

## The Constitutional Experiment in Iceland

*Baldvin Thor Bergsson/Paul Blokker*

Since the deep economic crisis of 2008, Iceland has seen the emergence of a remarkable experimental attempt at constitution-making from below. This Icelandic experiment constitutes a rare – in distinct ways probably unique – example of a popular or citizen-driven constitutionalism. The Icelandic participatory approach in many ways challenges core assumptions of mainstream, modernist understandings of constitutionalism, such as the idea of constitutionalism as a social phenomenon and practice dominated by legal professionals or that of constitutions as higher laws that are nearly impossible to change. At the same time, in particular now that the constitution-making process seems halted, the Icelandic experience brings to the fore many questions that popular or democratic constitutionalism raises as an alternative understanding and practice, not least related to the modes and effectiveness of participation, the notion of representation in the constitution-making process, the role of deliberation, the role of parliament and other political institutions, as well as the actual, substantive results of participatory constitution-making.

In the chapter, we will first discuss the historical background of the 1944 Icelandic Constitution that is still in vigour. In a second step, the grassroots constitution-making process that emerged in 2009, and the reactions it provoked, are analyzed, while in a third step, we assess recent political events that conditioned the status of the constitution-making project – now largely stalled in Icelandic parliament - in the first half of 2013.

### *1. The history of the Icelandic Constitution*

Approved through a popular referendum, the Icelandic Constitution stems from 17 June 1944, when Iceland declared its independence from Denmark (CRI 1944). The 1944 document can be traced back to the so-called Constitution on the Special Affairs of Iceland of 1874, a document which in itself was inspired by the Danish Constitution of 1849 and the Belgian Constitution of 1831 (Torfason 2009: 1). The 1944 document underwent only tech-

nical changes, related to bringing Iceland's Monarchy Union with Denmark to an end, which meant basically that the provisions that mentioned the king would be changed by replacing the word king with the word president (Árnason 2011: 344).

The Icelandic Constitution of 1944 in a way kept the flavour of an “imposed constitution” (Levinson 2005) in that the new Icelandic republic never autonomously wrote a new document to match the independent state. This is even more curious since most members of Althingi (Parliament) clearly favored such a revision. Political questions, such as the power of the president and the structure of the electoral system, were simply postponed as to provide a united front for the nation and towards the rest of the world before the constitution’s adoption in 1944. It was thus a “temporary document” meant to be revised at a later date (Jóhannesson 2011: 63-68). And ever since it has often been understood as a transitory document (Arnason 2011: 345), even if this status has never translated into a wholesale revision or substitution of the document. A parliamentary committee set up for the purpose has never been able to gather sufficiently widespread support for changing the 1944 Constitution. The perception of its transitory nature results inter alia from having been de facto adopted in the emergency situation of the Second World War, in which only minimal changes were made to transform Iceland from a country dependent on the Danish monarchy into an independent republic headed by a president. Another aspect that fed into the idea of its transitory nature is the fact that it is largely based on the Danish Constitution, thus not reflecting the autonomy of the Icelandic political community.

In general, the Icelandic Constitution declares the republican nature of the Icelandic state and enshrines the idea of the separation of powers. It arranges for a directly elected president, while legislative power is vested in both the Althingi and the president. Executive power is vested in the president and the government, while the judicial system is invested with judicial power (Torfason 2009: 1). The most important amendment of the 1944 Constitution occurred in 1995 (amendment 97/1995) (Árnason 2011: 346). This amendment entailed the revision of the entire chapter VII that deals with human rights and freedoms. Reasons for the amendment included the strengthening, coordination and harmonisation of human rights provisions, the need for an update or modernization of some of the language that dated back to the 1874 document, and the need for a review of the rights chapter in regard to international conventions, such as the European Convention on Human Rights and the UN International Covenants (Torfason 2009: 2).

*Baldvin Thor Bergsson/Paul Blokker*

With these changes, it is probably fair to describe the Icelandic Constitution as a relatively rigid document. This emerges from, for instance, the amendment procedure as laid out in article 79:

Proposals to amend or supplement this Constitution may be introduced at regular as well as extraordinary sessions of Althingi. If the proposal is adopted, Althingi shall immediately be dissolved and a general election held. If Althingi then passes the resolution unchanged, it shall be confirmed by the President of the Republic and come into force as constitutional law.

If Althingi passes an amendment to the status of the Church under Article 62, it shall be submitted to a vote for approval or rejection by secret ballot of all those eligible to vote.

The amendment procedure is monistic in that it only gives initiative to the Althingi, rather than other political or social actors. It is rigid in that two distinct parliamentary sessions, divided by dissolution and elections, have to adopt amendments by an absolute majority and the final result has to be confirmed by the president. Further elements of rigidity – understood here as placing emphasis on the constitution as a higher law and its related shielding from popular and political influence, either directly or through representatives – are the absence of instruments for popular democratic participation as well as the fact that the ultimate interpretative power lies with the Supreme Court. On a further note, fundamental rights are not protected by an 'eternity clause' but are subject to judicial review of the Supreme Court, a power that is not in the Constitution but which has developed through judicial activism. The potential for the Court has increased with the 1995 amendment of Chapter XII on human rights (Helgadóttir 2011).

## *2. Constitutional politics in Iceland*

After decades of relatively little attention to constitutional change, recent calls for radical modification have emerged with the 2008 economic crisis and its devastating effects for the Icelandic economy (Bater 2011). One consequence of this crisis has indeed been the attempt at political-moral renewal through the reformulation of the fundamental values of the Icelandic constitutional regime. The story of the Icelandic constitutional “revolution from below” is clearly a unique but at the same time conflictive process (which seems currently stalled), raising complex questions about constitutional change and innovation. A good part of the thrust for political and constitutional renewal came from the Icelandic population, that is, from in-

dividual dissenting citizens, intellectuals and civic organizations.<sup>1</sup> One key early activist and initiator of the revolution was Hördur Torfason (Torfason 2011), a musician, songwriter and human rights activist. People of a variety of backgrounds, representing various ideas and groups, including for instance anarchists, brought in different justifications to engage in the “pots and pans revolution”,<sup>2</sup> which consisted in lengthy protests and extensive resistance to the political establishment as well as critique of the status quo.

### *2.1 The initial stages*

An early manifestation of civic action was the organization of a National Assembly (see <http://www.thjodfundur2009.is/english/>) or national “brainstorming session” by the so-called Anthill movement, a collective of grassroots movements, in November 2009. The aim was to discuss the future and main defining values of Iceland (the slogan of the event read: “National Convention - a date with the future”). Organizers included Gudjón Mar Gudjónsson, a young entrepreneur with extensive ICT skills, and creator of the Ministry of Ideas, a civic movement promoting participatory democracy. Of the participants of the National Assembly, 1,200 were randomly selected from the Icelandic census, and 300 were deliberately selected from among political institutions and relevant associations. The highly innovative format

- 
- 1 The grassroots movement was perhaps not in all its facets a spontaneous popular reaction to the crisis. It would be worth studying the variegated composition of popular protests. A member of the Constitutional Council, whom one of the authors interviewed in August 2011, argued that an important role was played by more ‘elitist’ persons, including academics and writers, who were clearly more familiar with acting in the public sphere.
  - 2 A particularly significant and alarming episode regards an early eruption of protest in December 2008, when some thirty dissenting citizens set out to use their constitutional right to attend a session in the House of Parliament, with the intent to publicly read a critical declaration, but were stopped by a policeman and guards. Nine persons were arrested and faced heavy charges (being sentenced to one to 16 years of imprisonment), not least on the basis of violation of section 100 of the penal code, which stipulates that anyone found guilty of “attacking the sovereignty of Parliament” will be sentenced to a minimum of one year’s imprisonment. In February 2011, the Reykjavik District’s Court ruled that four dissenters were found guilty of minor charges, and five not guilty (Nikolov 2011). The law case against the “Reykjavik 9” has led to widespread public criticism, expressions of solidarity, and a recent intriguing documentary highlighting the absurdity of the charges.

– small, modified group discussions identifying main themes and core values, which then the plenary voted on – led to the identification of a number of themes and values to designate an Iceland of the future. The nine themes identified as particularly significant for Iceland were: Education, Economy, Equal Rights, Family, Environment, Public Administration, Welfare, Sustainability, and Opportunities. The four core values identified were: Integrity, Equal Rights, Justice, and Respect. While these outcomes might seem abstract and general, containing a highly universalistic flavour (thus not necessarily identifying purely Icelandic ideals), the importance of the event lay probably much more in its deliberative and civic-participatory nature. In other words, one of the underlying themes was clearly the need for a politics from below – in contrast to elite and institutionalized politics – as an answer to the various political failures and forms of negligence at the basis of the 2008 economic crisis. In this, the event became an important inspiration for those who favoured the idea of constitution-making as a way to address the crisis and to provide Iceland with a new, citizen-driven and locally engendered set of fundamental rules and values.

It should be mentioned that the transitory nature of the Icelandic constitution provided not only fertile ground for a grassroots revolution, but also reignited a political project for constitutional revision, as some distinct political forces had been endorsing a project of constitutional change for some time. In particular, the new prime minister, Johanna Sigurdardottir (Social Democratic Alliance), who until recently headed the centre-left government that came to power in April 2009 – after the collapse in January 2009 of the prior, conservative government (headed by the Independence Party) – had been pressing for constitutional reform for years. The new government's agenda included the idea of establishing a special Constitutional Council to revise the Icelandic Constitution. A bill to this extent was submitted to parliament and, after extensive debate, adopted in June 2010.<sup>3</sup>

The Act on the Constitutional Assembly (ACA 2010) adopted in June 2010 not only stipulated the election and mandate of a Constitutional Council but also proposed a Constitutional Gathering on constitutional matters, a one-day civic-participatory event to be held before the elections of the Constitutional Council and to be prepared by a seven-member constitutional

---

3 The main arguments against the undertaking of revising the constitution were its inappropriateness in times of crisis and an insistence on the parliament's prerogatives in constitutional politics, see Thorarensen 2011.

committee.<sup>4</sup> The Act stated that the “National Gathering shall endeavour to call for the principal viewpoints and points of emphasis of the public concerning the organization of the country’s government and its constitution; the committee shall process the information collected at the National Gathering and deliver to the Constitutional Assembly when it convenes” (Interim Provision/Act 2010). The National Gathering was thus to gather information among citizens regarding the main themes and core values for a new constitution. In this, the National Gathering was strongly inspired by the November 2009 Assembly.<sup>5</sup> The originality and unprecedented nature of the whole process lies clearly in the explicit emphasis on citizen-driven constitutional reform, a form of “crowd-sourcing” in the form of a civic brain-storming session, and the explicit exclusion of members of political parties to participate in either the National Gathering or to stand for elections for the Constitutional Council. The citizen-driven constitutional revision process is unique in any established democratic society.<sup>6</sup> The constitutional dimension that is clearly played on is the idea of self-governance and a perception of constitutionalism which understands civic participation as a necessity in or-

---

4 The chair of the constitutional committee recently gave an informative talk on the constitution-making experience, see <http://www.youtube.com/watch?v=AiO9oNbpN14&feature=relmfu> (Stand: 22.01.2014).

5 This also came through in the cooperation in the Gathering’s organization by members of Anthill. According to a description on the Participedia website, the ‘National Forum 2010 came in to being due to the efforts of both governing parties and the Anthill group. The goal of the forum was to produce a set of core values and visions that was representative of the Icelandic citizenship. The results of the forum were used as the basis for the constitutional revision. A seven-headed Constitutional Committee, appointed by the parliament, was charged with the supervision of the forum and the presentation of its results, while the organization and facilitation of the National Forum 2010 was done by the Anthill group’ (INF 2010).

6 Other recent innovative civic examples of constitution-making are seen in Latin America as well as Africa, but not in North America or Europe. Switzerland is a partial exception in that 50,000 citizens can initiate a revision of the constitution (IDEA 2006). Even if the ‘fear of the masses’ with regard to constitution-making processes is now much less outspoken than in the immediate post-WWII years (IDEA 2006), and public participation of some form is now widely endorsed, in particular in the case of democratizing and post-conflict societies, in most cases civic participation takes the form of consultation (the Kenyan National Constitutional Conference is one example of an inclusive, but not citizen-driven assembly). The Icelandic case has the potential to be unique (depending in a way on what happens with the Draft Constitution produced by the Constitutional Council) in that the Constituent Assembly is made up of the “people” rather than politicians and/or experts.

der for a constitution to become a vibrant reflection of a political community's political imagery and self-understanding.

The National Gathering has, however, not always been understood as virtuous in Iceland. The method of gathering a large group of people for a single day has sparked criticism. Gunnar Helgi Kristinsson, a professor of political science, criticized the tight schedule of the meetings and the vague general statements they produced (Kristinsson 2012). Without any more in-depth debate it was highly doubtful that those precise statements could be described as 'the will of the nation' and therefore serve as the foundation for the work of the Constitutional Council. Vilhjálmur Árnason, a professor of philosophy, has argued that Iceland could serve as the perfect setting for "citizens meetings" where complicated questions are discussed extensively and eventually answered through democratic deliberation (Árnason 2013: 49), but the National Gathering did not seem to provide such a debate and appeared based on a model that businesses use to reflect on clear-cut issues. Such a model is in Árnason's opinion not suitable for complicated moral questions. He concludes that the setup of the Constitutional Gathering and the way in which some members of the Constitutional Council interpreted and later used its 'findings' drove the debate towards confrontation and created a hindrance for further democratic discussion, for example in the *Althingi* (Árnason 2013: 30-31).

## *2.2 The Constitutional Council*

The Constitutional Gathering (Constitutional Council 2011) was held on 6 November 2010, organized amongst others by Agora<sup>7</sup>, a non-profit organization headed by the aforementioned Guðjón Mar Guðjónsson. 950 randomly selected Icelanders participated in the event, and discussed fundamental values and distinct constitutional categories in 128 roundtables. The main themes that resulted from the roundtables were "word clouds" which themselves reflected the themes most frequently raised by individual participants.<sup>8</sup> The outcome was the identification of eight main themes for a new Icelandic constitution (country and nation; morality; human rights; justice, well-being and equality; the nature of Iceland, conservation and uti-

---

<sup>7</sup> For details, see <http://agora.is>.

<sup>8</sup> Some have argued that because time was limited and the emphasis was on consensus, the more controversial topics were simply avoided in the Gathering (Árnason 2013).

lization; democracy; division of power, responsibility and transparency, and peace and international cooperation). These themes were then to be one of the bases of the deliberations of the Constitutional Council. This Council was elected on 27 November, when 37 percent of the Icelandic electorate selected up to 25 candidates out of 522 self-enlisted candidates by means of a proportional single transferable vote system (STV). The elections had been advertised by the National Electoral Commission twenty-four days earlier, while the candidates had run mostly modest campaigns (as their campaign money could not exceed 12,500 Euro). The novelty of these elections clearly lay in the explicit exclusion of politicians from candidature and the idea of establishing a purely citizen-based constituent assembly. Article 6 of the ACA on eligibility read “[p]ersons who qualify to stand for elections to the Althing may stand for election to the Constitutional Assembly. However, the President of the Republic of Iceland, members of parliament, their alternates, cabinet ministers and members of the Constitutional Commission and the Organising Committee are not eligible to stand for the election.” There seems to be a flavour of “anti-political politics” here the way it emerged for instance in the East-Central Europe of the 1970s and 80s. An important aspect of this view of politics is the idea of the self-empowerment and responsibility of citizens (e.g. Falk 2011). There were, however, major problems with the elections in that the turnout was particularly low (normal national elections see turnouts of around 85 per cent) and, at least according to some observers, procedures had been far from flawless. This led to complaints to an ad hoc, executive committee of the Supreme Court, which on 25 January 2011 suggested annulling the elections. In this very insecure situation of the Constitutional Council, after heated debate, parliament decided to install a Constitutional Council by means of parliamentary appointment. The ACA was thus repealed.

Clearly, the set of intricate events has weakened the social legitimacy of the Constitutional Council, starting with the low turnout and ending with the Council’s political appointment rather than its popular election. Nevertheless, the Council started its work in April 2011 on the basis of a wide range of materials, including the conclusions of the National Gathering, a detailed report by the seven-member Constitutional Committee which had also been set up in the ACA, and an extensive electronic database provided by the latter. One could argue that some of the civic-participatory potential was in part recuperated (and it should not be forgotten that the members of the Council were neither politicians nor constitutional lawyers) by means of an exceptionally open and transparent mode of working. The Council had an



active website (CC 2011) as well as a Facebook page<sup>9</sup>, where citizens could provide comments and suggestions, while draft proposals were posted online. Citizens could thus closely follow the evolution of the debate on the constitution. In addition to active use of Facebook, Twitter, Youtube, and Flickr were also taken advantage of. The whole process has clearly been very innovative and open, even if the argument that many foreign journalist made that this was an example of “crowd-sourcing” appears to be inaccurate, as ultimately the taking up of citizens’ comments in the final draft seems to have been fairly limited and the wider role of the public was mostly consultative rather than truly participative.

### *2.3 The constitutional draft*

Moving from the process of constitution-making to the substance of the actual draft (CB 2011), it seems fair to say that although there are a number of civic-democratic channels included in the Constitution, the overall nature of the text – including the civic-participatory dimension – does not differ drastically from many other constitutions in Europe. The most conspicuous aspects regard articles 32-36, which deal with the preservation of Icelandic cultural heritage and treat the natural resources as common property. It is interesting to observe in this respect that the radically participative and grassroots form of constitution-making has in this case not led to the adoption of a radically participatory form of democracy in constitutional terms. The most radical proposals in civic-participatory terms are found in articles 65 and 66. Article 65 gives the possibility to organize a petition by at least 10 per cent of the electorate to call for a referendum on legislation passed by parliament.<sup>10</sup> Article 66 gives the possibility for 2 per cent of the electorate to submit an item on the parliamentary agenda, while 10 per cent of the electorate may submit a legislative bill to parliament.<sup>11</sup> Article 113 dealing with constitutional revision introduces an obligatory referendum regarding

---

9 See: <https://www.facebook.com/Stjornlagarad> (Stand: 22.01.2014)

10 By way of comparison, article 75 of the Italian constitution allows for citizen-initiated referenda: “A general referendum may be held to repeal, in whole or in part, a law or a measure having the force of law, when so requested by five hundred thousand voters or five Regional Councils.” (CIR 1947)

11 By way of comparison, article 71 in the Italian constitution allows for popular bills: “The people may initiate legislation by proposing a bill drawn up in sections and signed by at least fifty-thousand voters.”

constitutional amendments. While the civic-participatory thrust of these articles seems clear, the draft constitution introduces a novel legalistic element: an institution resembling a constitutional court (the *Lögrétta*) with *ex ante* powers. Parliament or parliamentary committees can ask this institution for an opinion on the constitutionality of legislative bills. This could be seen – at least in theoretical terms – as being in partial tension with the parliamentary democratic form mentioned in article 1 and the civic-participatory dimension of articles 65 and 66.

In the run-up to the referendum on the draft Constitution in October 2012, an international expert report on the constitutional text classified the draft as indicating a ‘life-expectancy of 60 years’ (the global average is 19 years) and as reflecting ‘significant input from the public’ and as being ‘at the cutting-edge of ensuring public participation in ongoing governance’ (Elkins et al. 2012: 11). The three constitutional scholars evaluated the constitutional drafting as ‘tremendously innovative and participatory’, and the final result ‘as one of the most inclusive in history and well-above the mean of contemporary constitutions’. The experts’ short report was published on 14 October, 2012, a week before the referendum. The review by the three scholars is significant, because skepticism, including that of legal scholars also on the international level has often pointed to the lack of expertise and ordinary citizens’ constitutional and legal knowledge, and hence tends to dismiss a non-expert-based constitution-making process out of hand.

A second, more extensive international review was undertaken by the Venice Commission or the European Commission for Democracy through Law. The Opinion released by the Commission in March 2013 confirmed some of the views cited above - including the importance of the participatory nature of the constitution-drafting process, as well as the significance of the constitutionally stimulating active and direct involvement of citizens in politics – but it also pointed out a relatively high number of provisions formulated in “too vague and broad terms” and proposals for decision-making and participatory mechanisms that appear “too complicated” (Venice Commission 2013: 31). The Venice Commission then pointed out that the draft might produce “political blockage and instability” and, more importantly, that there is a “risk that, if adopted, the Bill does not reach the consensus needed for it to be confirmed by the next parliament” (2013: 30). One of the Commission’s recommendations is to revise the amendment procedure, something that indeed occurred in March 2013.

#### *2.4 The halted process of grassroots constitutional renewal*

The draft constitution was consigned to the Icelandic Parliament in July 2011, and was pending in Parliament until March 2013. The Constitutional Council responsible for the draft emphasized that it had been adopted in full consensus<sup>12</sup> within the Council and called for a referendum on the draft. In October 2011, the prime-minister indeed suggested a public consultation on the draft constitution, to be held together with the presidential elections scheduled for June 2012. On 16 January 2012, also the chairman of the parliamentary constitutional and supervisory committee, which had been examining the draft since the autumn of 2011, argued that it is not unlikely that the text will be put to a national referendum. The initial idea was to hold the referendum together with the presidential elections scheduled for June 2012, but parliament was unable to organize this in time. Ultimately, at the end of August 2012, it was decided to hold a non-binding or advisory referendum on 20 October.

#### *2.5 The 2012 referendum on the Citizens' Constitution*

The referendum asked the Icelandic citizenry six questions. The first question inquired in a general sense whether citizens wanted a process of change on the basis of the draft, while the next five questions asked for specific views on, inter alia, natural resources, the role of the church, and electoral matters:

- Do you wish the Constitutional Council's proposals to form the basis of a new draft Constitution?
- In the new Constitution, do you want natural resources that are not privately owned to be declared national property?
- Would you like to see provisions in the new Constitution on an established (national) church in Iceland?

---

12 The consensual basis of the draft might enhance its legitimacy, but might also indicate a reason for the lack of a radical democratic dimension of the draft. In other words, a more general problem of deliberation might have come into play, that is, a "taming" scenario in which radical dissenting views ultimately succumb to the more conservative views of a majority.

- Would you like to see a provision in the new Constitution authorizing the election of particular individuals to the Althingi more than is the case at present?
- Would you like to see a provision in the new Constitution giving equal weight to votes cast in all parts of the country?
- Would you like to see a provision in the new Constitution stating that a certain proportion of the electorate is able to demand that issues be put to a referendum?

The referendum process provided criticism, among other things, with regard to the status of the citizens' constitution as either an unfinished draft or a statement of intent as well as regarding the allegedly ambiguous legitimacy of the Council. In particular from the political right, skepticism has accompanied the grass-roots constitution-making process from the start, and it is not least the conservative Independence Party that is far from eager to adopt a new constitution on the basis of the citizens' draft. Be that as it may, the referendum of 20 October, 2012 has been an undeniable success in that a turnout of almost 50 per cent of the Icelandic electorate was achieved (in the elections for the Constitutional Council in November 2010, the turn-out was only 37 per cent) and around two-thirds of those who voted indicated a strong will for constitutional change, in particular regarding general change (question 1), the public ownership of natural resources (question 2), the composition of the Althingi (parliament) (question 4), and direct democracy (question 6).

*Table 1. The results of the 2012 referendum*

	YES	NO	TOTAL NUMBER OF ANSWERS
Question 1	73,509 / 67%	36,302 / 33%	109,811
Question 2	84,760 / 83%	17,470 / 17%	102,230
Question 3	58,455 / 57%	43,914 / 43%	102,369
Question 4	78,451 / 78%	21,660 / 22%	100,111
Question 5	66,653 / 66%	33,590 / 34%	100,243
Question 6	72,633 / 73%	26,440 / 27%	99,073

Source: <http://www.kosning.is/thjodaratkvaedagreidslur2012/english/nr/7993> (Stand: 22.01.2014).

*Baldvin Thor Bergsson/Paul Blokker*

Out of the 236,911 Icelanders registered, 116,069 cast their votes. Despite the 49 per cent turnout, it was mostly politicians that made the rather explicit claim that it was too low.

An important point has to be made about the referendum. It was only meant to be an advisory referendum, a term that evidently makes clear-cut political, legal, and academic interpretations of the results more difficult. What is more, article 48 of the Icelandic constitution states that: “members of Althingi are bound solely by their conviction and not by any instructions from their constituents” (CRI 1944). An advisory referendum is thus not legally binding, although some would claim it was morally binding. Björg Thorarensen, a law professor at the University of Iceland and an expert on constitutional matters, has written that advisory referendums could be used to seek the nation’s opinion on clearly defined issues (Thorarensen 2012). In that way, the legislator would have had a clear answer to a clear question and could use this answer as a basis for subsequent decisions. In the case of open or unclear questions, however – and this seems to be exactly the case with the 2012 referendum –, political groups are able to put forward competing interpretations of the results and make claims about citizens that did not vote.

### *2.6 Political response to the referendum*

The political response to the referendum was predictably divided amongst party-political lines. The government parties – the Social Democrats and the Left-Green Movement – welcomed the outcome and claimed it was an important step towards a new constitution. Of the opposition parties, only The Movement had supported the whole process from the beginning, so its three parliamentarians joined the government in celebrating the results. The Movement grew out of the protests in 2008-2009 and campaigned on the grounds of being made up of ordinary citizens instead of career politicians. It made explicit claims about the need for restructuring Icelandic society, for example, through a new constitution. The other two opposition parties, the Independence Party and the Progressive Party, remained skeptical despite the results. Bjarni Benediktsson, the leader of the Independence Party, stated in an interview that 70 per cent of voters had either stayed at home or voted against the draft from the Constitutional Council. Only 30 per cent of the population had said yes to the first question. The chairman of the Progressive Party’s parliamentary group, Gunnar Bragi Sveinsson, said that the results

showed that parts of the constitution needed to be revised. However, it was unlikely that the Althingi had sufficient time to carefully look at the draft and agree on changes to the constitution before the general elections in May 2013 (Hansen 2012).

Perhaps the most difficult question politicians had to answer was whether the referendum meant that no changes could be made to the draft from the Constitutional Council. After all, the first question had only asked whether the proposal should form the basis of a new constitution. Within the government parties opinions differed widely. A committee of legal experts was already working on the draft, going over the text to make sure there were no internal inconsistencies and to clarify both its words and concepts. Practically everyone saw the need for such a revision but some stressed that the review should only be technical, and that no material changes should be made. Þorvaldur Gylfason, a member of the Constitutional Council and a professor of economics, was perhaps the most vocal advocate of that view. His argument was that the Council had projected the will of the nation, as represented by the findings of the National Gathering, which had later been approved through a referendum (Gylfason 2012). The Althingi had therefore no right to meddle with the text. The Prime Minister, Jóhanna Sigurðardóttir, said that the results showed that the Althingi had limited permission to make material changes to the draft. Furthermore, she hoped that the Althingi would have a completed bill within two weeks of the referendum.<sup>13</sup> The President of Iceland, Ólafur Ragnar Grímsson, spoke about the draft in his annual New Year's Day address. Although positive about the process and the work of the Constitutional Council before the presidential elections in June 2012, in this speech he criticized several articles of the draft. He said that "there had been practically no discussion about the new system of government proposed and how the Althingi, Government and the President would interact."

Certainly, the draft Constitution contains some useful provisions on referendums, national ownership and human rights, but it also creates a system of governance that is very different from what we have been used to since the foundation of the Republic. It would be a political experiment without parallel in the countries of the West. The ingredients of the new system have not been discussed in any depth, but if a majority of the people considers them to be of advantage, then such a view would have to be clearly stated: no questions

---

13 Jóhanna Sigurðardóttir made the statement during an interview on "Silfur Egils", a program on the national television (RUV) on 21 October, the day after the referendum.

*Baldvin Thor Bergsson/Paul Blokker*

specifically about these aspects of the proposals were included in the referendum last October (Grimsson 2013).

Referring to discussions within the academic community, he said that “substantial criticism of many articles had been made”, and warned that people should not treat such contributions superficially. “Was not the most important lesson we learned from the economic crisis that we should take more notice of those who, from a position of knowledge, warn us of the dangers around the next corner?” (ibid.).

### *2.7 Discussions in the Althingi*

The Constitutional Council delivered its results in July 2011 but until the referendum in October 2012 surprisingly little discussion had taken place in the Althingi. The Constitutional and Supervisory Committee had discussed the matter extensively and hired a group of legal scholars to review the legal technicalities of the draft and write a report that would follow the bill. The group delivered its results on 12 November, and on the 16th a new bill was submitted to the Althingi. The text was mostly based on the draft from the Constitutional Council although some changes had been made. The leader of the Independence Party, Bjarni Benediktsson, stated that it was the Althingi that had the power to change the constitution – even though those changes should preferably be made with a wide public consensus. He added that he disagreed wholeheartedly with those that said that the Althingi should not discuss the matter thoroughly or make necessary material changes (Benediktsson 2012).

The bill went through two discussions in the Althingi but never made it to the third and final one. On 6 March the newly elected chairman of the Social Democrats, Árni Páll Árnason, along with the newly elected leader of the Left-Green Movement, Katrín Jakobsdóttir, and the leader of the newly formed Bright Future party, Guðmundur Steingrímsson, presented a new bill that effectively postponed the discussion about the constitution until after the elections. The bill proposes a constitutional amendment – a new way to revise the constitution. According to the amendment the Icelandic constitution can be changed up until 30 April 2017, in the following way. If two-thirds of parliamentarians agree on changes, they will be put to a referendum. The changes have to be confirmed by a majority of votes, and that majority must constitute at least 40 per cent of the electorate. When he proposed the amendment, Árnason cited two reasons. The first was the lack of

time the Althingi had to discuss the bill carefully, and the second the need for a wide consensus on how to proceed (Árnason 2013). It was clear from his speech and from remarks by several other members of the two government parties, that they feared a filibuster from the Independence Party and Progressive Party. When the amendment was put to the vote, it passed with 25 votes, while 2 were against, 21 abstained and 15 were absent. The Prime Minister, Jóhanna Sigurðardóttir, abstained. Since the amendment is a change to the current constitution it had to be passed unchanged by the new Althingi before it took effect, as stated in Article 79. In July 2013, the amendment was passed with 42 votes, 15 were against and 6 abstained.

### *2.8 The 2013 general elections and beyond*

General elections were held in Iceland on 27 April 2013 with a total of eleven parties running, a disproportional amount compared to an average of around seven. Besides the traditional four,<sup>14</sup> several new parties were formed, which led to a fragmentation amongst those campaigning for a new constitution, and added difficulties in crossing the 5 per cent threshold to enter the Althingi. The largest new party was Bright Future, a party formed by two parliamentarians and members of the Best Party.<sup>15</sup> It seems quite supportive of public participation and has advocated referendums on several issues. Parts of the Movement joined a coalition of other small parties and social movements and formed a new party called Dawn. Some members of the Constitutional Council campaigned with Dawn since the party was highly supportive of the new constitution. An Icelandic version of the Pirate Party was formed by Birgitta Jónsdóttir, a former parliamentarian of the Movement. Several members of the Constitutional Council founded a new party, Lýðræðisvaktin (Democracy Watch). Led by Þorvaldur Gylfason, a professor of economics and one of the most vocal members of the Constitutional Council, the party wanted to create a “just society with equal opportunities

---

14 Independence Party, Progressive Party, Social Democrats, and the Left-Green Movement.

15 The Best Party is a satirical party that received almost 35 per cent of the vote during the municipal elections in Reykjavik in 2012 and six out of fifteen council seats. It currently forms a majority with the Social Democrats and its leader, the former comedian and anarchist Jón Gnarr, is the mayor.



for everyone.”<sup>16</sup> Many found it odd that they did not join forces with Dawn since the two groups shared the same view on the constitution. However, they differed on other issues, such as whether to abolish the indexation of mortgages.

According to a poll, the constitution was not high on the list of voters’ priorities. When asked to name the three most important campaign issues, only 15.8 per cent gave it as one of the top three issues (RUV 2013). This led many to claim that the public was simply not interested in a new constitution and that the Althingi should prioritize other issues. No party campaigned on the grounds of rejecting the proposals of the Constitutional Council or promising to stop the bill in the Althingi, and all parties agreed that some changes were necessary.

The results of the elections were historical in many ways. The government parties, the Social Democrats and the Left-Green Movement, suffered heavy losses, unprecedented in Iceland’s history. The Social Democrats lost almost 17 per cent of the total vote and 11 parliamentarians, and the Left-Green movement lost almost 11 per cent and 7 parliamentarians. The total support for the two parties went down from 51.5 to 23.8 per cent. Two new parties managed to cross the 5 per cent barrier. Bright future received 8.2 per cent and 6 MP’s, which is one of the best results in Iceland of a newly formed party, and the Pirate Party got 5.1 per cent and 3 MP’s. Neither Dawn (3.1 per cent) nor Democracy Watch (2.5 per cent) got in, but probably would have if they had joined forces the way many argued they should have. It should be noted that almost 12 per cent of the electorate voted for parties that did not gain any seats in the Althingi, showing how volatile the political situation has become. A quarter of the Icelandic electorate favored other parties than the traditional four. The Progressive Party was the victor of the elections with 24.4 per cent of the vote and 19 MP’s, a gain of 9.6 per cent from 2009. The biggest party is however the Independence Party with 26.7 per cent and 19 MP’s, which is still the second worst result of the party in a general election, the worst being in 2009. These two parties have formed a government with the leader of the Progressive party, Sigmundur Davíð Gunnlaugsson, becoming the youngest prime minister in Iceland since the country became independent in 1944.

---

16 The phrase is taken from the preamble of the Constitutional Bill. See here: <http://www.althingi.is/pdf/ConstitutionJSAY7.pdf> (Stand: 22.01.2014).

At the time of writing (June 2013)<sup>17</sup>, it is unclear how the new centre-right government will proceed with the constitution. In its manifesto, there is a short section which states that the revision will continue under the leadership of the Althingi. The work of previous years will be used for reference and an emphasis will be placed on a transparent discussion with the involvement of the public. The two parties do not seem to favor a totally new constitution. Instead they say that they will work on articles concerning the public ownership of natural resources and referendums instigated by a ‘substantial’ part of the population.

### *3. Concluding remarks*

What is clear is that – even in the worst-case-scenario in which the draft constitution is ultimately dismissed by the Icelandic Parliament – the constitution-making process has been innovative and in many ways unprecedented, and will undoubtedly have important repercussions for Icelandic democracy. But the experiment clearly also entails wider lessons regarding the role of constitutions and of citizen participation in contemporary democracies. The process of Icelandic grassroots constitution-making has been original in its civic-participatory nature and in its explicit rejection of formal political interference. While not living up to more radical expectations of civic involvement, particularly in the earlier stages the process did raise the interest and participation of the wider citizenry. And the draft constitution seems to contain clear improvements – as also borne out by the international reviews discussed – not least with regard to civic-participatory channels and attempts to give citizens real power vis-à-vis an omnipotent parliament (Venice Commission 2013: 21). But distinct dimensions of the bottom-up process might also have contributed to the lack of consensus that currently seems to exist in Icelandic society on the status of the draft constitution and the best way to proceed. A strong emphasis on civic-driven constitutional politics appears to have ‘alienated’ parliament as well as part of the academic community from the process, while the October 2012 referendum has shown sizable civic support, but at the same time, left important questions open. In this regard, the constitutional moment for comprehensive constitutional

---

<sup>17</sup> On June 12, 2013, the amendment went through the first of three discussions in Althingi and was subsequently sent to a committee.

*Baldvin Thor Bergsson/Paul Blokker*

change might now have passed. At the same time, the constitutional experiment makes a thorough-going political reform in Iceland unavoidable, while it has inspired civic-driven constitutional reform in various European countries.<sup>18</sup>

### *Acknowledgement*

Paul Blokker acknowledges a *Unità di Ricerca* grant for the project ‘Constitutional Politics in Post-Westphalin Europe’ (CoPolis) from the *Provincia Autonoma di Trento*, held at the Department of Sociology and Social Research, University of Trento. Baldvin Thor Bergsson acknowledges a doctoral research grant within the same project. This paper was published within the TÁMOP project 4.2.2/B-10/1-2010-0015.

### *References*

- ACA (2010): Act on a Constitutional Assembly, at: [http://thjodfundur2010.is/other\\_files/2010/doc/Act-on-a-Constitutional-Assembly.pdf](http://thjodfundur2010.is/other_files/2010/doc/Act-on-a-Constitutional-Assembly.pdf) (last visited 16.08.2013).
- Árnason, Ágúst Thór (2011): A Review of the Icelandic Constitution – popular sovereignty or political confusion, in: *Tijdschrift voor Constitutioneel Recht*, Vol. 2., No. 3., S. 342-51.
- Árnason, Árni Páll (2013): Speech in Althingi, 6 March 2013, transcript available at: <http://www.althingi.is/altext/raeda/141/rad20130306T173940.html> (last visited 16.08.2013).
- Árnason, Vilhjálmur (2013): *Valdið fært til fólksins? Veikleikar og verkefni íslensk lýðræðis í aðdraganda og eftirmála hrunsins* (Power Brought to the People? Weaknesses of and Challenges to Icelandic Democracy Before and After The Crash), in: *Skírnir* 187 (spring), p. 11-54.
- Bater, Richard (2011): Hope from below: composing the commons in Iceland, *Open-democracy.net*, available at: <http://www.opendemocracy.net/richard-bater/hope-from-below-composing-commons-in-iceland> (last visited 15.07.2013).
- Benediktsson, Bjarni (2012): Speech in Althingi, 20 November 2012, transcript available at: <http://www.althingi.is/altext/raeda/141/rad20121120T153156.html> (last visited 16.08.2013).

---

18 As most clearly in the case of the Irish Constitutional Convention. Also in the UK, the Icelandic experience has been discussed in the context of a Constitutional Convention (see House of Commons 2013). In the recently started Romanian constitutional revision process, Iceland is equally part of the discussion.

*The Constitutional Experiment in Iceland*

- CB (2011): Constitutional Bill, 29 July 2011, at: <http://stjornarskrarfelagid.is/english/constitutional-bill> (last visited 16.08.2013).
- CC (2011): The Constitutional Council – General Information, at: <http://stjornlagarad.is/english/> (last visited 16.08.2013).
- CIR (1947): Constitution of the Italian Republic, at: [http://www.senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](http://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf) (last visited 16.08.2013).
- CRI (1944): Constitution of the Republic of Iceland, at: <http://www.government.is/constitution> (last visited 16.08.2013).
- Elkins, Zacharia, Tom Ginsburg and James Melton (2012): A Review of Iceland’s Draft Constitution, available at: <https://webpace.utexas.edu/elkinszs/web/CCP%20Iceland%20Report.pdf> (last visited 16.08.2013).
- Falk, Barbara (2011): Between past and future. Central European dissent in historical perspective, Eurozine, available at: <http://www.eurozine.com/articles/2011-05-26-falk-en.html> (last visited 16.08.2013).
- Grímsson, Ólafur (2013): New Year’s Address, available at: [http://www.forseti.is/media/PDF/2013\\_01\\_01\\_NewYearAddress.pdf](http://www.forseti.is/media/PDF/2013_01_01_NewYearAddress.pdf) (last visited 16.08.2013).
- Gylfason, Þorvaldur (2012): Vor í lofti og varla komin jól (Spring is in the air and it’s not even Christmas), personal blog, available at: <http://www.dv.is/blogg/thorvaldur-gylfason/2012/12/14/vor-i-lofti-og-varla-komin-jol/> (last visited 16.08.2013)
- Hansen, Skúli (2012): Deila um niðurstöðurnar (Arguing about the results), in Morgunblaðið, 22. October, available at: [http://www.mbl.is/frettir/innlent/2012/10/22/deila\\_um\\_nidurstodurnar/](http://www.mbl.is/frettir/innlent/2012/10/22/deila_um_nidurstodurnar/) (last visited 16.08.2013).
- Helgadóttir, Ragnhildur (2011): Nonproblematic judicial review: A case study, in: International Journal of Constitutional Law (I•CON), Vol. 9., No. 2., pp. 532–547.
- Ice News (16.01.2012): Icelanders may be asked to vote on new constitution, available at: <http://www.icenews.is/2012/01/16/29504/> (last visited 16.08.2013).
- IDEA (2006): Participation in Constitution Making, available at: [http://www.idea.int/resources/analysis/const\\_making\\_particip.cfm](http://www.idea.int/resources/analysis/const_making_particip.cfm) (last visited 16.08.2013).
- INF (2010): Icelandic National Forum, at: <http://participedia.net/en/cases/icelandic-national-forum-2010> (last visited 16.08.2013).
- Jóhannesson, Guðni T.H. (2011): Tjaldað til einnar nætur: Uppruni bráðabirgðarstjórnarskrárinnar (Preparing for the Short-Term: The Origin of the Interim Constitution), in: Icelandic Review of Politics and Administration, Vol. 7, No. 1., p. 61-72.
- Kristinsson, Gunnar Helgi (2012): Ráðskast með stjórnarskrá (Manipulating the Constitution), in: Icelandic Review of Politics and Administration, Vol. 8., No. 2., p. 565-570.
- Levinson, Sanford (2005): Imposed Constitutionalism: Some Reflections, in: Connecticut Law Review, No. 37, pp. 921-32.
- Nikolov, Paul (2011): Reykjavík Nine: Convictions For Some, Acquittal For Others, in: The Reykjavík Grapevine, 16 February 2011, at: <http://www.grapevine.is/News/ReadArticle/Reykjavik-Nine-Convictions-For-Some-Acquittal-For-Others> (last visited 16.08.2013).
- RUV (2013): Skuldamál heimilanna mikilvægust, 07 April 2013, at: <http://www.ruv.is/frett/skuldamal-heimilanna-mikilvaegust> (last visited 16.08.2013).

*Baldvin Thor Bergsson/Paul Blokker*

- The Guardian (09.06.2011): Mob rule: Iceland crowdsources its next constitution, available at: <http://www.guardian.co.uk/world/2011/jun/09/iceland-crowdsourcing-constitution-facebook> (last visited 15.07.2013).
- Thorarensen, Björg (2011): Constitutional Reform Process In Iceland, paper presented at the Oslo-Rome International Workshop on democracy, available at: <http://www.uio.no/english/research/interfaculty-research-areas/democracy/news-and-events/events/seminars/2011/papers-roma-2011/Rome-Thorarensen.pdf> (last visited 16.08.2013).
- Thorarensen, Björg (2012): Þjóðin er stjórnarskrárgjafi – ekki ráðgjafi (The nation should adopt the constitution – not write it), in: Fréttablaðið, 31. October, available at: <http://www.visir.is/thjodin-er-stjornarskrargjafi---ekki-radgjafi/article/2012710319973> (last visited 16.08.2013).
- Torfason, Hjörtur (2009): Influential Constitutional Justice: Some Icelandic Perspectives, World Conference on Constitutional Justice, Cape Town, 23-24 January 2009.
- Torfason, Hjörtur (2011): You Cannot Put Rules On Love. An Interview With Hörður Torfason, The Reykjavík Grapevine, 04. November 2011, at: <http://grapevine.is/Features/ReadArticle/You-Cannot-Put--Rules-On-Love> (last visited 16.08.2013)