

## Iceland: Window remains wide-open

Historical evidence suggests that, with few exceptions, it takes a crisis to write or revise a country's constitution. Iceland fits the pattern. The Icelandic Parliament, one of the world's oldest (est. 930), had for decades on end promised an overhaul of the provisional constitution from 1944 when Iceland unilaterally declared independence from Nazi-occupied Denmark, but Parliament failed to deliver. One reason for the failure was the perceived lack of urgency. This changed when Iceland's financial system collapsed in 2008, a collapse that was in several dimensions among the largest that the world has ever seen. People took to the streets banging their pots and pans and demanding, among other things, a new constitution. Terrified, the politicians had to face the fact that the game was up, and they gave in, promising a new constitution to be drafted by a directly elected Constituent Assembly rather than by MPs and their lawyers.

Briefly, here is what happened. Parliament organized a National Assembly comprising 950 Icelanders selected at random from the National Register, thus giving every Icelander an equal opportunity to get involved. The National Assembly called for a new constitution with certain key provisions, including equal voting rights (i.e., equal apportionment of seats in Parliament) and national ownership of natural resources. A 25-member Constituent Assembly was elected directly by the people and given four months to draft a new constitution. Before the four months were up, the Constituent Assembly completed and passed unanimously a partly crowd-sourced constitutional bill in full accord with the conclusions of the National Assembly. The crowd-sourcing involved open access of the public to the Constituent Assembly's work, including its interactive website.

At first, there was broad support in Parliament for the constitutional reform project as the political establishment had literally been brought to its knees after having, through corrupt privatization of the banks 1998-2003, paved their way to the abyss. The responsibility for the collapse rested squarely with the politicians as well as their banker friends. However, after the IMF was called to the rescue and its recovery program, partly financed by Nordic tax payers, began to bear fruit, support in Parliament for constitutional reform began to wane as politicians regained their misplaced poise and reverted to their old habits.

First, the Supreme Court of Iceland, no stranger to breaking the law,<sup>1</sup> declared the Constituent Assembly election null and void on flimsy technical grounds, a decision that was not only unprecedented in a democracy and wrong on substance but also illegal (five of the six justices involved were Independence Party nominees).

Second, the Independence Party began to fight tooth and nail against the new constitution in Parliament by staging the most extensive filibuster in the Parliament's history, supported by the Progressive Party that had originally supported the project and now turned fiercely against it. Those two parties realized that equal voting rights and national ownership of natural resources, among other provisions in the bill, would shrink their long-held privileges.

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<sup>1</sup> Over the years, the European Court of Human Rights has repeatedly overturned verdicts from the Supreme Court of Iceland, marred for many years by poor, politically motivated appointments to the bench. The Constituent Assembly's constitution bill contains a provision aiming to strengthen judicial appointments.

Third, the support from the government that had launched the project began to dither as well. When the Constituent Assembly delivered its bill to the Speaker of Parliament, no other MPs bothered to attend the ceremony. When the bill was brought to a national referendum in 2012, the governing parties that had called the referendum were nowhere to be seen: The bill was an orphan. But it was accepted anyway by 67% of the voters. Further, 67% supported the equal voting rights provision and 83% supported the provision regarding national ownership of natural resources. Turnout was 49%.

Fourth, Parliament now began debating the bill as if it could manipulate the results of the referendum after the fact. Even so, the Parliament's Constitutional and Supervisory Committee let it be known that only technical changes of wording were acceptable but substantive changes were not. This did not keep a team of local lawyers tasked with suggesting changes of wording if needed from suggesting radical changes in substance, including a 180 degree change of the natural resource provision to cater to the quota kings, Iceland's answer to Russia and Ukraine's oligarchs. Further, in a comic turn, the Parliament which had declined to have the bill translated into English came to the Constitutional Society with the tail between its legs to ask for permission to use the professional English translation that the Society, an NGO, had financed. The Parliament had at the eleventh hour decided to ask the Venice Commission for its views. The report of the Venice Commission showed a surprising lack of *Situationsgefühl* by making suggestions some of which the Constitutional and Supervisory Committee, mildly put, had no use for. Others were easy to take on board.

Fifth, the Speaker of Parliament, in violation of parliamentary procedure, failed to bring the bill to a ratification vote even if a majority of MPs had declared their support for ratification in writing. In a recent book,<sup>2</sup> a former MP reports rumors that the Speaker was bribed to not bring the bill to a vote. This is Iceland.

Sixth and last, the 2013 parliamentary election saw the return of the Independence Party and the Progressive Party to power, the Icelandic answer to communists returning to power in Eastern Europe in the mid-1990s. The new government appointed a parliamentary constitutional committee tasked with producing a cross-party consensus on four of the 144 provisions in the constitutional bill that was accepted in the 2012 referendum. The committee was, in other words, asked to find the lowest common denominator by producing a consensus that MPs have consistently failed to reach for 70 years. After three years of work the committee produced watered-down versions of the provisions on natural resources, the environment, and direct democracy where every single change proposed aims to weaken the bill. The Social Democratic member of the Parliament's constitutional committee, Ms. Valgerður Bjarnadóttir who chaired the Parliament's Constitutional and Supervisory Committee during 2012-2013, [has written](#): "The outcome [i.e., the constitutional committee's proposal] is what the reactionaries [i.e., opponents of constitutional reform] can accept." So much for parliamentary consensus.

Remarkably, the committee failed to reach agreement on the provision on the transfer of state powers considered by many crucial to avoid constitutional challenges to, e.g.,

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<sup>2</sup> Margrét Tryggvadóttir (2014), *Útistöður (Quarrels)*, Hansen og synir, Reykjavík.

Thorvaldur Gylfason  
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Iceland's pending application for EU membership, filed by Parliament in 2009 and laid on ice in 2013 by the current government, not by Parliament. What happened here is that opponents of EU membership do not want the constitution to permit membership. This outcome, if allowed to stand, would make Iceland unique in Europe.<sup>3</sup> Thus, by refusing to accept the Constituent Assembly bill's provision on the transfer of state powers, the opponents of reform thereby declare that they do not accept the right of the people to decide by popular referendum whether Iceland should join or stay out, an inalienable right conferred on the people in the bill.

Some observers have expressed concerns that now that Iceland's economic crisis has passed thanks to the IMF and the Nordic countries, the window of opportunity has closed: No crisis, no constitution. But this view is fundamentally misguided. Iceland's crisis has not passed, far from it. This week saw the largest demonstration ever in Parliament Square, with more than twenty thousand people demanding the resignation of the government in the wake of the Panama Papers scandal that involves three of Iceland's twelve ministers. Tortola in the British Virgin Islands which is at the center of the storm is not just any offshore tax haven. Rather, Tortola is virtually synonymous with the goings on before Iceland's financial crash of 2008. The Panama Papers are reported to show that the number of Icelandic offshore companies is four times larger than the corresponding number of Norwegian companies, implying a 60-fold difference in per capita terms.

Iceland's crisis is now deeper than ever before. Now that the people see – not only at home but also in the world press – what the chief opponents of constitutional reform have been up to, their demand for Parliament's ratification of the new constitution seems likely to intensify. A brand new post-Panama opinion poll taken by Iceland's largest newspaper, *Fréttablaðið*, suggests that the government parties' support has shrunk from 51% in the 2013 election to 30% today while the largest opposition party, the Pirates, whose chief policy aim is to ratify the new constitution, has seen its support rise from 5% in 2013 to 43% today.

The window of opportunity has not closed; it remains wide-open.

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<sup>3</sup> Denmark introduced a clause on the transfer of state powers into its constitution in 1953, Norway in 1962.