

Session 6

Constitutional Conventions





HÁSKÓLINN Á BIFRÖST
BIFRÖST UNIVERSITY

Iceland's Post-Crisis Constitutional Process

Prof. Eiríkur Bergmann

Conference on Remaking the UK Constitution

Bonavero Institute, Oxford University

23. February 2019

The Crash and the Constitution

- The “Crash” of 2008
 - Constitutional revision was one of the demands of the “pots-and-pans revolution” in January 2009
 - The banking system had grown 10 times the GDP
 - Three banks comprising 85% of the banking system collapsed within a week, the rest in quick succession
 - Local equity market was virtually wiped out overnight
- Constitutional moment turns into emerging new critical order



The process

- Parliament decided to proceed in three steps
- Convene **National Forum**
 - 1,000 persons selected at random through stratified sampling
- Appoint **Constitutional Committee** to gather information, provide analysis, and propose ideas
 - Seven specialist from different directions, 700-page report
- Hold election of **Constitutional Council** representatives
 - 25 representatives elected from among 523 candidates by STV (Single Transferable Vote) method to minimize number of 'dead' votes



Unfinished project

- Iceland's constitution dates from 1944 when Iceland separated from occupied Denmark
 - Derived from Denmark's constitution, with nationally elected president substituted for hereditary king, the Icelandic constitution was intended to be only **provisional**
 - Hails from 1874, or rather 1849.
 - Despite repeated attempts Parliament has failed to revise it holistically



The representatives

- The 25 elected were doctors, lawyers, priests, professors, company board members, a farmer, a fighter for the rights of handicapped persons, mathematicians, media people, erstwhile MPs, a nurse, a philosopher, poets and artists, political scientists, a theatre director, and a labor union leader.



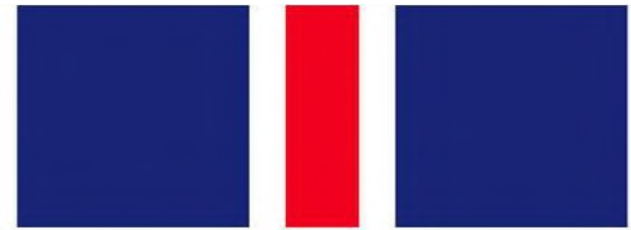
The framework

- Council had four months to do its work
 - (US constitution was also written in four months in 1787)
- Three working groups
 - A. Human rights and natural resources
 - B. Branches of government
 - Legislator, the executive, the president
 - C. Electoral system, direct democracy, the judiciary



Key decisions

- Council decided to:
 - Rewrite constitution rather than revise the provisional one from 1944
 - Basic feature of the 1944 constitution was however retained to preserve the continuity and stability of Iceland's **Parliamentary Republic**.
 - Move chapter on human rights up front to underline their importance
 - Invite the public to participate
 - Through media, but mainly social media



Þjóð til pings
Stjórnlagaping 2011



The world first “crowdsourced” constitution?

- Active public participation
 - Council received 323 formal proposals
 - All were discussed and answered by one of three committees
 - Over 3,600 comments were posted on website by visitors
 - Council representatives answered most if not all of them
 - Direct webcasts, also aired on TV
 - Over 50 interviews with Council members and others concerned were posted on YouTube



Expert advice and interest involvement



- Many experts also advised the Council every step of the way
 - Lawyers and others
 - In meetings as well as in writing
- Council could not seek the advice of all available and eligible experts
 - However, like everyone else, they were welcome to offer their comments and suggestions
- Council did not invite representatives of interest organizations to special meetings
 - These organizations had same access as everyone else to Council (bankers, fishing vessels owners, farmers)

Iterations

- Each week, Council posted on its website new provisional articles for perusal by the public
- Two to three weeks later, after receiving comments and suggestions from the public as well as from experts, Council posted revised versions of those articles on the website
- In a final round, proposals for changes in the document as a whole were debated and voted upon article by article, and the final version of the bill was prepared
- At the end of the last round, each article was approved in separate voting
- The Council adopted the new constitution **unanimously**



Substance

- Principle
 - Distribution of power, transparency and responsibility
- Main features
 - Keep the main features of **Parliamentary Republic** system
 - But with clearer division between the three branches of government and an increased public participation in decision-making

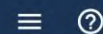


Referendum and failed ratification process

- Advisory referendum on October 20th 2012
 - Including five specific questions on substance, e.g., about whether to declare natural resources to be the property of the nation
 - **Accepted by 2/3 of voters** (Just under 50% turnout)
- Parliament
 - Ratification postponed until after the April 2013 Parliament elections
 - Right-of-center post 2013 Parliament abandoned the process
 - New constitutional committee contemplating next steps

KJÖRSEDILL	
Ráðgefandi þjóðaratkvæðagreiðsla um tillögur stjórnlagaráðs að frumvarpi til stjórnarskipunarlaga og tiltekin álitæfni þeim tengd, skv. ályktun Alþings 24. maí 2012.	
Merkið í annan hvorn fering hvernar spurningar. Kjósandi getur sleppt því að svara einstökum spurningum.	
1. Vilt þú að tillögur stjórnlagaráðs verði lagðar til grundvallar frumvarpi að nýrri stjórnarskrá?	<input type="checkbox"/> Já, ég vil að tillögur stjórnlagaráðs verði lagðar til grundvallar frumvarpi að nýrri stjórnarskrá. <input type="checkbox"/> Nei, ég vil ekki að tillögur stjórnlagaráðs verði lagðar til grundvallar frumvarpi að nýrri stjórnarskrá.
2. Vilt þú að í nýrri stjórnarskrá verði náttúruauðlindir sem ekki eru í einkaeigu lýstar þjóðareign?	<input type="checkbox"/> Já <input type="checkbox"/> Nei
3. Vilt þú að í nýrri stjórnarskrá verði ákvæði um þjóðkirkju á Íslandi?	<input type="checkbox"/> Já <input type="checkbox"/> Nei
4. Vilt þú að í nýrri stjórnarskrá verði persónukjör í kosningum til Alþingis heimilað í meira mæli en nú er?	<input type="checkbox"/> Já <input type="checkbox"/> Nei
5. Vilt þú að í nýrri stjórnarskrá verði ákvæði um að atkvæði kjósenda alls staðar að af landinu vegi jafnt?	<input type="checkbox"/> Já <input type="checkbox"/> Nei
6. Vilt þú að í nýrri stjórnarskrá verði ákvæði um að tiltekið hlutfall kosningarbærra manna geti krafist þess að mál fari í þjóðaratkvæðagreiðslu?	<input type="checkbox"/> Já <input type="checkbox"/> Nei
Stjórnarskrá er breytt þannig að frumvarp er lagt fram á Alþingi. Það er rætt við þjáfar umræður og getur tekið breytingum í meðförum þingsins. Verði frumvarpið samþykkt skal rjúfa Alþingi og kjósa nýtt þing. Frumvarpið er þá lagt fram að nýju og samþykki Alþingi það óbreytt taka breytingarnar gildi að fenginni staðfestingu forseta. Stjórnlagaráð hefur skilað Alþingi tillögum að frumvarpi að nýrri stjórnarskrá. Verði það lagt fram sem frumvarp á Alþingi fær það þá meðferð sem lýst hefur verið.	

Better Reykjavik



INNSKRÁ



Betri Reykjavik

Betri Reykjavik er samráðsverkefni Reykjavíkurborgar, íbúa ses og Reykvíkinga. #betrireykjavik

🗨️ 7,827 💬 17,832 👤 15 🌐 23,906

SVÆÐI (5)

FRÉTTAVEITA



Þín rödd í ráðum borgarinnar

Í þín rödd í ráðum borgarinnar verða efstu hugmyndir sendar til viðeigandi fagráða Reykjavíkurborgar.

🗨️ 2,916 👤 4 🌐 12,753



Hverfið mitt 2018

Óskað var eftir hugmyndum að verkefnum sem kosið var um í hverfakosningunni Hverfið mitt í október 2018. Hugmyndirnar ei...

🗨️ 821 👤 10 🌐 4,629



Stúdentaráð Háskóla Íslands

Háskólinn okkar

Stúdentaráð vill heyra hugmyndir frá nemendum skólans og veita nemendum tækifæri á að ákvarða hvaða málefni Stúdentaráð ...

🗨️ 41 👤 2 🌐 591



Hverfið mitt - eldri verkefni

Hér eru eldri Hverfið mitt verkefni frá árinu 2012

🗨️ 3,863 👤 60 🌐 12,854



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Accepted project in my neighborhood

HUGMYNDIR
0

Í FERLI
0


SAMÞYKKTAR
AF HANDAHÓFI


HAFNAÐ
56

FRÉTTAVEITA

KORT





≡ SÍÁ HUGMYNDIR


Leita að... 



Sleðabrekka í skerjafjörð





Það er enginn "hóll" í Skerjafirði svo krakkarnir í hverfinu geta rennt sér niður þegar snjór er og ...


 32  0  1 



vatnskraní í nýlendugarði





krani sem veitir aðgang að köldu vatni sem hægt er að láta renna í lækinn sem er kominn og svo framl...




 16  5  0 




Bæta við gangbraut yfir Suðurgötu sem næst Eggertsgötu

Oft þegar fólk sem býr við Eggertsgötu ætlar að taka strætó frá strætóskýlinu hinu megin við götuna ...

 7  0  1 




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Constitutional Conventions: Lessons from the Icelandic case



Hélène Landemore

Yale University

helene.landemore@yale.edu

Prepared for presentation at the conference “Re-inventing the UK constitution,”
Bonavero Institute, Oxford, February 22-23, 2019

Is Brexit a crisis of the UK constitution?

No, because most democracies are in crisis at the moment yet have very different constitutions + Iceland's case

Yes, because the crisis is, among other things, a crisis of the **electoral model of governance**, which is core to the constitutions of all modern representative democracies (also true of Iceland)

What's wrong with electoral representation?

Creates an oligarchic distribution of political offices (Manin 1995)

“Principle of distinction” => descriptively unrepresentative parliaments (rich white old boys' club) => lack of cognitive diversity (‘Oxbridge group think’) => incompetent policy-making as/and policies substantively disconnected from what the majorities actually want

Abundance of anecdotal evidence: financial crisis, government shutdowns, Brexit, Yellow Vests' revolt...

Statistical evidence: Gilens and Page 2014

Specific UK Twist

Oligarchic problem compounded by an imperialist/colonialist/nationalist distribution of power in the United Kingdom, to the benefit of England

Solution: more authentically *democratic* representation

= Genuinely accessible and open to all on an equal basis

[Proportional representation won't take care of the oligarchic problem]

⇒ Non-electoral forms of democratic representation:

- “lottocratic”: e.g., Citizen Assemblies
- “self-selected”: e.g., Participatory Budgeting
- “liquid”: e.g., European Pirate Parties

Does redesigning representative institutions
require writing a brand new constitution from
scratch?

Maybe not

But it does require a constitutional convention to
rewrite key parts

⇒ at the UK level (if still a meaningful option)

⇒ and at the national/regional levels at any rate
(including England)

On what model?

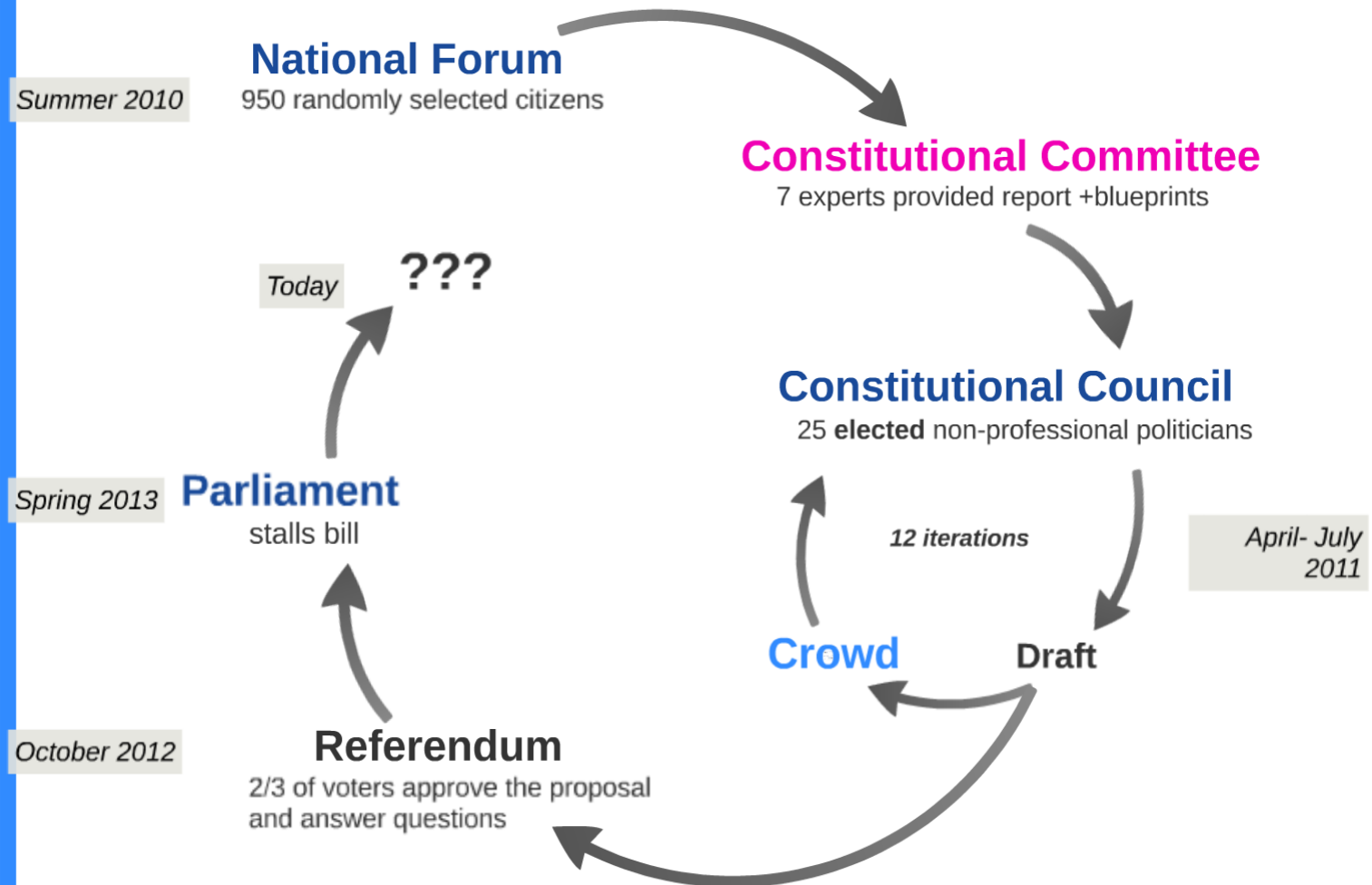
The Icelandic “citizen convention” in 3 participatory innovations

- 1. National Forum 2010

- 
- 2. Constitutional Council
(April-July 2011)

- 
- 3. Crowdsourcing for ideas

Icelandic Experiment (2010-2013)



1. National Forum: “lottocratic representation” for agenda-setting



Article 34: Natural Resources

Iceland's natural resources that are not private property shall be the joint and perpetual property of the nation. No one can acquire the natural resources, or rights connected thereto, as property or for permanent use and they may not be sold or pledged.

[...]

The public authorities may, on the basis of law, issue permits for the use of natural resources or other limited public goods, against full payment and for a modest period of time in each instance. Such permits shall be issued on an equal-opportunity basis and it shall never lead to a right of ownership or irrevocable control of the natural resources.

2. 25 “amateur” constitution writers: more open form of electoral representation for drafting



3. The Crowdsourcing Stage: self-selected representation

The screenshot shows the Facebook page for Stjórnlagaráð. The page header includes the Facebook logo, a search bar, and the user's name Héléne Landem. The page is set to 'Timeline' and 'Now'. The main content area displays several posts:

- Post 1:** Stjórnlagaráð shared a link on December 2, 2011. The link text reads: "Never again can the world be told by the custodians of the old that the people cannot be relied upon to write the contract between citizens and government, and write it well." Below the link is a quote from openDemocracy: "Iceland's fate epitomizes the tragedy of 'constitutional democracies' as they have been variously practiced and imposed in recent times: whereby the writing of a constitution by the". The post has 59 likes, 14 comments, and 36 shares.
- Post 2:** Stjórnlagaráð posted on October 31, 2011. The text discusses the upcoming Stjórnlagaráðstíðindi (Constitutional Council elections) and mentions the first Stjórnlagaráðstíðindi 1, which will include all members of the Stjórnlagaráð, the Stjórnarfundur, and the Stjórnlagaráð. It also mentions the second Stjórnlagaráðstíðindi 2 (hefti a og b) and the upcoming Stjórnlagaráðstíðindi 3. The post has 15 likes.
- Post 3:** Stjórnlagaráð posted on October 10, 2011. The text discusses the upcoming Stjórnlagaráðstíðindi and mentions the first Stjórnlagaráðstíðindi 1, which will include all members of the Stjórnlagaráð, the Stjórnarfundur, and the Stjórnlagaráð. It also mentions the second Stjórnlagaráðstíðindi 2 (hefti a og b) and the upcoming Stjórnlagaráðstíðindi 3. The post has 15 likes.
- Post 4:** Stjórnlagaráð shared a link on October 6, 2011. The link text reads: "Þór Saari ofl. þingmenn lögðu fram þingsályktunartillögu á Alþingi fyrr í dag um meðferð tillögu Stjórnlagaráðs: <http://www.althingi.is/altext/140/s/0006.html>". Below the link is a quote from the Stjórnlagaráð: "Þskj. 6 # frumskjal þSa, 140. lþ. 6. mál: #A meðferð frumvarps stjórnlagaráðs til stjórnarskipuna www.althingi.is". The post has 15 likes.

The right sidebar shows a "Your friend, Iceland" community link. The bottom right corner features a large blue Facebook logo.

- 12 drafts sequentially posted online
- 3, 600 comments, 311 substantive proposals
- 130 proposals per 100, 000 voters (Brazil: 88; South Africa: 67)
- 10% made a causal difference to the text (Hudson 2017)

Transparency in the Icelandic Process

Internet streaming of National Forum 2010

Vertical transparency: Access of public to Constitutional Council's drafts and Constitutional Council to public input, via email and social media

Horizontal transparency: Visibility of online comments to all

Was the Icelandic proposal any good?

s

Yes in comparison with 2
contemporary expert-
drafts (Landemore 2017)

Yes in absolute value
(Landemore 2016)

“Democraticity” criterion

s

“One of the most inclusive [constitutions] in history” (Elkins, Ginsburg, Melton 2012)

- One person, one vote (39)
- Participatory mechanisms: Right of referral (65), Citizens’ Initiative (66)

Conclusion

If the UK is to re-constitute itself as a democratic federation of free and equal democratic nations (among the willing)...

...Using a process that mirrors substantive democratic commitments...

Suggestions

S

A relatively transparent, multi-stage, multi-chamber convention using different forms of democratic representation or mixing them (Icelandic model)

Bi-cameralism (one chamber for UK, one chamber for representatives of the nations/regions) with selection mechanism TBD

Crowdsourcing and deliberation for all (see also French Great National Debate)

Thank you!