

Events in Iceland show that a UK constitutional convention should involve politicians as minimally as possible

By Democratic Audit UK

*Following the financial crisis of 2008-2009, the small country of Iceland decided to start afresh, and abandon its existing political and democratic institutions in favour of new, crowd-sourced arrangements. **Thorvaldur Gylfason** recounts the tale of how this idea was conceived and eventually abandoned thanks to political meddling. The lesson for the UK, he argues, is to keep politicians as far away from the process as possible.*



Iceland: Credit – Victor Montol, CC BY 2.0

Making a democratic constitution

After the financial crash of 2008, Iceland's prospects looked promising in two respects. First, the government decided to call the IMF to the rescue following the Central Bank's botched attempt to get Putin's Russia to protect Iceland from the IMF's 'Kiss of Death'. The Fund-supported recovery program served Iceland well. Second, up against the wall, Parliament gave in to the demands of the 'Pots and Pans Revolution', including the protesters' demand for a new constitution to be drawn up by the people, not by politicians or their lawyers. From 1944, when Iceland adopted what was essentially a translation of the Danish constitution from 1849, Parliament had consistently failed to keep its promise of constitutional reform. Without the crash, there would have been no new constitution.

Parliament took four key steps toward a new constitution. First, it appointed in 2009 a seven-member Constitutional Committee comprising mostly academics from a range of fields, including law, literature, and science, thus implicitly acknowledging that the constitution is not exclusively, and not even principally, a legal document, but primarily a social compact, a political declaration that supersedes ordinary legislation by virtue of the fact that the people are superior to Parliament. Second, the Constitutional Committee was tasked with convening a National Assembly in 2010 at which 950 citizens, drawn at random from National Register, defined

and discussed their views of what should be in the new constitution.

Third, the Constitutional Committee organized a national election of 25 Constitutional Assembly representatives to draft the constitution, a task that the Constitutional Assembly, renamed Council, completed within the four months assigned to it in 2011 by producing a partly crowd-sourced constitution bill, fully consistent with the conclusion of the National Assembly, and passing it unanimously with 25 votes to 0, a rare feat. The elected council members included five professors, three other academics, four lawyers, and so on. Fourth, Parliament held a national referendum on the bill in 2012 where the bill was accepted by 67% of the voters and its individual key provisions were approved by 67% to 83% of the voters.

The bill was drafted from scratch, based on the 1944 constitution. The text was made public week by week for perusal by the public that was invited to offer comments and suggestions on an interactive website specifically designed for that purpose. Hundreds did. Many thoughtful and constructive comments were thus received from the public. An open invitation to all made it needless to invite representatives from special interest organizations to express their views, a clear departure from common parliamentary practice which has been, and remains, to invite special interest groups to influence, or even draft, legislation of interest to them.

The bill reflects a broad consensus in favour of change. It is, by design, firmly grounded in and fully consistent with the conclusion of the 2010 National Assembly, virtually without exception. This helps explain the 67% support for the bill in the 2012 referendum. The bill embraces continuity plus new provisions aiming to

1. Strengthen checks and balances to limit executive overreach;
2. Secure equal voting rights, i.e., 'one person, one vote', to stem over-representation of rural areas in Parliament;
3. Ensure national ownership of natural resources, mainly to uproot the Russian-style handling of Iceland's natural resource wealth, especially the fisheries;
4. Promote environmental protection; and
5. Increase freedom of information. Some of these provisions are feared by politicians owing their careers to, inter alia, unequal voting rights and the umbilical cord binding them to vessel owners, the major beneficiaries of the deeply discriminatory management of Iceland's natural resources.

The constitutional bill is firmly anchored in the will of the people because (a) the bill fully reflects the declaration of the 2010 National Assembly at which every Icelander 18 years or older had an equal chance of being invited to take a seat and (b) it was approved by 2/3 of the voters in a national referendum against the wishes of much of the discredited political class.

Killing a democratic constitution

As time passed, support in the Icelandic Parliament for constitutional reform weakened. The opposition emerged gradually. The political parties showed no interest in the Constitutional Assembly election in 2010 which the Supreme Court decided to annul on flimsy if not illegal grounds. Never before has a national election been invalidated in a democracy. The political parties did nothing to promote the bill before the national referendum held by Parliament in 2012. The bill was an orphan. It fell upon ordinary citizens, including former members of the Constitutional Assembly whose legal mandate has long since expired, to present the bill to the voters. Only after the bill was accepted by 67% of the voters, did its opponents turn openly against it, waving objections that no one had raised before concerning provisions that Parliament, rightly, had seen no reason to put on the ballot. Their criticisms, sometimes dressed up in legal jargon, were political – and irrelevant because they appeared too late.

All along, Parliament had moved slowly. When the Constitutional Assembly, renamed Council, after four months of work, had delivered its bill to Parliament, the minority in Parliament used unprecedented filibuster against the bill for months. The government majority in Parliament shied away from breaking the filibuster by applying the 'nuclear option' permitted by law, which also would have been unprecedented. The filibustering minority complained that it did not have enough time to consider the bill and delayed the referendum from June until October 2012. After the referendum, where turnout was 49%, Parliament asked local lawyers to polish the

language instructing them not to change in any way the substance of the bill. The lawyers, led by an official at the Prime Minister's office, tried to turn natural resource provision upside down in favour of the vessel owners, but to its credit the parliamentary committee in charge restored the original language of the clause proposed by the Constitutional Council. At the eleventh hour, Parliament asked the Venice Commission for its reactions, and found them easy to incorporate into the bill. The bill was now ready for a vote in Parliament to ratify the outcome of the 2012 referendum.

As the vote approached, private citizens opened a website inviting MPs to declare their support for the bill. One by one, 32 MPs (a majority) declared support. If Parliament allowed a secret ballot, the bill might have stranded. In an open ballot, however, members of the government majority that had launched the constitutional reform process could not permit themselves to vote against the result of the referendum. On the last day of Parliament, before the parliamentary election in 2013, violating procedure, the Speaker failed to bring the bill to a vote. The election brought the old rascals – the main opponents of the bill – back to office. With 51% of the voters behind it, the new government shelved the constitution bill, some of its members referring to the 2012 national referendum as an irrelevant 'opinion poll'.

At present, the most democratic constitution bill ever drafted is being held hostage by self-serving politicians in the clearest possible demonstration of a fundamental principle of constitution-making – namely, that politicians should neither be tasked with drafting nor ratifying constitutions because of the risk that they will act against the public interest. The conduct of Parliament in Iceland is seen by many as a direct affront to democracy. Events like some of those described here – with six Supreme Court judges annulling a national election on flimsy if not illegal grounds, Parliament deliberately disrespecting the overwhelming result of a constitutional referendum – are simply not supposed to happen in a democracy.

In view of all this, Iceland faces uncertain prospects because many observers in Iceland see the country as having gradually become a Russian-style oligarchy marred by sometimes cartoonish corruption. According to [Gallup](#), 67% of Icelandic respondents consider Icelandic political corruption pervasive. The Parliament's putsch against the constitutional referendum deepens such concerns, further undermining social cohesion and public trust.

There may be a lesson or two also for the UK in the Icelandic constitutional saga as it has played out thus far. A national assembly comprising a statistically significant sample of the electorate is a crucial initial step toward a democratic constitution because political parties tend to serve as interest organizations for politicians or other groups. For that reason, politicians should not be allowed near the constitution making process because of the danger that they will try to hijack the process for their own benefit. Large countries like the UK should have no trouble with extending an open invitation to the public to participate in the process through crowd sourcing as long as appropriate sampling techniques are used to compile a representative collection of comments and suggestions offered by the citizenry.

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