Kári á Rógvi[1]

Except by some Action not provided for in the Instrument itself.

- *A Short Note on Opting Out of the Danish Realm*

> I hold that in contemplation of universal law and of the Constitution the Union of these States is perpetual. Perpetuity is implied, if not expressed, in the fundamental law of all national governments. It is safe to assert that no government proper ever had a provision in its organic law for its own termination. Continue to execute all the express provisions of our National Constitution, and the Union will endure forever, it being impossible to destroy it except by some action not provided for in the instrument itself.
> ***Abraham Lincoln First Inaugural Address***

> But since the point of a revolution is to reject the established order, it is unclear why constitutionalization of any such right would be a useful step at all.
> ***Cass R. Sunstein***[2]

---

[1] Junior Lawyer at the firm Faroe Law / Dania Advokater. Legal advisor to the Faroese Constitutional Committee. Educated in Denmark and in Scotland, cand. jur. Copenhagen, LL.M. Aberdeen.

[2] Constitutionalism and Secession 58 U. Chi. L. Rev. (1991) 633 at 66

Føroyskt Úrtak
Kári á Rógvi viðger í greinini, um føroysk loysing frá Danmark er í samsvar við donsku ríkisgrundlógina. Føroyingar tykjast leggja stóran dent á, um tað ber til at loysa sambært donsku stjórnarskipanina, og um danskir myndugleikar vilja geva bindandi tilsøgn um at virða føroyka loysing. Hetta er at misfata støðuna. Tað liggur í donsku skipanini eins og í øllum øðrum stjórnarskipanum, at skipanin skal varveitast í allar ævir, um ikki politiskar rembingar skaka skipanina av lagi. Velja føroyingar at enda tað samveldið, sum í verki nú er ímillum Føroya land og Danmarkar ríki, er hetta eitt politiskt sig, ið stríður ímóti grundlógini, men sum donsku stjórnarstovnarnir kunnu velja at góðtaka, og helst eisini fara at góðtaka. Danski hægstirættur fer óiva at lata Fólkatingið gera spurningin av eftir tilmæli frá Stjórnini. At loysa frá verandi støðu er við kollvelting at birta politiskan jarðskjáta, ið hevði skakað politisku skipanina, men sum so mangan áður hevði hetta ført við sær, at ein nýggj stjórnarskipan og nýggj løgskipan gjørdust veruleiki. Heimildin er ikki at finna í grundlógini, men heldur uttanfyri grundlógina.

1. What's the Problem?

From time to time, including at present, the political establishment and inhabitants of the Faroe Islands are actively considering leaving the Danish Realm. The Faroe Islands and Greenland are both associated to Denmark in constitutional arrangements that have puzzled a number of people. The debate on the position of these two entities in constitutional as well as international law is long and wide-ranging, as are the parallel discussion on political, historical, economical and cultural aspects of the matter.[3]

[3] I have written on this in unpublished paper at the Greenland International Conference on International Identity called "Our Land" and in the article "Færøsk Retspleje frem fra glemslen" in Lov & Ret 2002.
Other and more notable writers on the subject include:
Zakarias Wang, on the Faroese position vis-à-vis Norway and Denmark, previous article 2 FLR (2002) 159.

a. In the words of the Powers that be

The Problem can be articulated in the words of the politicians, first a question from the Faroese Nationalist side:

> "Will the Prime Minister recognise the following indisputable facts:
> a) that the Faroese People in accordance with international law is a nation,
> b) that the Faroese people is a subject of international law, and
> c) that the Faroese people has external self-determination in accordance with international law?"
> **Question to the Danish Prime Minister[4] submitted by the Honourable Mr. Tórbjørn Jacobsen, Member of the Danish Parliament (Faroese Republican Party)[5]**

Having refused this assurance, the Prime Minister, summed up the Danish position, indicating that the Danish Parliament is likely to give its blessing, albeit not upfront and not with reference to international law:

Jákup Thorsteinsson and Sjúrður Rasmussen on the question of the Faroese position being based on treaty or delegation. in Folketingets Festskrift Grundloven 150 år ISBN 87-00-39106-9 491 at 505.

Frederik Harhoff Rigsfællesskabet ("The Community of the Danish Realm") ISBN: 87-7724-335-8 Århus 1993. English Summary at 501.

A number of articles published in the FLR deal with the status question under international law:
A. Geater and S. Crosby: 1 FLR (2001) 11 at 34
G. Alfreðsson: 1 FLR (2001) 45
Halgir Winther Poulsen: 1 FLR (2001) 59
On the distinction between sovereignty and independence B. Larsen 1 FLR (2001) 89

The newest Danish textbooks deal only briefly with the Faroe Islands; Henrik Zahle Dansk Forfatningsret 2 at 259; Peter Germer Statsforfatningsret I at 19.

Older ones seem almost absurd in their total neglect and disregard of the Faroese position and the importance of history, culture, politics, precedence and common sence in constitutional law; most notably the one that caracterised the Home Rule Compact as a form of delegation that could as well as have been awarded to two Danish islets, one of them a metropolitan suburb, the other enjoying a similar political non-existence.

[4] In this note the terms for the various political bodies and offices are used thus: 1) the Danish term "Statsministeren" and the corresponding Faroese term for that office "forsætisráðharrin" is translated into "the Danish Prime Minister", 2) the Danish Legislature "Folketinget" is translated into "the Danish Parliament", 3) the Faroese term "Løgmaður" and the corresponding Danish term "Lagmanden" are translated into "the Faroese Prime Minister". This use corresponds with the official use of those institutions themselves. More controversially, perhaps, I use the word "Government" in the American fashion to mean the entire power structure, not just the executive branch, and "the Executive" to describe the executive branches. The Danish term for the Danish executive is "regeringen", the Faroese term for the same is "danska stjórnin", the Faroese term for the Faroese Executive is "landsstýrið", the Danish term for that is "landstyret".

[5] Question no. S 1737 – answered 17 April 2002 – Danish Parliament Session 2001/2002

> "To Mr. Tórbjørn Jacobsen I will say this in all tranquillity that Mr. Tórbjørn Jacobsen may freely suggest that the Faroe Islands and the Faroese Parliament, the Faroese People, are above the Danish Basic Law, but it is and will remain a theoretical discussion, because it is of no practical importance for it has been indicated by a massive majority in the Danish Parliament and by successive Danish Executives that if there comes a wish from the Faroese side for sovereignty, they can have it."
> ***Oral answer in Parliament by the Danish Prime Minister the Right Honourable Mr. Anders Fogh Rasmussen***

The Danish position seems to be that the Danish Government accepts the political eventuality of the Faroe Islands leaving the realm, but will not state this as a legal right, nor indicate the legal source that secession rights may be based upon, and, furthermore, the Danish Government reserves its formal response until such day that a formal request is put forth.

Further to this point, a proposal for a formal resolution put forth by the Honourable Mr. Tórbjørn Jacobsen calling upon The Danish Executive to "…notify the United Nations that the Faroe Islands have unlimited right of self-determination in accordance with international law. " was not adopted.[6]

The Faroese Parliament, for its part, has set up timetable for achieving sovereignty – though as always with considerable dissent – that is based on language referring to legal rights:

> "Recognising that the Faroese People is a Nation with inalienable and continuous right of self-determination, the Parliament approves that a determined effort of achieving Sovereignty is undertaken. The Parliament therefore approves that the Faroese Executive implements the following:
>
> - That the Faroese Government at the latest on January First 2012 assumes the full powers over all Policy Matters in accordance with the legal status of the Faroese people, except for those Matters that are directly connected to assuming sovereignty and, furthermore, that the Faroese Government in accordance herewith pays in full for these policy matters.
> - That [certain policy matters such as the State Church and family law] will be transferred to Faroese control on January 2002 at the latest.

[6] Danish Parliament Beslutningsforslag B. 107 Session 2001/2002.

- That [certain policy matters such as the judicial system] will be transferred to Faroese control on January 2004 at the latest.
- That [certain policy matters such as the police and currency] will be transferred to Faroese control on January 2006 at the latest.
- That [certain policy matters such as emergency services] will be transferred to Faroese control on January 2008 at the latest.
- [To develop the Faroese Economy from subsidy based to self-sustained, and to reduce the block grant by 300-400 million DKK by January 1 2002 and then further until it is eventually abolished].
- [To establish a Faroese Economic Fund].
- That before the Faroe Islands are established as a Sovereign State, it shall be conditioned on the Faroese People deciding so in a referendum held in the Faroe Islands."

Faroese Parliament Resolution (Bill no. 114/2000)

As is so often the case, the Faroese were not united on this occasion; Parliament passed the resolution with 18 votes in favour, 12 against, and one abstention (with one of the 32 members – an assumed nay-vote – absent). Furthermore, the timeframe for transferring policy matters has not been observed so far, but, and perhaps more important for the independence prospects, the reduction of the block grant has, indeed, happened.

Earlier the Danish Parliament articulated its position thus:

> "The Parliament recognizes that it is the Faroese population that decides the future relationship between Denmark and the Faroe Islands.
>
> The Parliament accepts the Prime Minister's account of the Danish Executive's position in the negotiations that have been initiated with the Faroese Executive.
>
> The Parliament will elect a committee of 21 members to follow the negotiations and discuss questions regarding a regeneration of the relationship between Denmark and the Faroe Islands."
>
> **Danish Parliament Debate Resolution V 68 / 1999**[7]

Although, as indicated by the Danish Prime Minister, the political event of a break-up is lurching in the Danish collective political psyche, the emphasis in the formal position is always on the "*future relationship* between

[7] Danish Parliament Folketingsvedtagelse V 68 ved Forespørgselsdebat F 47, 6. April 2000, Session 1999/2000.

Denmark and the Faroe Islands", however unorthodox this less than blissful cohabitation may prove to be.

b. The Supreme Power

More acutely, the question that always pops up in the mind of the Faroese is: Can the Faroes unilaterally withdraw from the present arrangement with Denmark and become a sovereign and independent Nation in its own right? Or does a successful transition from association to independence rely on Danish acceptance? If so, can the Danish Realm give its assurance that it will accept a Faroese wish to secede or is it bound by certain constitutional procedures? Or is it perhaps impossible to get untangled from the Danish Realm because of some constitutional bar to secession?

In other words: Who decides When and If, and How, it can be done?

To some foreigners it might seem confusing that the Faroese get so wound-up over this question, since the position of the Danish Executive and Parliament alike seems to be that the Faroese are free to go, though the Danes evidently would prefer that the Faroese stayed and will offer goodies aplenty to the remaining extremities.

In the Faroese debate, however, enormous importance is attached to the formal positions. Any sign of preconditions, mandatory procedures or constitutional quirks is seen as proof of "ófrælsi" (literally "unfreedom") and taken as a reason for leaving the Realm to protect our right to self-determination.[8]

Indeed, in political rhetoric (external) self-determination is often expressed as synonymous to secession. The better view, in my opinion, is to regard self-determination as the right to choose between association and independence and the numerous ways that both options can be realised, as well as – in this is very fundamental in our day and age – *the right to change one's mind* and opt again.

Now, this might seem controversial. Often, the analogy used is that of overseas colonies choosing either integration or independence at the time

[8] The Danes for their part could have been more flexible in recognising the Faroese potential. The last Prime Minister Poul Nyrup Rasmussen refused to accept international observers or mediators as part of the negotiations regarding a proposed Treaty recognising the Faroes Islands as a Sovereign state in Free Association with Denmark, this in possible violation of international law, see G. Alfreðsson: 1 FLR (2001) 45.

when they 'wake up' politically. However, the better analogy, at least in the Faroese case, is that of the European tradition whereby the various polities have been able to associate, disassociate and re-associate themselves to one another. As touched upon below, Denmark has itself been an active part of this tradition. Crucially, the question is, if the Faroese right to choose depends on proving a status as 'non-self-governing'. It is my submission, that the Faroes Islands have had and have claimed a right to remain self-governing even in association and a right to renegotiate the terms of association without thereby implicitly agreeing to a perpetual state of total integration.

2. What are the rules?

a. Danish Constitutional Law

The Basic Law of the Danish Realm (Danmarks Riges Grundlov – literally Denmark's Realm's Base law – or the Basic Law of the Danish Realm) is perhaps one of the most irrelevant constitutional documents in the western world. There are almost no cases of the courts annulling Parliamentary Acts or Secondary Legislation on the basis of the Constitution and lawyers are generally derided for referring to constitutional provisions. Its real function is being a national symbol of the establishment of democracy. The Basic Law is featured in Parliamentary debates, and certainly the text itself and its understanding has significant political importance, but ultimately the Parliamentary majority of the day decides its meaning – not the Supreme Court.

In 1999, to the great relief of those, who have clung on to the legal relevance of the Basic Law, the Danish Supreme Court finally (almost) invalidated an Act of Parliament[9]. However, there is no vengeance and furious anger in the opinion of the Court. It merely states that "§ 7 of [the Act] is invalid in relation to the appellant the Free School of Veddinge Bakker." The Act was a blatant example of a Bill of Attainder that refused grants to certain named private schools as a reprisal for alleged past misconduct. The Court struck one of its provisions down with reference to § 3 of the Basic Law that provides for the Division of Powers. Note, however, that the Act itself was not annulled and no general pronouncement made, only a particular provision found invalid in relation to one individual party in that specific case.

[9] See Den Selvejende Institution Friskolen i Veddinge Bakker v. Undervisningsministeriet, Ugeskrift for Retsvæsen U.1999.841H

When it comes to matters of sovereignty and the like, the Supreme Court is even more expressly non-political and timid. In the question of EU-membership being compatible with the Danish constitution, the courts for a number of years held that Danish citizen didn't even have legal standing to challenge its constitutionality[10]. When the question was finally admitted, the Court held inter alia that: "It must be seen as vested in Parliament to decide if the Executives participation in the EU-co-operation shall be subject to further democratic control."[11]

The power to guard Democracy (and presumably other Fundamental Principles of the Danish Constitution) is, therefore, vested in Parliament. Furthermore, this apparent doctrine is that only picking on individuals – as opposed to determining the faith of the great plurality – will be struck down by the Supreme Court. This understanding leaves rather certain the assumption that of the Danish Political Bodies, it is the Parliament that ultimately decides the If and How of a secession in accordance with the Danish Basic Law or the wider Danish Constitution. Parliament will do so upon the recommendation of the Executive, with which it is to a large extent intermingled, given the Parliamentary system that has evolved. Most members of the Executive, the cabinet members, are also at the same time members of Parliament. Their political parties will either hold the majority of the seats in Parliament or govern with the consent of a majority in Parliament. As the debate resolution above shows, there is a very strong tradition of striving for a national consensus in Parliament on important issues. Even the opposition parties not consenting to the administration of the day will often vote in favour of so-called "forlig" – political concords.

An example of the gradual substantive evolution of the Basic Law is its § 56. It used to be interpreted to mean that political parties were not allowed in Parliament – that is not the position anymore. Likewise, "The Executive" has in interpretation that is now second nature to Danish lawyers supplanted the "King" (in numerous provisions). The division of power between Legislature and the Executive (§ 3) has been blurred through "Parliamentarianism" by which the same majority effectively controls both bodies and most of the Cabinet Ministers are at the same time Members of Parliament. The Danish Constitution, thus, has evolved immensely without amendments to the text of the Basic Law, and without the groundbreaking

10 See Helge Tegen v. Statsministeren, Ugeskrift for Retsvæsen U.1973.694.Ø overruled in Hanne Norup Carlsen et al v. Statsminister Poul Nyrup Rasmussen U.1996.1300H.

11 Hanne Norup Carlsen et al v. Statsminister Poul Nyrup Rasmussen U.1998.800H.

reinterpretations of landmark court cases. Rather, there is and ever-developing compromise between the political agents and a legal tradition that always portrays the current consensus as self-explanatory, discarding earlier readings of the Basic Law. Illustrating this point is the fact that the debates of the Danish Constitutional Convention of 1848 can only be discerned by those proficient in reading 'gothic letters'.

The theory that the Danish Supreme Court will allow gradual constitutional change, even contrary to the language of the Basic Law, seems to hold up in the only reported case dealing with the division of powers between the Danish Realm and the Faroese Government. The case dealt with taxation in the Faroe Islands, where a Danish physician was denied the same tax deductions as the native Faroese. Although the Basic Law § 43 expressly hands over the Power of Taxation to the (Danish) Parliament, and Parliament only, the Appeal Court implicitly accepted the Taxation Powers of the Faroese Parliament, but ruled that the § 10 (2) of the Home Rule Compact forbids such discrimination between natives and other citizen of the Realm and gave the good doctor the same deductions[12].

b. "The Parts"

The provisions pertaining to the Faroes and Greenland are obscure to say the least:

> "**§ 1.** This basic law applies to all parts of the Danish Realm"

It is, alas, difficult to discern just what this mentioning of the "parts" means. The provision seems to infer that there is a "Realm" (Rige in Danish, Reich in German, Ríki in Faroese) that is Danish and includes more than the state or land of Denmark. Historically, the King of Denmark has always been head of a number of entities outside of Denmark (see later) and the change in the wording to "all parts" was to signify the entry of Greenland into the Constitutional Sphere, wheras it previously had lingered outside in a state of colonial limbo.

The provision signifies that there is a division between Denmark Proper and the Realm. Unfortunately, however, the Constitution does not explain the difference between the Parts, nor does it define any political bodies

[12] See Føroya Landsstýri v. Karsten Werner Larsen, Ugeskrift for Retsvæsen U.1983.986Ø. See also a recent case accepting a Greenland statute as "legislation" rather than "administrative regulation" Perorsaasut Ilinniarsimasut Peqatigiiffiat som mandatar for A v. Paamiut Kommuniat, U.2002.2591.Ø.

exclusively representing the parts or the whole. It says nothing, furthermore, on the possible dissolving of the Realm.

Other provisions give short reference to the Faroes and Greenland:

> "**§ 28.** Parliament is a unicameral house consisting of 179 members at the most, of which 2 members are elected on the Faroe Islands and 2 in Greenland."
>
> "**§ 32.** (5) There can be enacted in statute special rules regarding the Faroese and Greenlandic parliamentary mandates and their commencement and termination."
>
> "**§ 42.** (8) Particular rules on referendum, including to what extent a referendum shall be held in the Faroe Islands and Greenland, can be enacted by statute."
>
> "**§ 86.** [Special rules can be enacted in statute on voters' age for municipalities and church councils in the Faroe Islands and Greenland]."

These provisions mostly on elections and such trivia cannot be said to reflect in any meaningful way on the relationship between the Parts and the Realm. But these provisions would surely stick out like sore wounds if the relationship were terminated, especially if it happened without mutual agreement. Most acutely, a legitimate question is whether the provision on Faroese representation either precludes Faroese secession, or perhaps, allows die-hard unionist to continue returning MP's to the Danish Parliament, even after the Realm is actually dissolved. The same goes for the question of continuously claiming Danish citizenship. Of course, the Danish position after a break-up or Faroese declaration of independence will be crucial in this respect – will the Danish Parliament treat the provisions as obsolete or lapsed, or as a basis for clinging to its North Atlantic outpost.

c. The rules – perpetuity or continuity

Assuming implied perpetuity, one way of breaking up would be to amend the Danish Basic Law. § 88 on the amendment procedure provides for a very cumbersome, but not impossible, way of amending the Constitution, two consecutive Parliaments and a referendum carried by a majority consisting of a minimum of 40 cent of all voters. The time involved, the unpredictability of the Danish voters, and traditional reluctance to amend the Basic Law all indicate that amendments are unlikely to pass in a time of "revolution". When the Faroese are ready to ram the door, they are probably not going to await amendments of obscure Basic Law provisions.

Slightly more apt when painted into a constitutional corner is § 19. It is the provision that has been given most practical consideration. It appears to be the underlying belief of the Danish Government and the Faroese as well that this is the correct procedure to be used for dissolving the Realm:

> **§ 19** (1) The King acts on behalf of the Realm in international matters. Without the approval of the Parliament, He cannot, however, undertake any action that increases or decreases the area of the Realm, or undertake any obligation when its fulfilment requires action by Parliament, or otherwise is of greater importance. Neither can the King without the Parliament's approval cancel any international treaty, which has been ratified, without the consent of Parliament.
> (2) [Armed conflicts]
> (3) [The Foreign Affairs Committee]

The Faroese Executive proposed in its White Paper on Faroese Sovereignty and a Treaty of Free Association with Denmark that a Treaty between the Faroe Islands and Denmark be signed and then ratified by both Parliaments, in Denmark by following the procedure in § 19.[13]

With all due respect, this is utter crap. The Basic Law § 19 is not a procedure for dismembering the Realm. § 19 is a very traditional enabling provision giving the Executive (the King) the power to act in international relations. However, he is not to act without democratic consent in certain situations (when treaties, internal legislation or borders are concerned) nor in any other matter of greater importance. The Basic Law is resoundingly clear when it comes the division of power between the Danish Legislature and Parliament. It can even be said whisper that the borders may be amended or seceded in favour of other states. But it is deafeningly silent on the prospect of a break up of the constituent parts. The "land-area" provision is seems more minted on border changes that wholesale renouncement of associated countries. Neither it nor § 19 as a whole can be said to give substantive powers of authorising a break-up of the Realm, rather, these are procedures for such external dealings that may upon a proper construction be found in the Basic Law or the "the wider Constitutional set-up".

d. Norway

[13] Hvítabók (Faroese Executive White Paper on Faroese Sovereignty and a Treaty of Free Association with Denmark) ISBN 99918-53-31-6.

Interestingly – especially for people who value our Norwegian connection – had we remained a part of Norway, the situation would perhaps seem more hopeless altogether:

> **"§ 1**. The Kingdom of Norway is a free, independent and indivisible and in-transferable Realm..."
> ***The Basic Law of the Norwegian Realm***.

I will not pursue this matter further. However, what Lincoln assumed, is here spelled out, and the same fundamentals apply: opting-out must be based on some action not in the instrument itself. The words "free, independent and indivisible and in-transferable Realm" only mirror the hopes and frustrations of the Norwegians, who have experienced their share of foreign domination, partition and transfer of allegiance.

e. The Faroese Procedures

Another question that I will leave for others to ponder is the question of how and by which procedures the Faroese themselves should decide to opt out. The options suggested include the following:

- The Faroese Parliament ratifies a Treaty with Denmark, with an optional referendum.[14]
- The Faroese Parliament unilaterally withdraws from the Realm.[15]
- The Faroese implement the 1946-referendum.[16]
- The Faroese secede by using the procedure for amending the Faroese Constitution.[17]
- The Faroese amend the Faroese Constitution to provide for a secession procedure.[18]
- The Danish Constitution must be amended to provide for an opt-out clause.[19]
- The Faroe Islands claim to withdraw from the original Association of 127.[20]

---

[14] The White Book (supra 12) suggested this route.
[15] Favoured by many who favour independence in principle, but would like to postpone secession.
[16] The referendum is highly controversial and highly contested, but showed a majority favouring secession. The (extreme) Nationalist side traditionally favoured this route.
[17] This has been suggested in the works of the Faroese Constitutional Committee.
[18] This has been suggested by some in the Unionist camp, as it is the most cumbersome procedure in the book and, therefore, most appropriate when taking such a momentous constitutional step.
[19] This is the logical consequence of accepting that the Danish Constitution is a bar to secession by the Faroese, thus creating a legal basis for opting out.

- The Faroe Islands and Greenland collectively reveal themselves to be the lost Kingdom of Norway and formally end the Union of Bergen of 1450.[21]

All these options have been suggested by some quarters. Although the Faroese are one of the most homogenous and distinct nationalities of Europe they squabble loudly over this question. It seems that, just like the Danish Constitution, the Faroese Constitution is either silent or unclear as to the proper procedures to be used by the Faroese themselves.

3. Is there any History then?

Danish Constitutional History has plenty to tell us on how to adjoin to or dismember a constitutional conglomerate. The Present Queen is arguably a descendant of King Gorm the Old (about 900) and the Danish Dynasty has ruled a varying union of polities for the 1100 years since then. Originally they ruled the three Danish lands, Skåne (Scandia), Sjælland (Zealand) and Jylland (Jutland), which all by tradition were ruled by a Thing (Parliament) of their own that chose a King for that particular land. The descendants of Gorm managed by and large to get elected by them all throughout the Middle Ages. Adding to their core, the Danish monarchs ventured into the British Isles, Northern Germany, the rest of Scandinavia, the Baltics, they even joined the European colonialism establishing possessions in India, Africa and the Caribbean. Via their Norwegian branch the Danes even reached the North Atlantic and Northern America.

Arguably, politics, and especially politics continued through the means of armed conflicts had a lot more to do with the expansions and contractions of the Realm than had the intricacies of constitutional law. However, we must not dismiss constitutional or international law as made irrelevant by politics. Rather, we should accept that an interaction between the two will always exist.

To take but a few examples. Denmark and Norway were united through the union of dynasties. King Oluf in 1380 became King of both Realms. This led to the formal Union of Bergen in 1450. The Danish Princess Margrethe, who was the mother of King Oluf and the effective ruler of both Denmark and Norway for a number of years even managed to create a Union with Sweden, the Kalmar Union of 1397.

---

[20] This would be adopting the line that Iceland maintained in relation to its own Association of 1262-64.

[21] This is the view of Mr. Zakarias Wang and others, see supra 1.

The Union with Sweden was dissolved through a series of bloody wars. The Union with Norway remained intact. The main difference seems to have been the relative strength of the nobility in each of the countries that Denmark sought to dominate.

As explained by Wang, Norway Proper was ceded by the Treaty of Kiel 1814.[22] Now, again the political events preceded the legal niceties. Denmark had joined the wrong side in the Napoleonic Wars, Copenhagen was strategically bombarded and the new ruler of Sweden, Prince Bernadotte, though originally one of Napoleon's Marshals, managed to wrist Norway out of Danish hands. The Norwegians had already spontaneously enacted their own constitution in 1814, but had to, for political and economical reasons, amend it in great haste and swap the Danish Prince they had elected as King for the erstwhile Marshal.

Throughout, there has been the acknowledgement that the lands could be surrendered by treaty or by grudging acceptance[23]. The King's Law of 1662 – the then written constitution of Denmark – and its Norwegian counterpart of 1665 – even had a precursor to the present day Land Clause of § 19. It would then seem that there is a great tradition for accepting 'some action' from abroad changing the constitutional composition. Mostly, though, the 'parts' have been taken over by others rather than left to their own contemplation.

4. How about Precedence?

Iceland was allowed to leave, but did so by a rather cunning ploy. The Icelanders, clever lawyers from ancient time as the sagas tell in epic ways, were able to get the Danes to accept Iceland as a separate Kingdom in a Personal Union with Denmark (sharing the head of State). A clause providing for the Compact to be dissolved through a referendum (qualified majority required), but not before 25 years later, was used to sever ties in 1943 when Denmark was conveniently (and literally) otherwise occupied.

The formal arrangement then – a 'law' enacted by both Parliaments rather than a treaty, even with special and unusual features such a preamble - seem

[22] Supra 20 at 172

[23] Until 1972 the Danish King claimed to be king of two lost peoples (de Vender og Gother), and Duke of several duchies, otherwise ceded to Prussia after the war of 1864 by the Vienna Treaty of 1864; the Danish King even had to be reminded by the Swedes that he was no longer eligible to the title of King of Norway after the Kiel Peace Treaty of 1814.

somewhat akin to the Faroese Home Rule Compact, which is also called a 'law'. No opt-out clause was provided, though, the Danes learning from previous error.

Iceland is especially relevant as an analogy, as the question of the applicability of the Basic Law to Iceland had been hotly and continuously contested. The Icelanders recognised the King but not the Basic Law. Now, whatever the correct position in Danish Law was, despite the Danish Claim that the Basic Law was in force, it was possible to recognise Iceland as a sovereign State and provide opt-out clause from the Union, without amending the Basic Law.

5. Conclusion

The Danish Constitution – both written and traditional – gives no guarantees of secession, not even any particularly suitable procedure for leaving the Danish Realm. The Faroe Islands as well as Greenland have to rely on a constitutional earthquake that leaves them on the right side of the fault line, should they wish to leave.

The Icelandic precedence, as well as some earlier ones, show us that the Danish Realm is apt at and used to accepting loss of Realms and Lands that have been attached to it. However, neither the Basic Law, nor the wider Constitution provide for clear Rights for 'Associates' to leave or Procedures for doing so.

The Courts will probably accept anything that is ratified by Parliament, and Parliament will follow the Executive and its recommendations.

Opting out of an Association is not a legal right to be exercised at will. It is a political action, a constitutional revolution that the system in question can absorb and accept with more or less ease. Secession from the Union with Denmark cannot be completed at will with reference to the Basic Law of the Danish Realm, *except by some Action not provided for in the Instrument itself.*