

Textualizing democracy: The Norwegian Constitution 1814–2014

1 Introduction

The Norwegian Constitution ranks as one of the most frequently referenced texts in current Norwegian public debates. Throughout the year, the Constitution is invoked in numerous cases as the framework for understanding, improving, challenging, or defending contemporary Norwegian democracy. In the yearly nationwide celebrations of Constitution Day on May 17, the Constitution is referred to as a common point of reference by most Norwegian citizens. In this sense, the collective national consciousness casts democratic participation as constant encounters between the constitutional text and civic activities. Thus, citizens' democratic participation is deeply involved in processes of *textualizing democracy*.

Significantly, some of these ongoing textual processes manifest themselves concretely. Initially, the founding fathers, the *Eidsvollsmen* converted ideas on democracy into the text of the Constitution. From then on, citizens' interpretations of and actions based upon the Constitution have resulted in numerous derived texts, judicial and other. International in its historical origin, the Constitution also interconnects transnationally with foreign constitutions, international legal documents, political pamphlets, literary texts and other texts transmitting ideas of politics, rights, governance and social formations. Consequently, the Constitution is entwined in layers and networks of other texts that cut across and challenge our modern notions of genres and disciplines.

The specific interdisciplinary and textual focus on the Constitution will allow us to explore new ways of analyzing citizens' participation in the evolution of democracy in Norway. From our different disciplinary outlooks, we focus on investigating the textual processes involved in the creation of the Norwegian Constitution and its various transformations and interpretations during the last two centuries. A significant part of this investigation is to consider how the Constitution has evolved as a continuous dialogue with texts relating to international events in that period.

Although we research the Constitution as a text, we emphasize that textual processes imply and depend upon realities outside the text: People engage in many actions that do not involve texts (or that involve texts only distantly). Yet, people *also* write texts, they negotiate how texts should be written, and they debate how texts should be disseminated, interpreted, enacted, and changed. These negotiations and debates are particularly frequent and intense when responding to culturally, legally, socially, and politically significant texts, such as the Norwegian Constitution. A focus on the textual qualities of the Constitution therefore helps us scrutinize both its complex prehistory and its history of changes and interpretations. The textual focus enables us to reveal citizens' actions and decisions on a micro-level, and to follow closely diachronic and transnational transformations.

Researchers from many disciplines have examined the Norwegian Constitution within their respective fields. We move beyond those mostly mono-disciplinary approaches to fuse knowledge generated in our respective realms of expertise and to expand research of the Constitution into textual research. We plan to disseminate our research as an academic book published by an international publisher.

2 Textuality: producing and interpreting the Constitution as democratic participation

Researching the Constitution as a text, our first premise is that as any text, the Norwegian Constitution is historically situated. Thus, its first version, the Eidsvoll Constitution of 17 May 1814, was written by means of the linguistic and other semiotic resources available to the *Eidsvollmenn* in the particular historical situation of early 19th century Norway. The inventory of letters, words, grammatical and rhetorical norms given by Danish as well as by Norwegian conditioned how they could write the Constitution. Their writing was also informed by their knowledge of other systems of governance, constitutions, texts, and concepts. Some conditions were determined predominantly by domestic contexts, such as the vast political and cultural debate on all possible themes stimulated by the abolishment of censorship in 1770. Other influences came from abroad, such as the central concepts of civil and political rights. Crucially, the modern

tradition of constitutional writing, out of which the Norwegian Constitution emerged, represented a new understanding of the constitution concept per se. A constitution did not, as before, describe a particular actual state of the society, but rather it normatively prescribed a political vision and in consequence social transformations. A modern constitution as it was conceived around 1800 did not merely *modify* the emerging political structure of a society; it *prescribed* a whole new society.

Our second premise is that, again as any other text does, the Constitution submits to the potentials and limits generally involved in interpretations. The textuality of the Constitution is, however, generally overlooked. One cause of this ignorance is perhaps the Constitution's status as a national myth: the Norwegian public seems less interested in the text, which is understood as a given and stable entity, and more interested in how the Constitution relates to phenomena outside the text. People tend to see the effects of the Constitution more clearly than they see the Constitution itself. Thereby, the Constitution conforms to a general paradox: Social life is permeated by texts at every level, yet precisely due to this omnipresence, the texts per se are overlooked. Interestingly, the textuality of the Norwegian Constitution ceases to be overlooked because of the unique Norwegian practice of providing amendments in an archaic linguistic form (Hylland 1989, Vinje 2002). When we as researchers view the Constitution as a text, we are provoked to ask questions such as: Must a constitution have the form of a single, material text? Why are some changes considered to be amendments, while others are considered to be 'mere' text changes? May we detect a pattern in what have been considered formal changes and what have been considered informal changes and practices developed alongside the letter of the law? Which textual patterns were imitated? How do local and temporal conditions govern formulations?

Our third premise, partly contradicting the second one, is that due to its specific legal and political status, interpretations and enactments of a constitution affect social fields in ways that challenge its mere textual qualities. Because of its foundational character, a constitution functions as the basis of existing legislation and provides the framework of governance. This framework operates not only in the positive sense of opening up new possibilities to citizens, but also in the negative sense of marginalizing options and understandings not included in its text (Luhmann 1995). The specific political and legal status of a constitution will in this sense form the context. Variant readings exist that are all equally compatible with the text and none of which is privileged by the text against any of the other variants. In such cases, the choice of interpretation becomes a political act, resting on the interpreter's mobilizing of extra-textual information (Kis 2003: 143).

By approaching the Constitution analytically through such notions of textuality, we presume that, as any text, it may exist in three modes: as an artifact, as a social object, and as individual interpretations (Gammelgaard 2001). As an *artifact*, the Constitution has a material existence as a vehicle carrying linguistic and other signs. Thus, the Constitution appears as different things when handwritten on paper, printed as a booklet, and accessible in digital form on the Internet. It also appears as different things when written in different languages and when written in the varying historical shapes of single languages. Further, the Constitution appears as yet another material object whenever amendments are made. Finally, each different graphic design makes the Constitution appear to be a new artifact. Including such visual and material objects in our research will open up new possibilities for researching the material conditions for spreading ideas of democracy throughout Norway and throughout generations of Norwegian citizens. As a *social object*, the Constitution exists as an entity lodged in the collective national consciousness. Most often, when people express statements such as, 'The constitution says,' or 'This violates the constitution,' they refer to the 'Constitution-social object.' They refer to the general, socially shared idea of the Constitution's meaning, rather than to any of its many material varieties. They refer to general ideas about democracy rather than to the letter of the Constitution. Through *individual interpretations*, the Constitution exists whenever anybody reads it and forms his or her idea of its meaning. Such individual interpretations form a basic precondition for citizens' understandings of democratic participation provided by the Constitution. As researchers, we may access those individual interpretations when people reveal them in the form of new texts, spanning such diverse pieces as rulings by Supreme Court judges, amendments by parliamentarians, instructions by civil

servants, and May 17 speeches by young students. By researching these interpretative responses, significant and specific modes of Norwegian democratic participation may be illuminated on a highly detailed level.

The three modes of existence change at different paces. The ‘Constitution-artifact’ changes hand in hand with every new vehicle and amendment. Also, the individual interpretations change quickly: New interpretations appear with every individual reading. On the other hand, the ‘Constitution-social object’ changes gradually according to the impacts from new ‘Constitution-artifacts’ and according to continuous individual interpretations. The relative stability of ‘Constitution-social object’ is the reason that in 2014, we will celebrate the bicentennial of the Constitution.

3 Methodology: texts as social actions

This project brings together experts from all the involved disciplines to work jointly on researching the Constitution. The Constitution matters to researchers in different ways and with different significance, and when examining the Constitution, researchers have differing interests and methodologies. In this project, textuality serves as the meeting point for the involved researchers. Our joint methodology bases on a set of interrelated theories that share an understanding of texts as a specific kind of historically situated social action. Our joint platform rests on rhetoric, speech act theory (Austin), functional linguistics (Prague school, Halliday), conceptual history (Kosselleck), discourse analysis (Foucault), cultural semiotics (Lotman), theories of communicative action and political philosophy (Arendt, Habermas, Luhmann) and theories of text materiality (Darnton).

The Norwegian Constitution is a relatively short text. The Eidsvoll Constitution of 17 May 1814 contained less than 5000 words distributed over 110 articles. Though our project will consider the entire text, we will focus most closely on those articles that most clearly represent the Constitution as part of the historical projects of democracy and Enlightenment, that is we will focus on those aspects which relate to citizens’ democratic participation. Instances of international projects, these articles lend themselves to transnational comparisons (see Michalsen 2007) and for detecting transformations over time. Special attention will be given to Article 100 since it may be considered a meta-textual article. Anchoring freedom of expression to the Constitution, it allowed citizens to produce texts of any kind, including those criticizing the system of governance as detailed in the Constitution. As such, Article 100 reflected the rise of public spheres in Western Europe and the Americas around 1800.

To investigate how domestic and international impulses have interrelated throughout the two centuries of the Constitution’s existence, our team includes experts both on Norwegian affairs and on foreign cases and international phenomena. Comparing the Norwegian Constitution with foreign constitutions requires philological skills and our team has high competency for working with constitutions in Germanic, Romanic, and Slavic languages.

4 Transformations in time

The textual approach enables us to look upon the Constitution’s different modes as sites for change that make visible the intersection of a myriad of past, present, and future activities, interests, and ideas. Transformations in time represent one shared scope for all participants. Therefore, we will ask in what ways do time and temporality—references to the past, the present and the future—enter into the Constitution? For example, what is the link between the linguistic present of the Eidsvoll Constitution and the actual political present of 1814? Does the present tense express the performative speech acts of legal language only (see Visconti 2009: 394–98)? How does the text of the Constitution venture to free itself from the historical contingencies of the (then) present and guide the nation safely into the future? Article 100 may be seen as heralding a new era where print culture gains a status of its own, distinct from the oral culture of the 18th century.¹ Article 100 conceptualizes freedom of expression as the right of individuals to criticize society and the state

¹ Speaking specifically about the freedom of *print*, Article 100 relates to then communicative technologies used in the public sphere.

from the outside. Does this imply that Article 100 meant a closure to the older concept of freedom of expression as a means for the people to communicate directly with the regent?

Furthermore, the diachronic aspect includes setting the Eidsvoll Constitution in the contemporaneous landscape of other texts circulating in the public sphere of early 18th century Denmark-Norway, including works of fiction, newspapers, journals and political pamphlets, many of which were printed by the then less than ten printing works in Norway.

Following the Constitution through time, the question of amendments becomes central. We will investigate constitutional changes that appear as formal changes of the Constitution's text and discuss them against changes taking place without leaving traces in the text. We will also analyze in detail how members of the *Storting* look upon linguistic revisions made to the Constitution.

The Norwegian constitution seems remarkably robust and we will ask whether stylistic qualities may contribute to robustness. Do laconic formulations enable multiple interpretations that in turn make text revisions unnecessary? Rasch and Congleton (2006) found that a constitution is most likely to be stable when many players cooperate to create it. We will deepen this perspective by scrutinizing how players of the past and the present co-create and interpret the text. Young students' interpretations as delivered in speeches on 17 May represent a particularly future-oriented case. Most often, these interpretations do not rest on individual readings of the Constitution. Instead, they reflect collective interpretations fostered by the school and other institutions. For the young students, their guides and attendees, these speeches serve as important interpretations of democratic values.

5 Transnational transformations

From its very beginning, the Constitution has been part of an international dialogue. The Eidsvoll Constitution was an instance of the global movement of constitutionalism. This movement began in 1776 leading in the next fifty years to many hundreds of constitutions. Often imitating the most famous ones, the emerging constitutions fused international constitutionalism and the national (or regional) conditions. As part of the constitutional movement, they were framed according to model constitutions conveying universal principles. However, legally, each constitution regulated only one specific state and territory.

We will analyze the international position of the Norwegian Constitution by comparing it with other constitutions: the federal American constitution (1787), the French constitutions of the 1790s, the Austrian draft constitution of 1848–1849, a Czech mock constitution of 1849, the cluster of Swedish fundamental laws, and the constitutions of Poland (1791), Spain (1812), and Denmark (1849). When comparing, we will center on questions concerning textuality. How were global patterns shaped by national linguistic means and textual patterns? What happened in the process of imitation? Do textual differences across constitutions reveal who wielded the pens? We will also trace the global emergence of particular concepts formulated in the Constitution, particularly the very concept of *constitution*.

Influences from abroad extend to the international canon of philosophical, legal, literary, and political texts. To mention a single example, Thomas Paine's *Rights of Man* (1791) ranked as a bestseller in 19th century Europe. How did the Eidsvoll Constitution refer to this international corpus? What did these prior international texts allow for?

The international dialogue on rights and governance went both ways and we will investigate how the Norwegian constitution has been received abroad, particularly in the Nordic countries and Britain. Already 1814 saw two translations of the Eidsvoll Constitution into English and one into French. The November 4 Constitution was immediately translated into Swedish (Nilsen 1997).

6 Participants

All researchers involved in this project have worked since 2008 in the framework of the interdisciplinary project 'Foundational texts', at CULTRANS, the University of Oslo.² All

² For details on the team's activities, see <http://www.uio.no/english/research/interfaculty-research-areas/kultrans/areas/foundational/>.

participants have delivered early drafts of chapters to the international academic book. Participants are professors Dag Michalsen and Inger-Johanne Sand and associate professor Eirik Holmøyvik (Law), professors Ragnvald Kalleberg and Bjørn-Erik Rasch and PhD Yordanka Madzharova Bruteig (Social Sciences), associate professor Kirsten Sivesind (Education), professors Kjell Lars Berge, Karen Gammelgaard (project manager), Johan Tønnesson, researcher Mona Ringvej (Humanities), postdoc Tone Brekke (Centre for Gender Research) and academic head of CULTRANS, Helge Jordheim. All participants have thorough experience in the study of the Norwegian Constitution and/or other situated texts. For example, Berge, Gammelgaard, Jordheim, and Tønnesson co-authored a book on theories applicable for research into the interface between texts and history (Asdal et al. 2008).

Three distinguished international scholars will collaborate on the project. Professor William Warner (University of California, Santa Barbara) has researched how revolutionary communications history became embedded in the First Amendment (1789) of the Federal American Constitution (Warner 2005). Professor Jacqueline Visconti (University of Genoa, Italy) is an expert on comparative analysis of legal texts and legal translation. Professor Ulrich Schmid (University of St. Gallen, Switzerland) is an expert on text theory and cultural semiotics. As a guest researcher at the University of Oslo in spring 2010, Schmid participated in our team's workshops.

7 Communication

We aim to publish the joint book in 2013 or early 2014 by an internationally recognized publisher. We are currently working on a book proposal for Berghahn Books, New York.

Chapters in the book will approach several interrelated dimensions of the Norwegian Constitution as a text: textual culture 1814 in Denmark-Norway (Berge), the writing down of constitutional texts (Michalsen), Article 100 and the past (Ringvej), temporal inscriptions (Jordheim), the 1814 understanding of 'constitution' (Holmøyvik), textual connectives (Visconti), constitutional intertextuality (Schmid), the power of genre (Gammelgaard), British and Romantic textual reflections (Brekke), a comparison with the US experience (Warner), judicial and political codes (Sand), facilitation of public discourse (Kalleberg), amendments as text changes (Rasch), parliamentarians on the language of the Constitution (Madzharova-Bruteig), and young students' interpretations (Sivesind and Tønnesson). Brekke, Gammelgaard and Michalsen will edit the book. To emphasize the textual focus, all authors will quote relevant parts of the Constitution and reflect on how the concept of text functions in research conducted by their discipline.

8 Project plan

In autumn 2011 and in 2012 we will focus on writing, revising and editing the book. We will discuss all chapters in an international workshop in December 2011. In 2012 we will send chapters to external reviewers and work closely with an American academic copy-editor. The manuscript should be ready to present to the publisher in early spring 2013.

9 References

- Asdal, K., K.L. Berge, K. Gammelgaard, T. R. Gundersen, H. Jordheim, T. Rem, and J. L. Tønnesson. 2008. *Tekst og historie: å lese tekster historisk*. Oslo: Universitetsforlaget.
- Gammelgaard, K. 2003. *Tekstens mening*. København: Roskilde universitetsforlag.
- Hylland, Aa. 1989. 'Språket i grunnloven.' *Norsk statsvitenskapelig tidsskrift* 1989, vol. 5, no. 4, 345–64.
- Kis, J. 2003. *Constitutional Democracy*. Central European University Press.
- Luhmann, N. 1995. *Social Systems*. Stanford California: Stanford University Press.
- Michalsen, D. 2007. 'What is a constitutional tradition? The case of 19th century Norway.' In Diestelkamp, B. (ed). *Liber Amicorum Kjell Å Modéer*, Lund: Juristförlaget, 449–64.
- Nilsen, R. A. 1997. *Hva fikk nordmennene å lese i 1814? En bibliografi med beskrivelse av skrifter og trykk utgitt i Norge i grunnlovsåret*. Oslo: Universitetsbiblioteket i Oslo
- Rasch, B.E. and R. Congleton. 2006. 'Stability and Constitutional Amendment Procedures,' in Congleton, R. and B. Swedenborg (eds) *Democratic Constitutional Design and Public Policy: Analysis and Evidence*. Cambridge, MA: The MIT Press, 319–42.
- Vinje, F. 2002. *Frihetens palladium*. Oslo: Stortinget.
- Visconti, J. 2009. 'Speech Acts in Legal Language: Introduction.' *Journal of Pragmatics*, 41, 393–400.
- Warner, W. 2005. 'Communicating Liberty: The Newspapers of The British Empire as a Matrix For The American Revolution,' *ELH* 72. John Hopkins University Press, 339–61.