

**The Iceland Experiment (2009-2013):
A Participatory Approach to
Constitutional Reform**

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EXECUTIVE SUMMARY

The impact of the financial crisis in Iceland had more than economic repercussions on the country. The collapse of the financial system led to political upheaval and social unrest, as citizens sought accountability from their politicians, and an assurance that reforms would be made to ensure that such a collapse – and a betrayal of the public trust – could not happen again. In the wake of the crisis a grassroots, civic movement for constitutional reform took shape, ultimately resulting in the most consultative and participatory constitutional drafting process to date. Citizens were engaged in national assemblies, community meetings and online discussions, as a conversation on the constitutional structure unfolded. A new draft constitution emerged from this process, and is now being deliberated by the country’s Parliament. While the ultimate fate of the citizen’s draft constitution is not yet known, the precedent Iceland set through this citizen-driven discourse is critical, and provides a model that other countries might emulate as they seek to involve more citizens in this most democratic of processes.

THE ICELAND EXPERIMENT (2009-2013):
A PARTICIPATORY APPROACH
TO CONSTITUTIONAL REFORM

Introduction

In 1944, a national referendum established Iceland's independence from Denmark and approved a constitution for the newborn republic. The 1944 Constitution, drafted hastily in the midst of World War II and originally intended to be provisional, was nearly identical to the Danish Constitution. While Iceland's constitution included new provisions outlining presidential elections, impeachment, and veto, in many places it repeated the wording of the Danish Constitution exactly, merely replacing the word "king" with "president." The 1944 Constitution was not a bad one—it was functional, guaranteed basic rights, and was relatively inclusive¹—but it was dry and it was Danish. The Icelandic people, then, never established an emotional bond with their founding document.² When World War II ended Iceland conducted a review of the 1944 Constitution, but revision attempts in the late 1940s failed due to a lack of political consensus. Between 1950 and 2005 the state conducted periodic reviews of the constitution, amending it on four occasions, but lack of political consensus continued to prohibit comprehensive revision.³ As in every country, the process of constitutional reform in Iceland faced numerous, seemingly insurmountable, political obstacles.

Roots of the Revision

The Financial Collapse

Iceland's 2008 financial collapse, the biggest banking collapse relative to the size of the

¹ Zachary Elkins, Tom Ginsberg and James Melton. "A Review of Iceland's Draft Constitution." *Blog of the International Journal of Constitutional Law and Constitution Making*. 15 October 2012. Available at <http://www.iconnectblog.com/2012/10/a-review-of-icelands-draft-constitution-from-the-comparative-constitutions-project/>.

² Bjorg Thorarensen. "Constitutional Reform Process in Iceland: Involving People in the Process." Paper presented at the Oslo-Rome International Workshop on Democracy. Rome, 7-9 November 2011. Available at <http://www.uio.no/english/research/interfaculty-research-areas/democracy/news-and-events/events/seminars/2011/papers-roma-2011/Rome-Thorarensen.pdf>.

³ Ragnhildur Helgadóttir. "The Context of Iceland's Constitutional Revision: Will it doom the draft?" *Blog of the International Journal of Constitutional Law and Constitution Making*. 10 November 2012. Available at <http://www.iconnectblog.com/2012/11/the-context-of-icelands-constitutional-revision-will-it-doom-the-draft/>

economy that any country has ever experienced,⁴ united a large faction of Iceland's 320,000 citizens against the conservative ruling party and established a strong public consensus in favor of constitutional revision.

The buildup to the collapse began in the early 2000s when the ruling Independence Party (IP) – led by Prime Minister Geir Haarde and in coalition with the Progressive Party (PP) – initiated a series of economic policies (deregulation, privatization, low interest rates, tax cuts) that made it easy for the country's populace to access credit. As a result, Iceland's lending banks grew disproportionately large. At the same time these banks, no longer constrained by domestic regulations, began to open lucrative subsidiaries all over Europe, becoming very rich in the process. By mid-2008, Iceland's three largest banks—Kaupthing, Landsbanki, and Glitnir—had combined assets worth 14.4 trillion kronur (50 billion euros) or nine times the size of Iceland's GDP.⁵

Iceland's bank giants were unethical and reckless lenders. The biggest owners of Kaupthing, Landsbanki, and Glitnir were consistently among those banks' biggest borrowers. These owners abused their positions to obtain massive amounts of credit for their other businesses, contrary to the best interests of the banks. In addition Iceland's banks borrowed heavily from foreign creditors in order to lend and depended almost completely on short-term funds in money markets to meet their large funding needs.⁶ The Financial Supervisory Authority (FME), the government agency tasked with monitoring the banks, did not have the resources or the will to keep up with the banks' unprecedented growth and so the banks' questionable business practices went unchecked.

When Lehman Brothers went bankrupt on 15 September 2008, the money markets that Iceland's banks depended on dried up overnight. Kaupthing, Landsbanki, and Glitnir owed money to lending agents all over the world, but with worldwide money markets frozen, the banks could not raise funds. Since they could no longer meet loan repayments on their own, the Republic of Iceland was forced to take on the banks' enormous debts. The small country, however, did not have the liquidity to cover the banks' debts completely. An international crisis ensued surrounding Iceland's inability to repay foreign lenders and depositors.

A post-collapse investigation revealed that the Central Bank of Iceland (CBI) had begun to voice concerns about the viability of Iceland's banks to Prime Minister Haarde and a

⁴ "Cracks in the Crust." *The Economist*. 11 December 2008. Available at http://www.economist.com/node/12762027?story_id=12762027.

⁵ Einarsdottir, Helga K. "Icelandic Banks to Sell Assets; Government Guarantees Deposits." *Bloomberg*. 6 October 2008. http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aEb_jUV5LjZY.

⁶ James K. Jackson. "Iceland's Financial Crisis." *Congressional Research Service Report for Congress*. 20 November 2008. Available at http://www.policyarchive.org/handle/10207/bitstreams/18921_Previ%20Version_2008-11-20.pdf.

government consultative group in November 2007. Despite the fact that the CBI had painted a bleak picture of the banks as early as a year before their collapse, neither the consultative group nor the CBI itself had reacted constructively, or effectively. The CBI, apparently concluding that it did not have the authority to address the problem independently, did not propose remedies to the consultative group, and the consultative group, for its part, did not ask the CBI for any proposals. In addition, there were concerns that the personal friendship between Haarde and CBI Governor David Oddsson hampered the professionalism of discussions, while mistrust and cooperation problems between coalition party Social Democratic Alliance (SDA) ministers and Oddsson (of the IP) hampered the productivity of discussions. The CBI's concerns were never formally voiced outside the consultative group: Haarde did not inform other cabinet ministers of discussions with the CBI and no member of the consultative group submitted a report to the government.⁷

The government's failure to prevent the financial collapse brought two constitutional shortfalls to the forefront of social and political discourse. First, the 1944 Constitution, essentially remains a democratic adaptation of the document outlining Denmark's pre-World War II constitutional monarchy, and does not clearly assign executive roles. While the constitution splits executive power between the president and the ministers, it does not define the specific responsibilities of the powerful prime minister.⁸ This became a problem when the new government attempted to prosecute Haarde for negligence in the wake of the collapse. Haarde was acquitted of all but one charge because the existing Constitution simply does not hold him accountable for his actions (or, more correctly, his inactions).⁹

Second, the 1944 Constitution does not entrench the country's moral values into its government structures and culture. Before the collapse, government regulators and politicians acted unethically by ignoring and indulging bankers' malpractice. A post-collapse, government-sponsored Working Group on Ethics concluded that the Icelandic nation must strengthen weak social structures, political culture, and public institutions if it wants to support a well-functioning democratic society.¹⁰ In the 2000s Iceland's prevailing political ideology, the heart of which is the Constitution, did not match up with Iceland's social values.

⁷ Hreinsson, Páll. Gunnarsson, Tryggvi. Benediktsdóttir, Sigríður. "Summary of the Report's Main Conclusions." Report of the Special Investigation Committee to Althingi. 12 April 2010. <http://www.rna.is/media/skjol/RNAvefurKafli21Enska.pdf>.

⁸ *Constitution of the Republic of Iceland*. Available at www.government.is/media/Skjol/constitution_of_iceland.doc.

⁹ "Q & A: Iceland's ex-PM's Gier Haarde Trial." *BBC News*. 23 April 2012. Available at <http://www.bbc.co.uk/news/world-europe-17256626>.

¹⁰ Special Investigation Committee to Althingi, Working Group on Ethics. "Summary." 12 April 2010. Available at http://www.rna.is/media/skjol/WorkingGroupOnEthics_Summary.pdf.

The Kitchenware Revolution

In the wake of the financial collapse, a series of protests against the government led to early elections and a large number of resignations and removals in the government. Known as the Kitchenware Revolution, this initiative overturned the ruling Independence Party and brought a new liberal Parliament (*Althingi*) and coalition government to power in April 2009. The new *Althingi* provided, for the first time, the political consensus necessary for a constitutional revision process to move forward.

On 11 October 2008 (only days after the government assumed liability of Glitner, Kaupthing, and Landsbanki), well-known Icelandic singer/songwriter and activist Hordur Torfason staged a one-man protest in Reykjavik. The protest consisted of Torfason setting up a microphone in Austurvollur Square, a busy square adjoining the *Althingi* building, and inviting passers-by to speak spontaneously about the ongoing banking collapse. Torfason listened and took notes as frustrated citizens aired their grievances in what would become the first of the “Kitchenware Protests.”¹¹ The following Saturday Torfason organized a formal protest in Austurvollur Square (from then on the epicenter of the Kitchenware Revolution) that demanded the resignation of CBI Director David Oddsson. This protest was characterized by “a lot of unfocused anger” directed at Oddsson, who was blamed for the entire crisis.¹² Because the attack on Oddsson alienated a faction of more moderate protestors, the next Saturday Torfason and other organizers regrouped and presented four broader, more focused, demands: replace the government; replace the board of the central bank; replace the board of the FME; and hold early elections.

Throughout the cold Icelandic winter protestors continued to gather in Austurvollur Square for the Kitchenware Revolution’s Saturday demonstrations. Torfason was intent on preserving the protests as spontaneous gatherings of citizens, and worked hard to keep organizations with partisan or religious agendas out of the movement. He also tried to focus citizen’s anger by encouraging peaceful demonstration. Furthermore, since the press in Iceland is closely affiliated with the country’s political parties, the movement depended on the Internet and social media to spread information about the protests.¹³

On 20 January 2009 the Kitchenware Revolution turned violent when 1,000-2,000 protestors gathered in Austurvollur Square to protest the first *Althingi* session of 2009. As an unpopular Haarde joined ministers inside the *Althingi* building, repressed anger erupted

¹¹ “Learning From Iceland’s Kitchenware Revolution.” The Polic Blog. 22 June 2011. Available at <http://www.thepolisblog.org/2011/06/learning-from-icelands-kitchenware.html>

¹² “We Need Far More Radical Changes.” *The Iceland Weather Report*. 4 February 2009. <http://icelandweatherreport.com/2009/02/we-need-far-more-radical-changes.html>.

¹³ Alex Peitrowski. “Iceland’s Hordur Torfason - How to Beat the Banksters.” *Truth 11*. 13 December 2012. Available at <http://truth11.com/2012/12/13/icelands-hordur-torfason-how-to-beat-the-banksters/>.

outside. Protestors banged on pots and pans and honked horns to drown the politicians out. They hurled snowballs, *skyr* (an Icelandic yogurt product), and rocks at the windows of the building, breaking them. Then, as protesters threw smoke bombs into the *Althingi* building's backyard, the whole scene was engulfed in smoke.¹⁴ Riot police broke up the 20 January demonstration with pepper spray, and twenty people were arrested.¹⁵ The next day, when Haarde arrived at work, an additional 3,000 angry protestors were waiting. They banged pans and pelted his car with snowballs, eggs, and empty soda cans. After bodyguards and riot police ushered Haarde inside the government building, the protestors began pelting the building with paint and eggs. One protestor climbed the facade of the *Althingi* building and hung a sign that read, "Treason Due to Recklessness is Still Treason."¹⁶

On 23 January the Haarde administration conceded to one of the protestors' demands by announcing that the government would hold early elections in April. The protests continued, however, since the government had yet to meet three of the four Kitchenware demands. On 25 January Commerce Minister Bjorgvin Sigurdsson dismissed FME director Jonas Jonsson, recommended the Board of the FME resign (which they did) and then resigned himself.¹⁷ Thus two of the four Kitchenware demands were met. On 26 January, after the SDA called for the IP to concede power, Haarde announced that his government was resigning, thus meeting a third demand.¹⁸ Johanna Sigurdardottir became the new prime minister on 1 February 2009.¹⁹ Sigurdardottir represented a new SDA-Left-Green Movement (SDA-LGM) temporary ruling coalition that immediately moved to meet protestor's demands by proposing an amendment to the Act on the Central Bank of Iceland that would allow the government to replace the Board of the CBI.²⁰ The proposed amendment passed and, on 27 February, *Althingi* removed Oddsson

¹⁴ Valur Gunnarsson. "Icelandic Lawmakers Return to Work Amid Protests." *Associated Press*. 20 January 2009. Available at

<http://web.archive.org/web/20090131185044/http://www.google.com/hostednews/ap/article/ALeqM5h-RU16zdfvmljYqtmrqi2ROGbXgD95QU1DGO>.

¹⁵ "Icelanders Held Over Angry Demo." *BBC News*. 21 January 2009. Available at <http://news.bbc.co.uk/2/hi/europe/7842172.stm>.

¹⁶ Bruno Waterfield. "Protestors pelt car of Icelandic prime minister." *The Telegraph*. 21 January 2009. Available at <http://www.telegraph.co.uk/news/worldnews/europe/iceland/4308669/Protesters-pelt-car-of-Icelandic-prime-minister.html>.

¹⁷ "Platform of the Government - Report from the Prime Minister." *Icelandic Prime Minister's Office Publications*. 4 February 2009. Available at <http://eng.forsaetisraduneyti.is/news-and-articles/nr/3387>.

¹⁸ Helga Kristin Einarsdottir. "Iceland's Ruling Coalition Splits Following Protests." *Bloomberg*. 26 January 2009. Available at http://www.bloomberg.com/apps/news?pid=newsarchive&sid=avntV39aM_7I&refer=europe.

¹⁹ "New Icelandic Government Formed." *Icelandic Prime Minister's Office Publications*. 1 February 2009. Available at <http://eng.forsaetisraduneyti.is/news-and-articles/nr/3369>.

²⁰ Act on the Central Bank of Iceland. No. 26, 22 May 2001. Available at <http://www.cb.is/lisalib/getfile.aspx?itemid=7425>.

and four other CBI board members.²¹ A mere five months after the grassroots Kitchenware Revolution began, all of its demands were met.

The government held early elections for *Althingi* on 25 April. In the April elections the IP lost an astounding one third of its seats in *Althingi*. The SDA-LGM coalition made the biggest gains, winning 34 of 63 seats and establishing itself as the new ruling coalition.²² The short-lived Citizens' Movement, a party founded by Kitchenware Revolution activists running on an anti-corruption, constitutional reform platform, won four seats before falling apart in September.²³ Before being overturned in the April elections, the IP had held power in *Althingi* for 18 consecutive years.²⁴

During the Kitchenware Revolution the government depended almost entirely on emergency legislative measures and voluntary resignations to meet the protestors' demands. The new, active political environment stimulated by the financial crisis was one with no precedent and few rules. As politicians scrambled to fulfill Kitchenware initiatives in a legal manner (and thereby end the civic protests), a third shortfall of the 1944 Constitution emerged in the public and political discourse: the Constitution did not provide the Icelandic people with the necessary tools to truly enable civic initiatives and to participate in government at the level they desired. The need for civic initiative tools that could be pursued directly, not just through the elected government, became even clearer on 16 July 2009 when the new SDA-LGM majority in *Althingi* narrowly passed a resolution to begin membership talks with the EU.²⁵ The Icelandic public, two-thirds of whom opposed EU accession, began to panic.²⁶ It seemed that no political party could truly represent their interests.

The 1944 Constitution did, however, allow for one remarkable expression of democratic resolve (or, some might say, obstinacy) during this tumultuous period. When Landsbanki collapsed on 7 October 2008, Dutch and British depositors in the bank's foreign subsidiary,

²¹ "Acting Governor and Deputy Governor of the Central Bank of Iceland appointed." *Icelandic Prime Minister's Office Publications*. 27 February 2009. Available at <http://eng.forsaetisraduneyti.is/news-and-articles/nr/3441>; "Prime Minister appoints Dr Anne Sibert and Dr Gylfi Zoega members of the Monetary Policy Committee of the Central Bank of Iceland." *Icelandic Prime Minister's Office Publications*. 3 March 2009. Available at <http://eng.forsaetisraduneyti.is/news-and-articles/nr/3464>.

²² "New Government Takes Office - Social Democrats and Left-Greens Continue their Coalition Partnership." *Icelandic Prime Minister's Office Publications*. May 10 2009. Available at <http://eng.forsaetisraduneyti.is/news-and-articles/nr/3699>.

²³ Iris Erlingsdottir. "Iceland Elections: The Revolution is in (the House)." *Huffington Post*. 26 April 2009. Available at http://www.huffingtonpost.com/iris-lee/iceland-elections-the-rev_b_191460.html.

²⁴ Election Resources on the Internet. Elections to the Icelandic Althing (Parliament). Available at <http://www.electionresources.org/is/>.

²⁵ "Icelandic parliament votes for EU membership." *Associated Press*. 16 July 2009. Available at <http://www.guardian.co.uk/world/2009/jul/16/iceland-parliament-votes-eu-membership>.

²⁶ "Want to stop the EU Accession Talks." *Iceland and the European Union*. Available at <http://eunews.blogspot.com/2013/02/want-to-scrap-eu-application.html>. 21 March 2013.

Icesave, lost nearly 7 billion euros.²⁷ The Netherlands and the UK immediately demanded that an already heavily indebted Iceland repay the countries' depositors. On 5 January 2010, however, when *Althingi* placed a repayment resolution on a disapproving President Olafur Grimsson's desk, he invoked Article 26 of the 1944 Constitution and put the resolution to a national referendum. Icelandic voters believed, like Grimsson, that the taxpayers should not be forced to shoulder foreign debts incurred by the country's bankers. The 2010 Icesave loans guarantee referendum, the first in Iceland since the 1944 Constitutional referendum, was resoundingly defeated with 98% voting against.²⁸ Another Icesave referendum a year later also failed.²⁹ The success of the 2010 and 2011 Icesave referenda drew attention to the referendum as an effective and workable civic initiative tool in the small, centralized country and to the fact that Icelandic law allowed exercise of this tool only in exceptional circumstances.

From Revolution to Constitution

Civic Involvement: The National Assembly

On 14 November 2009 a group of liberal grassroots think tanks known as The Anthill held an unofficial national conference, the National Assembly (*Thjodfundur*), in Reykjavik. The National Assembly was a civic initiative without government sponsorship. The Anthill envisioned that it would draw on the collective intelligence of Icelandic citizens to accomplish two tasks: define the most important values in Icelandic society and produce a vision for the future of the country.³⁰ These tasks were important in terms of policy, but the objective of the National Assembly was also procedural. The *Thjodfundur* process was meant to be an alternative national visioning process, providing an authentic space where citizens could participate in democracy. The financial collapse had shown how easy it was for the government, and even *Althingi*, to fall out of sync with its constituency. The National Assembly, then, was envisioned to fill Iceland's democratic vacuum. In an event characterized with joyfulness and punctuated by musical interludes featuring national and cultural songs, the National Assembly also aimed at restoring an injured national pride and "leaving no one untouched by the experience."³¹

²⁷ Andrew Ward. "Debt recovery in Iceland's growth sector." *The Financial Times*. 12 January 2011. Available at <http://www.ft.com/intl/cms/s/0/539b84a0-1e69-11e0-87d2-00144feab49a.html#axzz2LQq0CrOB>.

²⁸ Statistics Iceland. <http://www.statice.is/>. 21 March 2013.

²⁹ "Iceland welcomes acquittal in Icesave case." *Iceland Ministry for Foreign Affairs, Subjects, Icesave*. Available at <http://www.mfa.is/tasks/icesave>.

³⁰ Thjodfundur 2009 News Feed. Available at <http://www.thjodfundur2009.is/english>.

³¹ "The Assembly Process." Document provided by Thorsteinn Sigurdsson, Secretary General of the Constitutional Council.

About 1,200 Icelandic citizens (roughly 0.5% of the voting age populace) participated in the National Assembly. Nine hundred participants were selected randomly from the national registry; the other 300 represented key Icelandic interest groups and included government officials. Though the tone of the event was reportedly light, the conversations themselves were structured and disciplined. Participants were separated into small working groups led by professional facilitators. All facilitators followed the same procedure, outlined in the *Thjodfundur* Facilitators' Handbook, to keep order and protect the participatory democracy of the *Thjodfundur* process.³² Agora, the Anthill NGO that drafted the handbook, published the *Thjodfundur* Handbook for the public in order to maintain the transparency of the process and provide guidelines for similar events. The Anthill utilized online social media to spread awareness about the National Assembly before the event and to share the National Assembly's conclusions afterwards. Since 94% of Icelandic citizens were Internet users in 2009,³³ publishing information online ensured widespread access. The Anthill sent invitations to the National Assembly, however, via post. This allowed citizens who did not use the Internet or did not use social media – most significantly the elderly – to participate.

A series of votes at the National Assembly concluded that integrity was, by a large margin, the most important value in Icelandic society. Equal rights, respect, and justice followed, then love, responsibility, freedom, sustainability, and democracy. Participants referenced these nine moral pillars while envisioning the future of Iceland in the areas of education, family, welfare, economy, environment, sustainability, opportunities, equality, and public administration. The National Assembly's vision was often directly reflective of the financial crisis; it called for more financial literacy in education, improved business ethics, a stable currency, taking responsibility, and learning from experiences. Significantly, the official, written conclusions of the National Assembly called for a new constitution on two separate occasions.³⁴ The conference reiterated public demands, following the financial collapse, for a "renewal of the social contract"³⁵ through constitutional reform.

Parliamentary Involvement: The Act on a Constitutional Assembly

On 16 June 2010 the SDA-LGM majority in *Althingi* forced through an Act on a

³² National Assembly Facilitators Handbook. <http://agora.is/wp-content/uploads/2011/03/2010-11-06-National-Assembly-Facilitators-Handbook.docx>. 21 March 2013.

³³ *The Global Information Technology Report 2010-2011*. INSEAD and World Economic Forum. 2011. Available at http://www3.weforum.org/docs/WEF_GITR_Report_2011.pdf.

³⁴ "National Assembly (Iceland, 2009)." Participedia Discussion. 30 November 2010. Available at <http://participedia.net/en/cases/national-assembly-iceland-2009>.

³⁵ Jon Olafsson. "An Experiment in Iceland: Crowdsourcing a Constitution?" Draft paper. Available at http://www.yale.edu/polisci/conferences/epistemic_democracy/jOlafsson.pdf.

Constitutional Assembly with 39 votes.³⁶ Introduced by Prime Minister Johanna Sigurdardottir³⁷, a longstanding proponent of democratic constitutional reform, the Act established a democratic advisory group to review and rewrite the 1944 Constitution. The Constitutional Assembly was to be composed of 25-31 delegates directly elected from the Icelandic citizenry (government officials were barred from election). The Assembly would, first, conduct a truly comprehensive review of the document, examining its fundamental concepts and pertinent issues like the organization of the legislative and executive branches and public participation in the democratic process. Second, the Assembly (working with constitutional experts) would draft a legislative bill for a constitutional act (i.e. a formal proposal for constitutional change) and submit it to *Althingi*. Significantly, the Act does not specify that the Constitutional Assembly should produce a completely new constitution. The Assembly could have introduced a constitutional act consisting solely of amendments or supplements if it so desired. Furthermore, *Althingi* is vested with the power to alter the constitutional bill without the approval of the Constitutional Council.

The Act also stipulated that a preliminary *thjodfundur* on constitutional matters (called “the National Gathering” in the Act, and translated as the National Forum) would be held some time before the Constitutional Assembly elections. The National Forum, based on the model established by the National Assembly, would include 1,000 voting-age participants randomly selected from the national registry. It would be a forum where a wide range of citizens could formulate non-binding recommendations and proposals for Iceland’s new constitution. The Constitutional Committee, a multi-party 7-person *Althingi* committee, would submit the National Forum’s work to the Constitutional Assembly for consideration before the drafting process began.³⁸

The National Forum

On 6 November 2010 950 Icelanders convened in Reykjavik for the National Forum. While the government’s Constitutional Committee was the event’s official organizer, the Anthill provided the procedural model and handbook for the event, and participated directly, in, for example, facilitation and the selection of participants (see below). The tasks of the National Forum included identifying broadly what Icelanders wanted from a new constitution, identifying those values that should form the basis of the new constitution, and providing

³⁶ “Icelandic National Forum 2010.” Participedia Discussion. 30 August 2011. Available at <http://participedia.net/en/cases/icelandic-national-forum-2010>. 21 March 2013.

³⁷ The Constitutional Council: General Information. Stjornlagarad 2011. Available at <http://stjornlagarad.is/english/>.

³⁸ Act on A Constitutional Assembly. Adopted on 16 June 2010. Available at <http://www.kosning.is/media/stjornlagathing-2010/Act-on-a-Constitutional-Assembly.pdf>.

specific recommendations to the Constitutional Assembly.

The Anthill and the polling company Gallup Iceland collaborated to select 1,000 citizens that represented Iceland in terms of gender, age, and geographic location. Gallup used quota sampling to select a representative portion of Icelandic society. The selection process had a mobilization rate of 20%, meaning that 5,000 people had to be invited in order to have 950 participate. The mobilization rate indicates that interest in the process was not particularly high.³⁹ The Anthill, however, did do an exceptional job of reaching the many people (including many small groups residing outside of Reykjavik) who were interested in participating through a large number of decentralized gatherings independent of the government-sponsored National Forum. Between 2009 and 2011, for example, the Anthill organized approximately 100 *thjodfundurs* involving a total of about 20,000 participants in communities all over Iceland. Discussion at the National Forum took place in small, random groups and in thematically specialized groups. As with the 2009 National Assembly, professional facilitators moderated and enforced *thjodfundur* rules within the groups. Frequent votes and strict facilitation protected the essential participatory democracy of the *thjodfundur* process.⁴⁰

The National Forum channeled the existing social and political discourse surrounding Iceland's government and constitution into a number of broad, but concise, recommendations. The Forum called for a constitution that, among other things, established a government based on moral values, clearly stated the roles and responsibilities of authorities, held government officials responsible for ethics breaches, outlined an active and transparent democracy based on the triple separation of powers, and vested the people with the power of referendum on important issues including EU accession.⁴¹

Constitutional Assembly Elections

The government scheduled Constitutional Assembly elections for 27 November 2010, less than a month after the successful conclusion of the National Forum. The government, however, had difficulty generating enthusiasm for the unconventional November election. The Ministry of Justice and Human Rights prepared materials on the 522 Constitutional Assembly candidates that were then published online and distributed to every household in Iceland. They also distributed sample ballots to the residences of each registered voter. The government

³⁹ "National Assembly (Iceland, 2009)." Participedia Discussion. 30 November 2010. Available at <http://participedia.net/en/cases/national-assembly-iceland-2009>.

⁴⁰ Jon Olafsson. "An Experiment in Iceland: Crowdsourcing a Constitution?" Draft paper. Available at http://www.yale.edu/polisci/conferences/epistemic_democracy/jOlafsson.pdf.

⁴¹ News Feed. Thjodfundur 2010 Official Website. Available at <http://www.thjodfundur2010.is/english/>. Accessed 21 March 2013.

utilized both online and traditional media to conduct an impressive awareness campaign, but even so the country's media outlets virtually ignored the election, giving it about one fourth the coverage given to other elections in Iceland.⁴² In the end only 36% of the country's voters participated in the election. Low turnout meant that assemblypersons were elected with as few as 347 votes.⁴³ The disappointing turnout is likely due to lack of media coverage, lack of political campaigning and debate, lack of support and interest from conservatives, and the fact that the Icesave referendum and municipal elections held earlier had already exhausted voters.⁴⁴

On 27 November, Iceland's voters elected 25 individuals to represent them on the Constitutional Assembly. The elected were a diverse group with regards to gender, age, experience, and profession. It included, among others, respected economics professor Thorvaldur Gylfason, director of the University of Iceland Ethics Institute Salvor Nordal, prominent farmer Ari Teitsson, and 24-year-old political science student Astros Signyjardottir.⁴⁵ The assemblypersons elect, though hailing from all walks of life, held rather homogeneously liberal political ideologies. Only two of the candidates favored by the IP, for example, were elected.⁴⁶

Following the Constitutional Assembly election, three individuals with connections to the IP (including one unsuccessful candidate) filed a technical complaint against the election procedure. The claimants pointed to a myriad of procedural issues that violated Icelandic election law including voting booth and ballot box designs that compromised secret voting, serial numbers that made ballots traceable, and vote counting conducted without representatives of the candidates present. They also claimed that election turnout had been too low to vest the Constitutional Assembly with the proper democratic authority it needed to draft a new constitution for the country.⁴⁷ On 25 January 2011 the Supreme Court of Iceland ruled four to two in favor of the claimants on the technical issues and invalidated the election.

Following the Supreme Court's ruling a majority of the Constitutional Committee and *Althingi*, arguing that the technical problems did not disprove the actual election results, overrode dissenting IP members and appointed a "Constitutional Council" comprised of the 25

⁴² Gudbjorg Hildur Kolbeins. "The Icelandic media coverage of the constitutional assembly election." *Fraedigreinar*. 2012. Available at <http://www.stjornmalogstjornsysla.is/wp-content/uploads/2012/12/a.2012.8.2.9.pdf>.

⁴³ "Iceland Election Results Announced." *Iceland Review*. 1 December 2010. Available at http://www.icelandreview.com/icelandreview/daily_news/?cat_id=16567&ew_0_a_id=370813.

⁴⁴ "Poorest Election Turnout in Iceland's History." *Iceland Review*. 29 November 2010. Available at http://www.icelandreview.com/icelandreview/daily_news/?cat_id=16567&ew_0_a_id=370733.

⁴⁵ "Constitutional Assembly Elects Appointed to Council." *Iceland Review*. 25 February 2011. Available at http://www.icelandreview.com/icelandreview/search/news/Default.asp?ew_0_a_id=374415.

⁴⁶ Thorvaldur Gylfason. "From Collapse to Constitution: The Case of Iceland." 10 August 2012. Available at <https://notendur.hi.is/gylfason/Economic%20Role%20of%20Constitutions%2016.pdf>.

⁴⁷ "Iceland's Constitutional Assembly Voting Invalid." *Iceland Review*. 25 January 2011. Available at http://icelandreview.com/icelandreview/daily_news/?ew_0_a_id=372995.

persons previously elected to the National Assembly. The Constitutional Council would assume all the roles of the National Assembly as outlined in the Act on a Constitutional Assembly. Inga Lind Karlsdottir, a Constitutional Assemblywoman elect who was favored by the IP, refused her appointment and was replaced by lawyer Iris Lind Saemundsdottir, who placed 26th in the elections.⁴⁸

The Constitutional Council

The Constitutional Council (*Stjornlagarad*) convened in Reykjavik between 6 April and 29 July 2011. Though assisted by legal experts throughout the process, the Council itself determined the structure and procedure of its meetings. On 7 April the Council appointed Salvor Nordal Council chairman and Ari Teitsson Council vice-chairman. Early discussion revealed that Council members were more interested in producing a completely new draft constitution than in amending the 1944 Constitution. With this in mind, the Council broke into three working groups, each dealing with a different set of issues. The issues, mandated by *Althingi* and outlined in the Act on a Constitutional Assembly, ranged from defining basic values, to evaluating the role of the president, to ensuring the democratic participation of the public.⁴⁹

In accordance with the Act on a Constitutional Assembly, the Constitutional Council's official website was updated throughout the drafting process. The website included presentation material on the 1944 Constitution and the ongoing work of the Council, material received by the Council, broadcasts of sessions of the Council, and the Council's current version of the draft constitution. The Council continued to engage the public by asking for proposals on popular social media sites including Youtube, Twitter, Facebook, and Flickr. Icelanders responded enthusiastically as over 3,000 suggestions were posted on the Council's Facebook page alone. The Council pulled the best proposals from all secondary sites for public debate on the Council's official website. The Council then worked the most popular of these proposals, such as a provision guaranteeing the protection of animals, into the draft.⁵⁰ The enthusiastic public participation in the drafting process via social media prompted news organizations to dub Iceland's draft constitution "the world's first crowdsourced constitution."⁵¹

⁴⁸ News Feed. Thjodfundur 2010 Official Website. Available at <http://www.thjodfundur2010.is/english/>. Accessed 21 March 2013.

⁴⁹ News Feed. Thjodfundur 2010 Official Website. Available at <http://www.thjodfundur2010.is/english/>. Accessed 21 March 2013.

⁵⁰ Alda Sigmundsdottir. "Tech-savvy Iceland goes online for new constitution." *USA Today*. 12 June 2011. Available at http://usatoday30.usatoday.com/money/world/2011-06-12-Iceland-constitution-online_n.htm.

⁵¹ "Iceland: Voters back 'crowd-sourced constitution' in referendum." *The Journal* (Ireland). 21 November 2012. Available at <http://www.thejournal.ie/iceland-referendum-constitutional-council-644482-Oct2012/>.

In their meetings, the Council focused on resolving the three issues that had dominated social and political discourse surrounding the financial collapse: the moral vacuum in the government, the role and accountability of the country's executives, and the lack of outlets for direct democratic participation. First, unlike the 1944 Constitution, the draft constitution includes a preamble. This preamble establishes Iceland as "a free and sovereign state with freedom, equality, democracy and human rights as its cornerstones" where "[t]he government shall endeavor to strengthen the welfare of the country's inhabitants, encourage their culture and respect the diversity of the life of the people, the country, and its biosphere."⁵² This bold preamble sets the moral tone for the rest of the document. Interestingly, the draft constitution changes very little with regards to the organization of the legislative and executive branches except that the legislative branch is granted greater oversight of the executive branch.⁵³ Perhaps most significant, however, was the Constitutional Council's revisions to national referendum power. Referendum is, indeed, the heart of direct democracy in the draft constitution. The draft stipulates that 10% of voters can initiate a national referendum on laws passed by *Althingi*, 2% of voters can present an issue (excluding the budget, taxes, citizenship) to *Althingi*, and 10% of voters can present a bill to *Althingi*.⁵⁴ In all, the draft constitution outlines six ways initiatives or legislation may or must be put to national referendum, versus only two in the 1944 Constitution.

A congenial, homogenous political atmosphere allowed for cooperative work and easy consensus within the Constitutional Council. In the end, Council members unanimously approved the draft constitution submitted to *Althingi* on 29 July 2011.

The October Referendum

The draft constitution must be approved by three distinct votes before it becomes law. Like the drafting process, the ratification process for the draft constitution involves an interaction of civic participation and parliamentary action.

First, the 2010 Act on a Constitutional Assembly stipulates that constitutional changes introduced by the Constitutional Council must be submitted to a non-binding national

⁵² "Preamble." *A Proposal for a New Constitution for the Republic of Iceland*. 24 March 2011.

http://stjornlagarad.is/other_files/stjornlagarad/Frumvarp-enska.pdf.

⁵³ Bjorg Thorarensen. "Constitutional Reform Process in Iceland: Involving People in the Process." Paper presented at the Oslo-Rome International Workshop on Democracy. Rome, 7-9 November 2011. Available at <http://www.uio.no/english/research/interfaculty-research-areas/democracy/news-and-events/events/seminars/2011/papers-roma-2011/Rome-Thorarensen.pdf>.

⁵⁴ Articles 65 and 66. *A Proposal for a new Constitution for the Republic of Iceland*. 24 March 2011. Available at http://stjornlagarad.is/other_files/stjornlagarad/Frumvarp-enska.pdf.

referendum before debate begins in *Althingi*.⁵⁵ This referendum was held on 20 October 2012 and attracted 49% of eligible voters.⁵⁶ The referendum consisted of six questions. The first, asking whether the draft constitution should form the basis of a new Icelandic constitution, passed with 73% in favor. The following five questions addressed particularly controversial areas of the draft constitution, including the exclusion of mention of the state church from the draft and the inclusion of the one man/one vote principle, public ownership of natural resources, more frequent *Althingi* elections, and referendum power to the people. Voters agreed with the Constitutional Council on all but one issue; voters overwhelmingly favored a constitutional provision establishing the National Church of Iceland as the official state church.⁵⁷

Second, the 1944 Constitution stipulates that proposed constitutional amendments are subject to two votes in *Althingi*. Initially *Althingi* must adopt (via majority vote) the proposal. Upon adoption, that *Althingi* is immediately dissolved and general elections are held. The new *Althingi* must then adopt (via a second majority vote) the change. When those two votes are secured, the President must confirm the change and it becomes law.⁵⁸

Althingi Ratification

On 27 March 2013 the *Althingi* that was elected during the Kitchenware Revolution dissolved for general elections without bringing the draft constitution to a vote. As constitutional reform supporters gathered in Austurvollur Square to protest SDA and LGM inaction, members of *Althingi* left office in an atmosphere similar to the one in which it entered four years prior.⁵⁹ The constitutional bill's fate is now in the hands of the new *Althingi*, which will be elected on 27 April.

Despite public support for the draft constitution, major parties in *Althingi* were reluctant to push for a vote since, on the one hand, conservative parties do not necessarily support the draft constitution and, on the other hand, liberal parties were not eager to dissolve the *Althingi* they dominated last term. The two-year long delay prompted a pro-constitutional reform

⁵⁵ "Referendum to be Held on Icelandic Constitution." *Iceland Review*. 25 May 2012. Available at http://www.icelandreview.com/icelandreview/daily_news/Referendum_to_Be_Held_on_Icelandic_Constitution_0_390328.news.aspx.

⁵⁶ Constitutional Referendum Results. Available at http://ruv.is/files/skjol/lokatolur_flipi1_0.xlsx.

⁵⁷ "Iceland Constitutional Referendum: Reactions to Results." *Iceland Review*. 22 October 2012. Available at http://www.icelandreview.com/icelandreview/daily_news/Iceland_Constitutional_Referendum_Reactions_to_Results_0_394587.news.aspx.

⁵⁸ Constitution of Iceland, 1944, Article 79. Available at <http://confinder.richmond.edu/admin/docs/iceland2.pdf>.

⁵⁹ "Iceland will not get the new constitution this term - No agreement in parliament." *News of Iceland*. 27 March 2013. Available at <http://www.newsoficealand.com/home/politics/parliamentministries/item/957-iceland-will-not-get-the-new-constitution-this-term-no-agreement-in-parliament>.

member of *Althingi* to initiate a vote of no confidence against the government in March 2013. The vote failed, but only by three votes.⁶⁰ Lukewarm reception of the draft constitution in national and international political spheres also worked against ratification of the constitutional bill. On 31 December 2012, for example, President Olafur Grimsson (an Independent) controversially criticized the draft constitution at a state council meeting of the president and ministers, causing the council to explode in argument.⁶¹ On 11 February 2013, the Council of Europe's Venice Commission reviewed the draft and, while praising the document's sentiment, warned that it lacked enforceable legal specifics.⁶²

Before dissolving, *Althingi* passed a motion to temporarily alter the constitutional amendment process laid out in the 1944 Constitution. As previously discussed, the 1944 Constitution requires new elections after the first vote on a constitutional bill. This amendment introduces an alternative means of adopting constitutional changes. If two-thirds of *Althingi* and 40% of the Icelandic electorate (by national referendum) support a constitutional bill it, now, may become law without extra elections. This amendment removes the risk to the job security of members of *Althingi* and is intended to overcome the deadlock on the constitutional bill during the next term.⁶³

Elections held in April resulted in a coalition government of the Independence Party and the Progressives, showing waning interest in the SDA-LGM government and citizen interest in promises from the Progressives such as debt relief.⁶⁴ SDA-LGM popularity crumbled in July 2009, around the time *Althingi* voted to begin accession talks with the EU, and never recovered. Even as early as May 2009 (one month after the SDA's historic takeover) the IP was the most popular party in Iceland.⁶⁵ Conservative parties' popularity was also bolstered by the timing of the European Free Trade Association (EFTA) ruling in January 2013 that relieved Iceland of its Icesave obligations for good, in spite of the fact that it was the opposition together with

⁶⁰ "Iceland Government Holds on to Power, 32-29." *Iceland Review*. 11 March 2013. Available at http://www.icelandreview.com/icelandreview/search/news/Default.asp?ew_0_a_id=398562.

⁶¹ "President Submits Protocol at State Council Meeting." *Iceland Review*. 7 January 2013. Available at http://www.icelandreview.com/icelandreview/search/news/Default.asp?ew_0_a_id=396692.

⁶² "Draft Opinion on the Draft New Constitution of Iceland." European Commission for Democracy Through Law (Venice Commission). 11 February 2013. Available at www.althingi.is/pdf/Feneyjanefnd_skyrsla_e.pdf.

⁶³ "Iceland will not get the new constitution this term - No agreement in parliament." *News of Iceland*. 27 March 2013. Available at <http://www.newsoficealand.com/home/politics/parliamentministries/item/957-iceland-will-not-get-the-new-constitution-this-term-no-agreement-in-parliament>.

⁶⁴ Gylfason, Thorvaldur. "Democracy on Ice: A Post-mortem of the Icelandic Constitution." openDemocracy web site. 19 June 2013. Available at <http://www.opendemocracy.net/can-europe-make-it/thorvaldur-gylfason/democracy-on-ice-post-mortem-of-icelandic-constitution>.

⁶⁵ Market and Media Research. Available at <http://mmr.is/frettir/birtar-nieurstoeur/310-framsoknarflokkurinn-medh-mest-fylgi>. 1 April 2013.

grassroots activists that had supported the Icesave referendum in the first place.⁶⁶ The EFTA ruling legitimizes the unorthodox national sovereignty measures utilized by the government to protect Icelandic interests in the months following the financial collapse. Indeed, putting Iceland's sovereignty before international obligations seems to have actually been the best way to encourage economic recovery in the country in the long run.⁶⁷

The two biggest parties in Iceland in the months preceding the elections were the Progressive Party (PP) and the IP. The IP vocally opposed the draft constitution every step of the way. The PP showed some support during the drafting process, but mostly opposed the draft constitution.⁶⁸ It seems unlikely, then, that an *Althingi* dominated by these conservative parties would adopt the draft; in fact the new constitution was barely mentioned during the campaign.

Conclusion

While the fate of the draft constitution is uncertain, the Iceland experiment has already produced a workable model for constitutional reform with an unprecedented level of civic participation. The model reveals the weaknesses in the process: a constitution drafted by persons who are not constitutional experts runs the risk of legal vagary and, in the current political framework of most countries, a draft constitution that does not have the support of existing institutions, political parties and an establishment with vested interests in the status quo will not be ratified. But the Icelandic model is also the first to show that a reform process that relies almost exclusively on civil society during the drafting phase can, in fact, function. First, the emergent popularity of social media allows lawmakers the opportunity to crowd-source content from the citizenry in a way that was not possible ten years ago. Second, the Anthill's *thjodfundur* process provides a procedural model for successful ad hoc constitutional brainstorming sessions involving large numbers of citizens. The Icelandic model also shows how an appeal to civil society can strengthen the democratic legitimacy of a constitution. While the national Constitutional Assembly election ultimately fell flat, the use of referendum to approve the Constitutional Council's draft lent the controversial document much needed popular

⁶⁶ "Icesave ruling made farmers' party the largest political party in Iceland." *News of Iceland*. 15 March 2013. Available at <http://www.newsoficealand.com/home/politics/parliamentministries/item/877-icesave-ruling-made-a-farmers-party-the-largest-political-party-in-iceland>.

⁶⁷ Martin Zeis. "Why has Iceland experienced a strong economic recovery after complete economic collapse in 2008?" Global Research. Available at <http://www.globalresearch.ca/why-has-iceland-experienced-a-strong-economic-recovery-after-complete-financial-collapse-in-2008/5320866>.

⁶⁸ "Progressive Party MP: New Constitution Bill is 'Crap'," *Iceland Review*. 23 January 2013. Available at http://www.icelandreview.com/icelandreview/daily_news/Progressive_Party_MP_New_Constitution_Bill_Is_%E2%80%99Crap%E2%80%9D_0_386595.news.aspx.

legitimacy. Lastly, the Iceland experiment shows that the impetus for constitutional change can, and usually does, come directly from the people. The Kitchenware Revolution channeled citizens' frustration and anger into change, jumpstarting a constitutional reform process that had been stuck in political deadlock for over 60 years. The constitutional reform process really began one Saturday in Austurvollur Square; as citizens demand more democratic participation, similar scenes in city squares are likely to be seen over and over again, all around the world.