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Our New Constitution is Not an Exclusively Icelandic Concern

Democracy is under stress around the world. Apart from the United States, democracy was practically nonexistent until 1850 when Europe was swept by revolutions that were struck down, yes, but delivered remarkable results later on. The number of democracies rose to around 25 in the interwar period, then fell to fewer than ten during WWII. In 1943, there were only five democracies in Europe: the United Kingdom, Ireland, Iceland, Switzerland, and Sweden. From 1945 to 1960 the number of democracies rose rapidly to about 35, then stagnated during 1960-1980, and then jumped to 90, almost a half of all countries, from 1980 to 2000 after the fall of communism around 1990. Then the spread of democracy stagnated again. There has been no increase in the number of democracies over the past ten years. A number of countries have scaled down or turned their back on democracy in recent years, including Russia and Turkey and also Thailand and Bangladesh. Autocracies are backsliding, true, but anocracies (a technical term for halfway houses between autocracy and democracy, like Russia) are increasing in number. Even Hungary and Poland, fully fledged European Union members, show new signs of waning respect for democracy and human rights. And even the United States has been downgraded by [Freedom House](#) in its most recent report on democracy and freedom.

Against this background, the Icelandic Parliament's failure to ratify the new constitution supported by 2/3 of the voters in the 2012 national referendum is a matter of concern. We should not view the challenges faced by democracy around the world at present as an excuse for disrespecting democracy in Iceland. On the contrary, we should be especially alert that now is an exceptionally bad time to digress from the path of democracy. When democracy is under stress as it is now even within Europe and the United States, it is of paramount importance that Parliament do the right thing, that it show the rest of the world that when, after the financial collapse of 2008, the people of Iceland produced perhaps the most democratic constitution ever made, anywhere, they really meant what they did. Iceland is now in a unique position to send the rest of the world an uplifting signal about the beauty and utility of popular democracy, a signal that would be welcomed by advocates of democracy and human rights all over the world. Parliament has neglected to send that message for almost four years now, thus inviting the rest of the world to wonder why.

As Gudni Th. Jóhannesson, President of Iceland, has described in more detail than others, the 1944 constitution was intended only as a [provisional constitution](#). In his 1949 New Year's address to the nation, Iceland's first president, Mr. Sveinn Björnsson, reminded Parliament of its failure to keep its promise of a new constitution: "... we still have a mended garment, originally made for another country, with other concerns, a hundred years ago." He was right. The 1944 constitution is deeply flawed as is hardly surprising given that it dates in essence back to 1849. It was perhaps fit for a 19th century king, but not for a modern republic. For example, the 1944 constitution would have allowed a new President to be elected with only 12% of the popular vote last June had each of the eight unsuccessful candidates received 11% of the vote. Fortunately,

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that did not happen, but it could have happened. It could not, however, have happened under the new constitution that Parliament continues to refuse to ratify. For another example, the unequal voting rights allowed by the 1944 constitution produced two extra seats in Parliament for the party of the Prime Minister after the 2013 election. That election that was held in violation of the principle of “one person, one vote,” a principle supported by 2/3 of the voters in the 2012 referendum. The upcoming parliamentary election next month will likewise be held in accordance with electoral laws rejected by 2/3 of the voters in the 2012 national referendum on the new constitution.

Parliament needs to listen to its own voice. In 2012, Parliament resolved unanimously, with 63 votes to zero and no abstentions, that “criticism of its political culture must be taken seriously.” Yet, three to four years later, it came to light that the names of about 600 Icelanders, including three cabinet ministers and the First Lady, were among those found in the Panama Papers. Of the 332 cabinet ministers in all of Western Europe, four showed up in the Panama papers and three of those four are Icelandic and two of them, the leader and deputy leader of the Independence Party, are still in office as if nothing happened and running for reelection, as is the former Prime Minister who resigned from office under public protest after the scandal broke. For comparison with the 600 Icelanders, there are 51 Danish names in the Panama Papers. This is not because Iceland has 12 times as many inhabitants as Denmark; as you know, it is the other way round – Denmark’s population is 15 times that of Iceland.

It would take 100,000 Ukrainian names for the Ukraine to have a similar per capita presence as Iceland in the Panama Papers but actually there are not nearly that many names listed from around the world in the leaked documents. I mention the Ukraine here for a reason. According to opinion polls, only [20% of Ukrainians](#) say they trust the Parliament in Kiev. In Iceland, since the crash of 2008, polls show that an average of [15% of respondents](#) have said they trust the Icelandic Parliament, compared with 41% on average from 1995 until the crash. In early 2016, 17% expressed trust. The Icelandic people’s trust in our Parliament has collapsed below even the Ukrainians’ trust in their Parliament in Kiev.

I do not raise this issue lightly. I do it on this occasion because these numbers appear to convey an important message. Iceland accepted economic advice and assistance from the IMF, the Nordic countries, and Poland to resuscitate the country’s economy after the crash in 2008. In many respects, the economic rescue operation orchestrated by the IMF went remarkably well. However, Iceland did not receive, nor did it ask for, external assistance with amending its political and business culture. This may help to explain why we still are faced with business as usual on the political front. The failure of Parliament to ratify the new constitution needs to be viewed in this light. It is a sign of a failed political system, a failed political class that has permitted itself to stage a frontal assault on Iceland’s age-old democracy. The reason for the current constitutional impasse can be found in Iceland’s deficient political culture rather than in possible design flaws illuminated by constitutional theory and international experience. The

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current impasse constitutes yet another confirmation that politicians as a rule are not fit for constitution making.

Let us remember that Iceland has one of the oldest parliaments of the world, established almost 1100 years ago. Let us also remember the progress made by Icelandic democracy over time. In 1874 when the King of Denmark unilaterally dictated the current constitution to Iceland, 8% of the people were eligible to vote. Today, 74% of the Icelandic population have the right to vote compared with 71% in the United States. Voter turnout in parliamentary elections in Iceland peaked at 92% in 1956 and has since gradually declined to 82% compared with 36% in the United States in 2014. A people with an unblemished long-standing record of liberal democracy cannot permit its Parliament to deprive it of a new constitution that 2/3 of the voters have said they want. It is futile to argue that the opponents of the new constitution won the parliamentary election of 2013, with 51% of the vote but 60% of the seats in Parliament, because such an argument implies that politicians in Parliament can repeat elections as often as they please until they get the results they want.

A fundamental rule of democracy is that election results cannot be revised after the fact. Election results are final, they must stand – always, without exception. Thinking and behaving otherwise amounts to an affront against democracy. The British understand this. That is why the results of the advisory referendum on Brexit will stand, however misguided some of us may think the outcome was. The UK will leave the EU unless perhaps Scotland mounts a successful legal challenge authorizing it to exercise its veto. I will never forget a lesson I learned from Lord George Brown, Britain's Foreign Secretary, on his visit to Iceland almost 50 years ago. He said: "Democracy means that there shall be no one to stop us from being stupid if stupid we want to be."

This is why the only correct course of action for Iceland's Parliament was to ratify the new constitution after the referendum called by Parliament in 2012 where an overwhelming majority of the voters declared their support for the new crowd-sourced constitution as the basis for Iceland's legislation and where also an overwhelming majority declared their support for certain key individual provisions of the new constitution. Among those provisions are the one stipulating "one person, one vote" through equal apportionment of seats in Parliament and the one stipulating national ownership of natural resources. What sets those two provisions apart from the rest is that they concern human rights.

Unequal voting rights have marred every parliamentary election in Iceland since 1845, creating controversy. In 1931, for instance, the Progressives won 55% of seats in Parliament with only 35% of the votes. The problem reappeared in 2013 when the Progressives won 30% of the seats in Parliament with 24% of the popular vote. The difference is that the 2013 election took place after 2/3 of the voters had declared their support for equal voting rights. Many Icelanders, recently supported by foreign election monitors from the Organization for Security and Co-operation in Europe ([OSCE](#)) view unequal voting rights on the scale observed in Iceland as a violation of human rights.

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Fisheries management has been another hotly contested issue in Icelandic politics for almost 50 years. The access to Iceland's fishing grounds was granted free of charge to selected vessel owners from the mid-1980s until 2002 when a nominal charge was levied on quota allocations. To make a long story short, Parliament, with the stroke of a pen, created a class of wealthy oligarchs by granting them free or virtually free access to a common property resource which, by law, belongs to the people. The oligarchs, in turn – as no observer of, e.g., Russian politics will be surprised to hear – have used their wealth to flex their muscles in the political arena, media, and elsewhere. It did not have to be that way. Norway has no oligarchs. Iceland could have managed – and was, indeed, urged to manage – its marine resources the way that Norway manages its oil but Parliament chose not to. The new constitution aims to set this right by declaring, as the law has done for 25 years, that Iceland's natural resources belong to the people and that there can be no discrimination among citizens in the allocation of the rights to exploit these resources. This is the thrust behind the opening salvo of the preamble to the new constitution: "We, the people of Iceland, wish to create a just society with equal opportunities for everyone."

The Supreme Court of Iceland ruled the discriminatory nature of Iceland's fisheries policy regime unconstitutional in 1998. Under visible political pressure, the Supreme Court reversed course 18 months later, suddenly seeing no discrimination. In 2007, the United Nations Human Rights Committee confirmed the 1998 ruling by issuing a [binding opinion](#) stating that Iceland's fisheries management system is discriminatory and hence unconstitutional. Accordingly, the UNHRC instructed Iceland in 2007 to remove the discriminatory element from the system and to award damages to the fishermen whose rights had been violated and who had brought the case before the Committee. The government did not comply but it promised a new constitution that would set the matter right, a promise that the Parliament has yet to keep. These events help to explain why the new constitution includes a provision that aims to strengthen judicial appointments.

If all the Parliament had done was refuse to ratify the new constitution in spite of the result of the 2012 referendum, the people of Iceland would have no recourse except through their flawed electoral process that still fails to respect the principle of "one person, one vote." But the Parliament seemingly seeks to do more. If it persists in its failure to ratify the new constitution, it can be seen as trying to impede the advance of human rights by preventing the people from exercising their right to "one person, one vote" as well as their right to the full rent generated by their natural resources that belong to them by law. It seems inevitable that this aspect of Iceland's current constitutional impasse will be brought to the attention of the UNHRC unless Parliament mends its ways as many of us hope will happen after the elections in October 2016.

As if to prolong the impasse the government in office since 2013 established yet another parliamentary constitutional committee comprising representatives of the political parties in Parliament, initially under the chairmanship of a steadfast opponent of constitutional reform. The mandate of the committee was to forge a consensus across

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political parties as if no referendum had taken place. The committee chose four provisions of the 114 in the bill, aiming to find the lowest common denominator that all committee members could agree on. One of the four provisions concerned the transfer of state powers to remove any perceived constitutional hindrance to Iceland's accession to the EU as well as to continued membership in the European Economic Area and NATO. Denmark did this in 1953. This provision was quickly taken off the table, however, suggesting that the majority of the committee members want Iceland to be the sole country in Europe where EU membership is implicitly forbidden by the constitution. The majority of the committee members seems to want the constitution to prevent the people of Iceland from being able to decide in a national referendum whether to join the EU or not. The other three provisions that the committee could agree on are watered-down versions of the corresponding provisions in the bill already approved in the 2012 referendum, including the one on national ownership of natural resources. In the end, the consensus of the committee broke down. One member declared: "The outcome [i.e., the constitutional committee's proposal] is what the reactionaries [i.e., opponents of constitutional reform] can accept." The comments from the public solicited by the Parliament and published on its website were overwhelmingly critical, and rightly so.

To repeat, the only correct course of action for Parliament after the referendum was to ratify the new constitution and then ratify it again after the 2013 election. Before the 2013 election a majority of Members of Parliament had declared in writing their support for ratification, but the Speaker of Parliament failed to bring the bill to a vote.

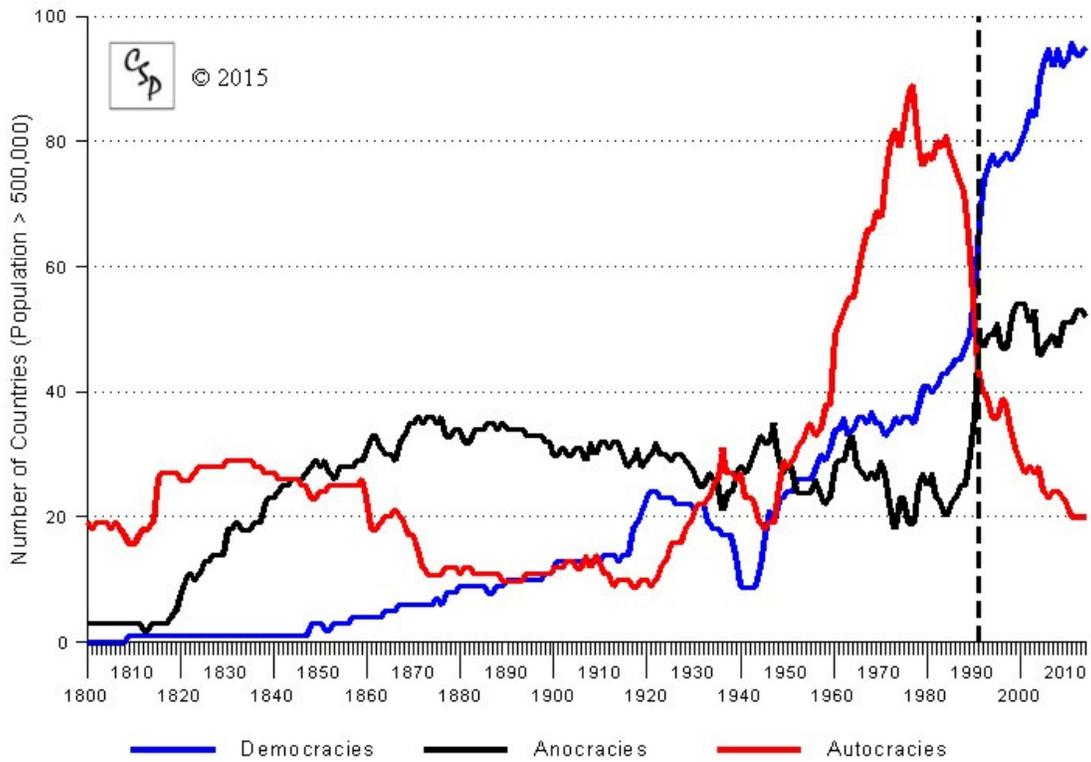
What did the US Congress do in 1787? It decided that it had no right to change the bill drafted by the Constitutional Convention in Philadelphia, not even a single word. Members of Congress understood that all that they were supposed to do was to send the bill to the 13 states for ratification. After nine states had ratified the bill, some with narrow margins, it became the law of the land without the Congress in Washington having left any fingerprints on the bill. Even so, and this is important, the process of amending the bill started almost immediately.

This is what should also happen in Iceland. Parliament should demonstrate its respect for democracy to the Icelandic people and to the rest of the world by ratifying the bill, twice, and then set in motion the process of amending the new constitution along the lines laid out in the bill which simplifies the rules concerning constitutional change. The simplification consists in requiring a simple majority in Parliament plus a simple majority in a national referendum for a constitutional amendment to take effect rather than requiring simple majorities in two consecutive parliaments without a national referendum as stipulated in the 1944 constitution. If not, extraconstitutional means of ratification may have to be considered as was done in 1944.

It is never too late to do the right thing. It is not too late for Parliament to ratify the new constitution. Should Parliament fail to do so, however, Iceland may stray farther toward the cluster of countries where democracy is now under the greatest stress. Let us not go there.

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Global Trends in Governance, 1800-2014



Source: <http://www.systemicpeace.org/polity/polity1.htm>