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## CHAPTER 48

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# RATIONAL POLITICS

### *Commissions of Inquiry and the Referral System in Sweden*

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pp. 650–662

Swedish policy-making style is often regarded as distinctive when compared to other countries. Policy-making in Sweden is said to be *deliberative* to the extent that problem-solving is left to well-trained specialists. Moreover, Swedish politics is considered as *rationalistic* in that great efforts are made to develop the fullest possible information about political issues. It is also *open* in the sense that all interested parties are consulted before the final decision. Furthermore, it is seen as *consensual* in that broad agreements are highly valued. For the outside observer Swedish politics is marked by a decision-making style which never seems rash, abrupt, irrational, or indeed, exciting (Anton, 1969).

Similar steps in the decision-making process can certainly be found in several countries but the Swedish system stands out because of its strong emphasis on the preparatory stages. Considerable time and effort is spent on investigations and discussions before a policy proposal becomes a government bill. This can partly be explained by a political culture based on the sounding out and “anchoring” of policy proposals in different segments of Swedish society. Another explanation has to do with particular features of the Swedish justice system and legal culture. According to the dominating view the

courts are supposed to base their judgments on the will of the legislator, hence the need for elaborate texts explaining the intent behind laws. When adjudicating a case a Swedish judge does not primarily refer to legal precedents set by the courts of law. More important are the “travaux préparatoires” of the policy process, which consist of a chain of legal sources such as legislative acts, parliamentary committee proposals, government bills and, importantly, reports from the commissions of inquiry and results from the referral process.

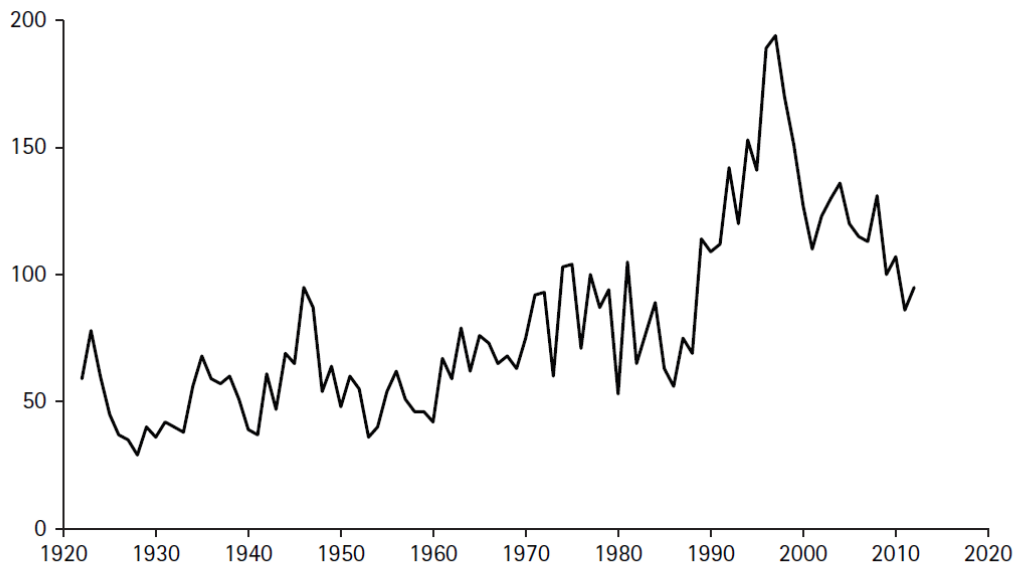
The characterization of Swedish politics as deliberative, rationalistic, open and consensual stems from the 1960s. The question is whether it still holds today, several decades later. Commissions of inquiry and the referral system, being central to the political decision-making process throughout this entire period, can serve as an important indicator of stability and change in Swedish politics.

### **Current trends**

The standard type of decision-making procedure in Sweden can be rather cumbersome. The different phases of the policy-making process involve several types of participants. Normally a commission of inquiry is appointed by the Cabinet in order to investigate the problem and make recommendations. These proposals are published in a special series (“Statens offentliga utredningar”, SOU) and in most cases submitted to public agencies and relevant interest groups for comments. The Swedish term for this referral system is “remiss”, from the French word “remise”. The commission report and the referral replies serve as the basis for the bill submitted by Cabinet to Parliament. Every government bill is scrutinized by a Parliamentary committee. The committee submits its written argument and proposals to the whole Parliament for deliberation and vote. Finally, the Cabinet and the administrative agencies can supplement the parliamentary decision with detailed regulations and instructions (Ruin, 1982).

One might get the impression that not much has changed during the last decades. The formal rules are basically the same. The annual output volume from the commissions of inquiry is still quite high. Around 100 titles in the SOU series are published yearly. This is certainly lower than the peak years of the 1990s, when the average was around 150 titles, but significantly higher than the 50–60 volumes published yearly during the 1950s

and the 1960s (Figure 48.1). Judging from the average number of pages, there is no decline in the total text volume produced by the commissions of inquiry. However, behind this impression of stability are some important indicators of change (J. Johansson, 1992; Gunnarsson and Lemne 1998; Ruin 2008; Amnå, 2010; Lemne, 2013).



**FIGURE 48.1** Annual output volume of Swedish commission of inquiry reports, 1922–2012.

*Note:* The graph shows the number of reports published yearly in the series of Statens Offentliga Utredningar (SOU). The data has been collected and analyzed by the author. In order to assess the total text volume, two more pieces of information have to be taken into account. Firstly, the number of pages per report has varied over the years but there is no universal trend toward shorter reports. The annual mean number of pages for selected years: 1940 = 137, 1960 = 245, 2010 = 298 pages. Secondly, changing typesetting practices have led to a slight decrease in the number of characters per page. The overall conclusion is that the total written output volume from the commissions peaked in the late 1990s and has declined during the last 20 years.

*Source:* Swedish National Bibliography; Swedish Union Catalogue Libris, <<http://libris.kb.se>>

First, the composition of commissions has changed dramatically. The most obvious transformation is the shifting gender balance among commission members. In pre-democratic times, the world of commissions, as the rest of politics, was exclusively male. After the democratic breakthrough the proportion of women started to rise, but at a slow pace. As late as 1988, only 8 percent of the commissions had women as chairpersons. In 2012 this figure had risen to 32 percent. In 2012 the proportion of women commission members was 43 percent (Zetterberg, 1990; Riksdag skrivelse 2012/13:103).

Second, the type of broad commission of inquiry with politicians, interest organizations, experts, and bureaucrats, which was so characteristic until a few decades ago, has now become a rare exception. Today only around 10 percent of the commission members are Members of Parliament. Politicians are primarily found in consultation panels in areas

such as security policy, international law, defense policy, environmental issues, and media violence. Instead, the typical commission of inquiry has become a special investigator. Today around 75 percent of the commissions consists of one single person and in most cases a judge or a senior civil servant. The special investigator is often supported by a specialist staff and can, in some cases, rely on an advisory board of politicians and representatives from business and civil society.

This means, thirdly, that the commissions of inquiry have more or less ceased to be an arena for negotiation and consensus seeking. The opposition parties are rarely invited to participate in the preparation of new legislation. As a general rule, commissions of inquiry have become less independent, thus giving the Cabinet tighter control of the entire decision-making system. New commissions are given less time than before to complete their work. In 2010 the average life span of Swedish commissions of inquiry had declined to slightly less than one and a half years. For single-member specialist commission the average length was even less (Riksrevisionen 2012). This change from formal and long-term to informal and short-term procedures means, together, that the Swedish commissions of inquiry have lost their unique function in the production of a qualified knowledge base for political decision-making.

Several explanations can be offered for the changing character of the commission system. The pace of political decision-making has increased, giving less time for the old type of broad consensus-seeking commissions. At the same time, the political conflict level has risen. Neo-corporatist arrangements, such as interest organizations being represented in the board of state agencies, were dismantled already in the 1990s.

When Sweden became a member of the European Union in 1995 the preparation of new legislation in areas such as agriculture and trade moved from Stockholm to Brussels. Even though the basic structure of the Swedish decision-making process remains intact, European Union membership has had consequences for the commissions of inquiry. In EU matters the Cabinet normally seeks advice and collects information through other channels and primarily from the permanent public agencies. Commissions of inquiry are, therefore, rarely used to prepare Swedish positions in the European decision-making arena.

The system of “remiss” referrals might also look well-established. The vast majority of commission reports are still sent out to public agencies, interest organization and other interested actors in order to collect opinions and advice. But there are signs of change and weaknesses in this Swedish type of hearing process. Written replies continue to dominate, while procedures such as public hearings and oral arguments are used rarely. Well prepared and thoroughly argued responses to commission reports could certainly still be found, but there are several examples of superficial responses with low information value (Eriksson, Lemne, and Pålsson, 1999).

### **Formal regulation**

Policy investigations can be carried out by Parliament, government ministries, public agencies, county councils, municipal governments or other public bodies. However, some commissions of inquiry have special legal status. The concept of “kommitté” is defined in a government ordinance on this particular subject (“Kommittéförordningen”, SFS 1998:1474). Commissions of inquiry have two distinguishing traits. Firstly, they are appointed by the Cabinet and have a legal status similar to other government agencies. Secondly, commissions of inquiry are set up with a mandate to investigate a special subject (the official Swedish term is “utredningsuppdrag”). In colloquial political language the word “utredning” (meaning investigation) is not only used for a commission of inquiry itself but also for the report published by the commission. Centralized political control is exercised in the design of each commission of inquiry, being given a uniform identification number (for example “Ju 2010:09” where “Ju” stands for the Ministry of Justice). Parliamentary approval is not required, which means that the Cabinet can initiate and abolish commissions at its own discretion.

The legal framework of the commissions of inquiry is regulated by the government ordinance mentioned above. The specific instructions for each commission are decided collectively by the Cabinet, not by an individual minister. These instructions are numbered chronologically and published in a separate series (“Kommittédirektiv”). Commissions can be given additional tasks by the Cabinet issuing a new directive. The official name of the commission is decided by the commission itself.

A commission of inquiry consists of a chairperson and one or more members. The power to appoint the chairperson and the members resides with the Cabinet but in most cases the decision is delegated to the responsible minister. Neither Parliament nor any other public body is involved in the formal selection of commission members. The Cabinet may also select one individual to be responsible for the inquiry. Since “commission” refers to a plurality of people the official term for single-member inquiries is “special investigator” (“särskild utredare”). Commissions of inquiry, including special investigators, may be assisted by subject specialists (“sakkunniga”) and experts (“experter”). These two terms might sound synonymous but there is a difference in formal powers. Subject specialists are entitled to be briefed to the same extent as commissions members and permitted to participate in the meetings and deliberations of the committee. Subject specialists are allowed to write dissenting opinions to the commission report. The role of “experts”, on the other hand, is entirely defined by the commission or its chairperson.

The ordinance on commissions contains some general guidelines for the commission reports. If the proposals can be expected to have financial consequences the commission must present an estimate of the costs and benefits for the state, regional and local governments, private business and individual citizens. If proposals concern regions and municipalities the commission must assess how local self-government is affected. Other consequences to be taken into account include law enforcement, employment, public services, small business, gender equality, and integration. In actual practice many commission reports neglect to present this type of impact analysis (Riksrevisionen, 2012). Sweden is often wrongly viewed as a leading country when it comes to better regulation through impact assessments. In fact, Sweden barely fulfills the more stringent criteria of Regulatory Impact Analysis (RIA) and is lagging behind many other European countries (Erlandsson, 2010).

This brief overview shows that the formal regulation of commissions of inquiry could be described as detailed but weak. Administrative procedures are elaborated in length but commissions of inquiry are not part of the constitutionally defined institutions of Sweden. In fact, the Cabinet could appoint any number of commissions or abolish all sitting commissions over night.

Compared to commissions of inquiry the referral system represents a different type of regulation. In this area the rules are not very specific but they are constitutionally binding. The Instrument of Government contains a clause which makes it mandatory to seek advice from outside sources: “In preparing Government business the necessary information and opinions shall be obtained from the public authorities concerned. Information and opinions shall be obtained from local authorities as necessary. Organizations and individuals shall also be given an opportunity to express an opinion as necessary” (Chapter 7, Article 2, official translation) . This constitutional article defines three types of sources. The cabinet has an obligation to seek advice from “public authorities concerned”. Municipal and regional government is given slightly lower priority since the cabinet itself could decide when it is “necessary” to obtain information and opinions from regional and local authorities. The third category consists of private bodies such as organizations and individuals, which should be “given the opportunity” to express opinions when it is judged necessary to do so.

The obligation to seek advice pertains to all types of “Government business”, not only legislation but decisions in individual cases as well. However, the constitution remains silent about the specifics of the referral procedure. The responsible minister can decide which authorities and other bodies to hear. In actual practice the selection of referral partners is decided by a civil servant in the ministry concerned. There is a close link between commissions of inquiry and the referral system. The vast majority of commission reports are sent out for comments to a broad range of public and private bodies, which are normally given a few months to react. The written referral responses are sent to the ministry in charge. These responses are covered by the general principle of open government and hence available for anyone to consult. In some important cases the referral responses are summarized and published in a separate volume. If a commission report leads to legislation the Government bill normally contains an overview of the most important arguments given in the referral responses.

### **Historical development**

Precursors of the present system of commissions of inquiry can be found in the 17th century. During the ascent of royal power and the territorial expansion of the realm temporary commissions were used in order to collect information and prepare decisions.



The dominance of the legislature during The Age of Liberty in the 18th century meant that the Riksdag took the initiative for most of the special commissions, which often had a strong representation of Members of Parliament. Although political power shifted back to the King in the 19th century there was still a significant element of parliamentary involvement in the temporary commissions. During the 19th century around eight temporary commissions were set up yearly. About 60 percent of these commissions were appointed by the executive and 40 percent by the Riksdag (Hesslén, 1927; Zetterberg, 1990).

With the introduction of parliamentary democracy around 1920 and the subsequent expansion of the public sector commissions of inquiry became a frequently used instrument to prepare legislation. In the first half of the 20th century more than 50 new commissions were set up every year. After a while, the system of temporary commissions almost seemed to have become too popular. The commissions were criticized for being costly, slow, bureaucratic, and even prone to corruption. In 1922 the Social Democratic minister of finance F. V. Thorsson initiated a cut in the public sector budget, a decision which became known as a “commission slaughter”. This led to a decline in the number of commissions but after a few years the number of commissions started to rise again (Meijer, 1956; Zetterberg, 1990).

The commissions of inquiry had become an integral part of the Swedish policy-making process. Commissions of inquiry were initiated by the Cabinet, which was also given the power to write the instructions and appoint the members. However, Parliament still kept its influence since Members of Parliament, including the opposition parties, were regularly invited to participate in the commissions. By the 1970s more than half of the commissions had some kind of parliamentary representation. At this time many commissions could be described as policy planning commissions. By working out the basis for formal legislation these commissions of inquiry became important centers of political power in areas such as research, housing, energy, defense, labor conditions, regional policy, and constitutional reform. The plans for many of the political reforms during the construction of the Swedish welfare state were drawn up by commissions of inquiry. Sometimes these commissions became semi-permanent institutions and even some cases developed into permanent public agencies (Zetterberg, 1990).

This type of policy-making machinery worked very efficiently. It has been estimated that more than 40 percent of all legislation in Sweden during the late 1960s and early 1970s was based on commission proposals (Brantgärde, 1979; Premfors, 1983). A study of all commissions of inquiry which delivered their final reports between 1968 and 1973 showed that 90 percent presented specific policy proposals. In this particular period of time, almost half of the commissions argued for increased government spending. A vast majority of these proposals led to government bills that were sent to Parliament. The commissions were not only able to develop policy proposals but also to build political consensus. Unanimous proposals had a high likelihood of passing the subsequent stages of the policy process without modifications. However, commissions with dissenting opinions were often criticized in the hearing process, changed by the ministries, amended by Parliament, or simply abandoned (F. Johansson, 1979).

Most commissions of inquiry had a mixed composition. In the first half of the 20th century around a quarter of the members were politicians, primarily Members of Parliament. Around half of the commission members were recruited from the public sector, including the courts. That meant that senior civil servants from national agencies and ministries as well as high judges took active part in the preparation of legislation in different policy areas. The remaining quarter were members from civil society and other areas external to the administrative, governmental and parliamentary sphere. Trade union federations and business associations were frequent participants in the commissions of inquiry. This was a central ingredient in the Swedish variety of neo-corporatist cooperation between politics, bureaucracy, and interest groups (Meijer, 1956; Johansson, 1992).

Experts were a prominent feature in the commissions of inquiry. While experts rarely exceeded ten percent of the total number of commission members, they formed an important link to academic research in different fields. Furthermore, experts were recruited as secretaries, staff and consultants. Around one fourth of the commission reports published between 1959 and 1973 contained social science contributions from disciplines such as political science, public law, economics, business administration, public administration, geography, sociology, social medicine, criminology, and pedagogy (Foyer 1969). However, one should not draw the conclusion that the commissions were

primarily instruments of objective inquiry. Rather, they could best be described as an integral part of an often highly politicized process of policy making (Premfors 1983).

By the early 1980s it became obvious that some basic conditions for the Swedish policy-making model had changed. The economic crisis of the 1970s demonstrated that the public sector could no longer expand at the same rate as in the previous decades of continuous economic growth. As in many other European countries, Sweden experienced new problems of policy making, including ungovernability and overload. When the Social Democrats returned to power in 1982 Prime Minister Olof Palme announced that the number of commissions of inquiry would be decreased and that many of the remaining commissions would have their mandate reduced. The established system was criticized for being cumbersome and generating fiscally unrealistic proposals. From now on, policy proposals would be prepared in a more tightly controlled manner, for instance by relying on internal resources of the ministries and public agencies (Premfors, 1983).

Olof Palme's "commission slaughter" led to a temporary reduction in the number of commissions but the number soon started to rise again, thus following the pattern of the 1920s. In the 1990s commissions of inquiry were just as frequent as in the past. However, the character of the commissions was profoundly changed. The political conflict level started to rise, as measured by the proportion of commissions unable to find unanimous support among its members. At the same time parliamentary representation began to decline and the Cabinet increasingly came to rely on expert commissions or even an individual "special investigator" (J. Johansson, 1992; Gunnarsson and Lemne, 1998). Political planning commissions with broad participation of Members of Parliament, representatives of large interest organizations, civil servants and experts, reflecting the type of commission epitomizing the Swedish policy-making process, became less and less frequent. A study of remiss referrals between 1964 and 2009 shows that the participation of voluntary organization has declined. Furthermore, the proportion of conflict-oriented and member-benefit-oriented organizations has decreased while consensus-oriented and public-benefit-oriented organizations have increased their relative share of participation (Lundberg, 2012).

## Varieties of commissions

Looking back at the political history of Sweden it obvious that there has been a considerable variation among the many thousands of commissions of inquiry. One can distinguish at least eight main categories (Meijer, 1956, 1969; F. Johansson, 1979; J. Johansson, 1992; Hirschfeldt 1999; Ruin 2008, 2012).

*Policy sector planning.* The classical commission of inquiry has been set up with the purpose of proposing legislation in a specific policy area. This type of commission often had members representing different political parties, large interest organizations, civil servants from ministries and agencies as well as academics and other experts. Such policy planning commissions were often able to “anchor” decisions in different segment of Swedish society, channel research results into the political decision-making process and ease the future implementation of political reforms.

*Long-term policy making.* Commissions of inquiry have been used to formulate overarching and long-term policy goals but not necessarily proposing specific legislation. Long-term surveys of the Swedish economy (“Långtidsutredningar”) have been carried out on a triannual basis since the late 1940s. Nowadays these long-term surveys are coordinated by the Ministry of Finance and often devoted to specific problems, such as demographic trends or the labor market.

*Public administration.* Some commissions of inquiry have purely administrative tasks, such as setting up or dismantling a permanent public agency. After a new policy has been decided, often on the basis of the proposals from a policy planning commission, the Cabinet might appoint a special investigator to prepare the organizational changes necessary for the implementation of the policy decision.

*Consultation.* When the Cabinet wants to consult with experts and representatives of organized interests it might use the formal framework of a commission of inquiry. This is particularly the case if the consultation process is supposed to last for a longer period of time. Some of these consultation committees have acquired a semi-permanent status. Often distinguished by names ending in “delegation” or “beredning”, these commissions are found in areas such as environment, research, social issues, migration, and gender issues.

*Special inquiries.* Commissions of inquiries are sometimes appointed after disasters, scandals and other events when public trust is at stake. Members might include representatives of different political parties, outside experts, and well-respected citizens. For example, such commissions of inquiry were set up to investigate the events in Ådalen 1931 when the military killed demonstrating workers on strike, the use of secret intelligence during World War II, the assassination of Prime Minister Olof Palme in 1986, the Estonia ferry catastrophe in 1994, and the political and bureaucratic responses to the tsunami disaster in Southeast Asia in 2004.

*Expert teams.* Sometimes the Cabinet appoints a team of scholars to investigate a certain problem, without necessarily giving the task of proposing specific policy proposals. One example is the Study of Power and Democracy in Sweden (“Maktutredningen”) which was set up in order to answer questions about the distribution of power resources in Swedish society and the quality of Swedish democracy (SOU 1990:44). During the final years of the state church system one commission of inquiry consisted of theological and linguistic experts who were given the task of translating the Bible into modern Swedish (“Bibelkommissionen” 1973–2000, SOU 2000:100).

*Symbolic action.* In the 1920s the Social Democrats initiated one commission on the nationalization of Swedish industry and another on industrial democracy. Neither led to any practical results, but the government could refer to these commissions in order to demonstrate its ideological fervor.

*Political burial.* By appointing a commission of inquiry the Cabinet can win political time. Hot and sensitive political problems might be defused or cooled down if they are referred to commissions which keep them at arms-length distance from the political decision-making process.

## **Rational politics redefined**

The general conclusion is that Swedish politics can still be portrayed as deliberative, rationalistic, open and consensual, but only if these four concepts are reinterpreted.

When Sweden was described as *deliberative* in the 1960s this concept was given a quite narrow meaning. Deliberation at that time signified that formal political decision-making was preceded by “long periods of time during which more or less attention is given to some problem by well-trained specialists” (Anton, 1969). Today the situation has changed in at least three different respects. Firstly, the time span of the policy-making process has become much shorter. Only in a exceptional cases are commissions of inquiry allowed to devote several years to investigate political problems. Secondly, “well-trained specialists” certainly still play a role in the elaboration of public policy but the authority of experts and scientists has declined. The philosophy of social engineering and expert rule has been challenged by technological failures, environmental problems and increasingly critical media and citizens. Thirdly, if Swedish policy making is still to be characterized as deliberative the preparation of legislation can no longer be confined to the closed elite arenas of the 1960s. Rather it must include new arenas for public discourse opened up by increased pluralism and innovations in communication technology. In short, the stakeholders of Swedish politics has changed from elite to mass. It has also changed from a long-term sounding out style of policy making to a short-term and iterative trial-and-error method.

Sweden in the 1960s was characterized as *rationalistic* in a very special sense. The commissions of inquiry were used as evidence for the conclusion that “great efforts are made to develop the fullest possible information about any given issue, including a thorough review of historical experiences as well as the range of alternatives suggested by scholars in and out of Sweden” (Anton, 1969). In fact, many commissions report at that time contained long historical background chapters as well as international comparisons. Different policy alternatives were probed in detail and possible consequences were methodically investigated. This situation changed already in the 1980s when commissions were ordered to finish their assignment in less time and deliver shorter reports. Although the quest for factual correctness and disdain for emotional arguments, captured by the Swedish word “saklighet”, is still central to the political culture of Sweden, political decisions today are taken on a much less solid factual ground. This transformation is captured by the well-known distinction between, on the one hand, full or perfect rationality and, on the other hand, bounded or satisficing rationality (Simon, 1957). If contemporary Sweden should still be described as rational it

is certainly not in the utopian and perfect sense but rather in an unexceptional, possibly satisficing meaning.

The depiction of Swedish politics in the 1960s as *open* carried a particular connotation. Sweden was open “in the sense that all interested parties are consulted before a decision is finally made” (Anton, 1969). This situation has changed. It is no longer the case that “all interested parties” are consulted beforehand. The most obvious example is the decline in the number of commissions with parliamentary representation. Only on rare occasions are the opposition parties invited to participate in the preparation of new legislation. The involvement of interest organizations has declined in a similar fashion. Today the commissions of inquiry are more tightly controlled by the Cabinet and the government ministries. When interest groups are no longer invited to participate in the commissions of inquiry, they are forced to use other ways of influencing political decision-making. This is one explanation of the increase in lobbying, opinion-making activities, and communication consultants (Micheletti, 1984). Thus, the political process has moved from a system based on selected access for a few major interests to an open-ended system characterized by competition and unpredictability.

Lastly, Swedish politics was once characterized as *consensual*. Political decisions were “seldom made without the agreement of virtually all parties to them”. This conclusion is not supported by contemporary evidence. One can no longer say “virtually all parties” agree to the political decisions taken by the Cabinet and the Parliament. In many cases the affected groups are not even invited to participate in the preparatory stages. In certain respects Swedish politics can no longer be characterized as consensual. The conflict level has risen and parliamentary politics has become more polarized. The old type of broad agreements based on elite compromise belongs to Swedish political history. However, certain elements of the old consensual culture are still intact. Open conflicts are often avoided and the political rhetoric of the major political actors is still comparatively low-keyed and open-minded. A frequent gesture used in political discourse by politicians from the government as well as the opposition is to stretch out a hand as invitation to the opponent to negotiate a broad agreement on a specific issue. In contrast to the old closed-room arenas of yesteryear present-day consensus-seeking is played out in the openness of the public sphere and should be seen as an element of influencing public opinion.

It is safe to conclude that the transformation of the commissions of inquiry and the system of referrals indicate a more general change in Swedish politics. For political decision-makers, the system has become more unpredictable and more difficult to govern. For individual citizens and civil society organizations, it has become more open and the difference between insiders and outsiders has become less pronounced. For political scientists in the field of comparative government Sweden has become more similar to other European polities, thus slightly less interesting.



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