one's views as regards politics, religion, culture or other such matter, protection against being compelled to take part in a meeting for the formation of opinion or in a demonstration or other manifestation of opinion or to belong to a political association, religious community or other ideological association, as well as the rule that a report concerning a citizen entered in a public register must not without the consent of the person concerned be based only on his political opinions. Among the category of absolute rights there is also the ban on capital punishment, on corporal punishment, torture and the like, on banishment and

[7] *Prop.* 1975/76: 209, pp. 85 f.

deprivation of Swedish citizenship, as well as the right to have a prison sentence reviewed by a court of law and the prohibition against retroactive penal and taxation legislation and also on temporary courts of law.

Among the relative rights that can be restricted are most of the positive freedoms of opinion: freedom of expression in its widest sense, freedom of access to information, freedom of assembly, freedom to demonstrate, freedom of association. This category also includes protection against physical trespass by force other than corporal punishment and torture and the like, protection of freedom to travel and against deprivation of freedom, as well as the principle that court proceedings must be held in public. In the special Freedom of the Press Act there is laid down the principle of public accessibility, the rule relating to the public nature of official documents, and mention is also made of the grounds on which exceptions from this may be made. It must be possible to refer specifically to one of these grounds in respect of every restriction of public accessibility that appears in the Official Secrets Act.

Other rules relating to rights in the Instrument of Government provide only weak constitutional protection. In reality, the rules amount only to a declaration in principle that the rights in question shall exist, but the details are left entirely to the legislator (in one case to the contracting parties). The rights involved here are the right to strike or declare a lockout, the right to compensation for loss as a result of confiscation or similar disposal of property, as well as, finally, the rights of authors, artists and photographers in their work.

Finally, the chapter on rights in the Instrument of Government contains two discriminatory prohibitions. On the one hand, there is a prohibition against discrimination affecting minorities on grounds of race, colour of skin or ethnic origin and, on the other hand, discrimination on grounds of sex. The latter has, however, been suspiciously modified through a supplementary note to the effect that it does not apply if "the stipulation forms part of attempts to bring about equality between men and women".

The Instrument of Government also contains rules relating to the extent to which the regularization of rights must apply also to the advantage of foreigners. From this it appears that a foreigner is on terms of equality with a Swedish citizen as regards the negative right of assembly, demonstration and association, as regards protection against capital punishment, corporal punishment, torture and the like, of the right to have a prison sentence reviewed by the courts as a result of a crime or suspicion of crime, protection against retroactive punishment and taxation, against the setting up of temporary courts of law, against discrimination on grounds of belonging to a minority or of sex, of the right to resort to strikes and lockouts and the right to compensation in the event of confiscation or the like. In other respects, the position is that a foreigner is on an equal footing with a Swedish citizen unless special regula-

tions state otherwise (or, in the event of war or danger of war, as a result of a decree issued under the law). This is the position as regards the positive freedoms of opinion, the negative freedom of expression, protection against physical trespass other than corporal punishment, torture and the like, protection against deprivation of freedom, the right to have a prison sentence reviewed for a reason other than crime or suspected crime, the right to be tried in a court accessible to the public, protection against restrictions on rights on the grounds of opinion as well as protection of copyright. The foreigner is not protected by the Constitution against having his opinions recorded, against deportation and against restrictions on his freedom of movement, where this is not the result of deprivation of freedom. The protection given to foreigners against trespass on grounds of opinion can be removed by law.

THE NORM-GIVING AUTHORITY

The formal changes in legislative procedure that the 1974 Instrument of Government implies compared with the previous system are considerable in that the Riksdag is now the sole legislator. But the actual changes are not really so great. The Government, of course, has considerable influence over legislative work because for most of its legislative decisions the Riksdag is dependent on Government Bills. The Government also has at its disposal the necessary investigatory and preparatory apparatus to an extent the Riksdag cannot match.

In addition, the Instrument of Government has provided scope for the Government also to act as a norm-giving authority, even though it has no legislative authority. Such norm-fixing takes place, on the one hand, through the fact that the Government is vested with its own norm-giving authority that is derived from the Instrument of Government and, on the other hand, because under the Instrument of Government the Riksdag is empowered to delegate considerable parts of its norm-giving authority to the Government.

Like its predecessor the new Instrument of Government rests on the basic thesis that an organ which possesses a certain competence by virtue of the Constitution cannot delegate this unless the Constitution expressly permits it. The Riksdag's possibility of delegating to the Government or other organ the norm-fixing authority vested in it by the Instrument of Government is regulated by a number of rules in the chapter dealing with the norm-giving authority (ch. 8). To begin with there is an extensive field of jurisdiction indicated where the Riksdag has authority, but within this several part areas are marked out where delegation can take place. The rest of this field of jurisdiction consists of the compulsory field where decisions can be taken only by the Riksdag.

Instead of carefully marking out in the Instrument of Government the line of demarcation between the normgiving authority of the Riksdag and that of the Government the legislators have chosen a much more flexible model. The precise line which separates these norm-fixing areas from each other is not therefore drawn in the Instrument of Government but appears through decisions to delegate taken by the Riksdag in connection with legislation in various fields. In this way a mobile and easily maneuverable method has been worked out whereby the division of norm-giving authority between the Riksdag and the Government may be determined. At the same time the Instrument of Government contains guarantees that certain fields of jurisdiction are always reserved to the sphere where only the Riksdag can decide and where no delegation is possible. It was felt that a completely unlimited right of delegation, through which the Riksdag itself was therefore left to keep a watch on its own authority, could represent a threat to democracy. In the *travaux préparatoires* of the Instrument of Government it was emphasized that "it is an important aspect of the sovereignty of the people that the most significant political decisions shall always be taken by the organ of state which most faithfully reflects opinions among the population—in other words, the Riksdag".[8]

As regards the division of competence within the norm-giving authority as laid down in the Instrument of Government the first thing to note is that the Riksdag has the right to legislate on any subject whatever. The Riksdag may, therefore, in exceptional cases enact legislation affecting even the Government's constitutionally specified authority to issue ordinances, an authority which comprises two component parts, on the one hand, powers to decide on administrative regulations concerning the implementation of laws and, on the other hand, a general residual competence, that is to say, powers to decide on regulations which under the Instrument of Government are not to be issued by the Riksdag. Unlike the previous Instrument of Government, the 1974 Instrument of Government is based on the fundamental thesis that the Riksdag possesses all the legislative power and that the fixing of norms by the Government amounts merely to an encroachment on the Riksdag's legislative power that is justified for practical reasons. This fundamental thesis finds expression in the system laid down in the Instrument of Government according to which the authority vested in the Government to issue ordinances on a certain subject does not prevent the Riksdag from passing a law containing regulations on the same subject. This can take place not only within the area of the Government's norm-giving authority as specified in the Instrument of Government but also on subjects that come within the competence of the Government as a result of

[8] *Prop.* 1973:90, p. 205.

the Riksdag's decision to delegate, and this also applies in cases where the Government has already exercised its power. In that case the law that the Riksdag has decided on can nullify a Government ordinance. However, there is no reason to suppose that the Riksdag would, to any extent worth mentioning, decide on a law within the Government's sphere of competence without receiving a proposal from the Government. Even so it is an ultimate power in the hands of the Riksdag, and it is one that is completely in agreement with the fundamentals of the system of government.

Over and above this general legislative authority given to the Riksdag the Instrument of Government indicates certain subject areas where legislation is specifically prescribed. The subjects, therefore, form the primary field of jurisdiction, and to the extent that the rules relating to delegation do not allow any delegation at all it then becomes a question of the compulsory field of jurisdiction. Apart from the fundamental laws and the Parliament Act this area contains the constitutional legislation in other respects, legislation relating to municipal law, legislation relating to judicial procedure where law courts and their activities are concerned, legislation in general in connection with public law that imposes restrictions on the individual: penal legislation, legislation relating to distraint, to taxes, to administrative law that restricts the individual and, finally, legislation connected with private law. Consequently, not all public law regulations fall within the Riksdag's primary field of jurisdiction. Such regulations as do not involve obligations or intervention in the affairs of the individual but are either neutral or beneficial in the eyes of the individual, fall outside the primary field of jurisdiction and are thus within the primary field of the Government. Legislation relating to private law is almost wholly within the compulsory field of jurisdiction. The only part of it that may be the subject of delegation consists of regulations about terms of respite with regard to the fulfilment of obligations (moratoria).

The normal form of delegation is that the Riksdag authorizes the Government to decide on ordinances, and these then take the form of regulations. This authorization could also include power for the Government, in its turn, to delegate further to a subordinate administrative agency or to a municipality. The Riksdag may also delegate to administrative agencies which come under the Riksdag. Within its primary area of competence the Government is in a position to delegate its norm-fixing authority to a subordinate agency.

A special form of delegation is that which the Riksdag can give to the Standing Committees on Finance and Taxation concerning the fixing of indirect taxes while the Riksdag is not in session. It has been considered most in accordance with fundamental principles that the possibility of delegating where taxation is concerned should be restricted to organs within the Riksdag. The power to impose taxes is the prime function of the Riksdag and for this

reason it is difficult to accept that any part of it be delegated to the Government. One exception to this fundamental standpoint is the regulation that the Riksdag may delegate to the Government power to decide concerning import duties on goods. Delegated decisions concerning indirect taxes taken by the Finance and Taxation Committees—but only following proposals from the Government—take the form of a provisional law that must be submitted to the Riksdag shortly after the opening of the next session of the Riksdag. The reason for this special form of delegation is that it may be necessary for reasons of economic policy to decide without delay on an increase or a reduction in indirect taxes during the period when the Riksdag is not in session. When the combined Finance and Taxation Committees are empowered to decide on indirect taxation they are obliged to submit their decision for approval. On the other hand, when the Riksdag delegates powers to the Government there is no such obligation automatically, though the Riksdag has unlimited possibilities of issuing a stipulation to this effect when making the authorization.

DIVISION OF FUNCTIONS IN OTHER RESPECTS

Where *financial power* is concerned—and this consists of the two part-functions of taxation and budget regulation—the Instrument of Government is characterized by a considerable degree of simplification compared with the one previously in force. Only certain main principles are laid down. The principal idea behind the rules in the Instrument of Government concerning financial power is that the right of decision as regards state income, expenditure and capital is reserved to the Riksdag alone. However, the implementation must devolve mainly upon the Government. In two main areas though—the monetary system and the raising of Government loans together with the administration of the National Debt—the Riksdag has its own executive agencies, the Bank of Sweden and the National Debt Office.

One basic enactment is that state funds must not be used other than in the way decided by the Riksdag. This applies irrespective of whether the funds emanate from taxes and fees that the Riksdag decides on, or come from sources of income controlled by the Government. State funds are at the disposal of the Government but each payment that is decided by the Government or other agency must be based on a decision taken by the Riksdag. The Riksdag's decisions as regards appropriations are passed on in written form to the Government, which then informs the agencies about the appropriation decisions and at the same time issues detailed regulations concerning how the appropriations are to be used. In this way the agencies have an opportunity of

making the preparations that are necessary to enable them to implement the decisions at the start of the new financial year, which runs from July 1 to June 30.

The regulations in the 1974 Instrument of Government concerning the *control of foreign policy* agree in the main with those in the previous Instrument of Government as regards the wording this had following the democratization around 1920. The rules in the Instrument of Government relating to the right to make treaties are very similar to those that applied previously. The Government must not enter into international agreements that are binding on Sweden without the consent of the Riksdag if the agreement concerns a subject that is within the Riksdag's area of competence. A treaty which is of major importance, though without falling within the competence of the Riksdag, must as a rule be submitted to the Riksdag for approval. However, the Government may omit to seek the approval of the Riksdag "if the national interest so requires". In such a case the approval of the Riksdag must be replaced by consultations between the Government and the Advisory Council on Foreign Affairs appointed by the Riksdag. As a rule the Government must consult with the Advisory Council on Foreign Affairs on all important matters of foreign policy before arriving at a decision about the issue in question.

As a result of a partial constitutional reform in 1964–65 the possibility was opened up of transferring the right of decision of the Riksdag, the Government or other organ specified in the Instrument of Government to an international organization for peaceful cooperation or to an international court. Such a transfer of sovereignty may only be made to a limited extent and must never be related to a question of establishing, changing or repealing any part of the Constitution or other fundamental laws or to a question of limiting any of the rights laid down in the special section dealing with rights.

An international commitment undertaken by Sweden is not immediately and automatically binding on Swedish citizens or on the whole on anyone to whom Swedish law applies. The commitment is concerned with Sweden as a state, which is committed in its fixing of norms and otherwise to observe the contents of the agreement. These contents must therefore first be transferred to Swedish law before the agreement takes effect within Sweden. Legally such a transformation may take place in various ways. The contents of the treaty may be rewritten in the form of a Swedish statute. The treaty or a part thereof may be adopted as a Swedish statute. When ratifying the treaty the Riksdag can point out that its contents are compatible with current Swedish law. The new Instrument of Government does not involve any change in this respect. In the *travaux préparatoires* it was maintained that the rules about legislation permit the Riksdag to decide, when considering a treaty, that it should apply as Swedish law.

The Instrument of Government also contains rules about the right of decision concerning the use of the armed forces, as well as concerning the announcement of a declaration of war. The rules assure the Government of the authority to send the armed forces into battle in order to repel an armed attack on the country, but apart from this the authority of the Riksdag is required before a Swedish armed force is sent into action or to another country. In the event of an armed attack on the country a declaration of war may be announced by the Government, though otherwise the consent of the Riksdag is required.

The enactments in the Instrument of Government concerning the *courts of law* and the *administrative agencies* establish the fundamental principles and bases of organization. It is emphasized that a judicial dispute between private citizens must not without the support of the law be settled by an agency other than a court of law and that no agency, not even the Riksdag, is allowed to decide how a court of law should judge in individual cases nor how a court of law in other respects is to apply the law in a particular case.

The independence of the administrative agencies is not as pronounced as that of the courts of law. The state administrative agencies come under the Government—though not under the Ministries or heads of Ministries. Some administrative organs come instead under the Riksdag, for example, the Bank of Sweden. The great majority of administrative agencies must therefore comply with directives issued by the Government. Even so, the principle of legality—that the exercise of power must conform to the law—is of course applicable in this connection. Any directives must be in agreement with the law of the land currently in force. Over and above this the administrative agencies are assured of relative independence through the enactment that no agency, nor the Riksdag or a decision-making body of a municipality, is permitted to decide in any special case how an administrative agency should decide as regards the exercise of authority vis-à-vis an individual person or a municipality or where the application of the law is concerned.

In a number of provisions relating to the situation in the event of *war and danger of war* the 1974 Instrument of Government intends to uphold the currently accepted norm in Swedish constitutional law that the *jus necessitatis* is in principle unacceptable. Instead, the intention is to introduce in advance constitutional rules that make it possible for the state agencies to act within the framework of the Constitution even in situations of extreme crisis. In fact the most important reform in this respect was made some years before the general revision of the Constitution, in that a partial amendment to the Constitution was made in 1964–65 which provided for the setting up of a Riksdag War Committee—consisting of the Speaker and fifty other members—which in certain situations can take the place of the Riksdag.