

Comments on “Uppskot til stjórnarskipan Føroya”

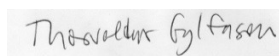
As a former member of Iceland’s Constitutional Council in 2011, elected by the nation and appointed by Althingi, I wish to submit three short comments on the current version of “Uppskot til stjórnarskipan Føroya”.

1. Iceland was granted its first constitution by the Danish King in 1874, a constitution essentially the same as the Danish one from 1849. Iceland attained home rule in 1904 and full sovereignty in 1918 without the 1874 constitution being changed. When Iceland declared independence in 1944, the people adopted a new constitution that was only slightly different from the one from 1874. The people trusted the promise made by MPs representing all parties in Althingi that the 1874 constitution would be thoroughly revised as behooves a newly independent nation. This promise Althingi has yet to keep. The Icelandic record suggests that the people of the Faroe Islands can, if they wish, adopt a new constitution irrespective of the status of the relationship between the Faroe Islands and Denmark. Different opinions on this relationship need not stand in the way of a new constitution. A new constitution can be neutral in this regard.

2. In a democracy, the people are the ideal constitution makers, exercising their will through special representatives – directly elected ones, for example. To avoid conflicts of interest, politicians need to stay away from drafting constitutions or changing constitution bills drafted by special representatives. Constitutions lay down the rules that guide politicians who, therefore, to avoid the appearance of self-dealing, should not participate in the making of constitutions. This is why MPs were not allowed by law to stand for election to Iceland’s constituent assembly in 2010. This is also why the US Congress did not vote on and did not change a single word in the constitution bill produced by the Federal Convention in Philadelphia in 1787. The failure to follow this principle to its logical conclusion, apparent in the insistence of MPs that they must have the last word on the constitution, is the main reason why Althingi has failed to keep its promise of constitutional reform in Iceland since 1944, even despite a national referendum in 2012 where 67% of the voters declared their support for the constitution bill delivered by the Constitutional Council to Althingi in 2011 and where 83% of the voters specifically declared their support for national ownership of natural resources.

3. The original Provision 24 from 2010 on “Tilfeingi og umhvørvi” is excellent and served as an inspiration for the corresponding Icelandic provision from 2011. The provision that “Tá vundið verður úr landsins tilfeingi, skal landið antin krevja viðurlag ella tryggja øllum vinnurætt” aims to prevent unequal and thus discriminatory access to common-property natural resources. It does not, however, go as far as the corresponding Icelandic provision that stipulates “full consideration,” that is, full market price, for the right to utilize common-property resources. Althingi, on the initiative of an MP who used to work for a large fishing firm, removed the word “full” from the text as if to please the vessel owners. The change from “Margfeldið á landi og á havleiðum landsins, sum privat ikki eiga, er tilfeingi og ogn fólksins” to “Landið eigur alt landtilfeingi, sum privat ikki eiga, og alt havtilfeingi” weakens the provision. The removal of the words “tilfeingi og ogn fólksins” is unfortunate because “ogn fólksins”, that is, “tjodarogn”, is a clearly understood term in common language and law and is firmly anchored in international human rights conventions that declare the expropriation of common-property natural resources to be discriminatory and hence in violation of human rights. The words “Landid eigur” have no such basis in common language or law and, therefore, sow confusion and doubt. Further, the change from “ogn fólksins” to “Landid eigur” carries an undemocratic connotation in that it may be taken to suggest that the country supersedes the people who live there – as, for example, when Donald Trump won the US presidency in 2016 by carrying more counties and more square miles of land than his opponent despite losing the popular vote by nearly three million votes.

With respect,



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