



THE PRESIDENT AND THE CONSTITUTION – FOUR YEARS ON

Lecture
by President of Iceland
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at a Seminar on Constitutional Reform
held by the Faculty of Law at the University of Akureyri

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Prime Minister,
lecturers and
participants, near and far

I am delighted to take part in this seminar on the occasion of the publication of an important work on Icelandic constitutional reform. I thank the University of Akureyri Faculty of Law for this welcome initiative. I congratulate the authors and editors of the book for a fine publication. And I remember Ágúst Þór Árnason with respect and affection. A fine man is gone, but good memories live on, and Gústi lives on too in his works, not least in the field of constitutional law.

We often talked about constitutional matters, including the origin and content of the Icelandic constitution of 1944. I cited the words of parliamentarians and jurists in 1944, referring to an “provisional” constitution, which should be subjected to thorough revision as soon as possible. Ágúst Þór felt that I went a little too far there. We also exchanged views on the status of the constitution during the financial crisis following the collapse of the banks in 2008. He was of the view that the constitution had withstood that trial, and that is broadly true. On the other hand, I feel that the debate should include, among other things, that the obsolete provisions regarding the National Court (Landsdómur) exacerbated matters during those years of conflict – and indeed there has been a general consensus in favour of abolishing the court in its present form.

Yes, my discussions with Ágúst Þór meant a lot to me, and still do. Shortly after I was inaugurated as president in the summer of 2016 he got in touch and asked me to take part in a conference on constitutional issues, to be held by the University of Akureyri in collaboration with the Constitutional Committee and the office of the Prime Minister. At the conference, held in September 2016, I gave an address under the title “The President and the Constitution.” In it I briefly discussed the attitudes of previous presidents to constitutional revisions. I also mentioned my own position in the lead-up to the presidential election, and not least my view that in the Constitution the powers and sphere of responsibility of the president should be clarified, and that a provision should be added regarding the holding of a referendum on the initiative of a specified number of the electorate.

And now four years have passed. What has changed? What has happened in this field? A general election took place at the end of October 2016, which was followed by prolonged and stringent negotiations to form a new government – on each occasion based on authority issued by the president for the task. Among those taking part in the negotiations were representatives of parties whose policy is that the proposals of the Constitutional Council, submitted to Alþingi in 2011, should form the basis of a new constitution of the Republic of Iceland. It seems unlikely that agreement could have been achieved on that solution, although it is also safe to say that constitutional revision was not a main issue in discussions about the formation of a new government. In the event, a government of the Independence Party (Sjálfstæðisflokkurinn), Liberal Reform Party (Viðreisn) and Bright Future (Björt framtíð) was formed. In its policy statement the new government stated that a parliamentary committee would undertake the revision of the constitution “on the basis of the extensive work that has taken place in recent years,” and that proposals for amendments would be submitted to parliament not later than 2019.

That government was short-lived. In September 2017 the prime minister tendered his resignation, and I agreed to his proposal that parliament should be dissolved, having ascertained that the majority of the members were in favour.

Another election took place, and once more negotiations began to form a new government. And, once again, it may be said to have been unlikely that agreement could be reached that the proposals of the Constitutional Council should form the basis of a new constitution. Ultimately a government of the Left-Green Movement (Vinstrihreyfingin – Grænt framboð), Independence Party and Progressive Party (Framsóknarflokkurinn) took office. The new government’s compact stated: “The government wishes to continue the overall revision of the constitution in cross-party collaboration and involving the people of this country, applying inter alia the methods of public consultation. A committee on the matter will be established at the beginning of the new

parliament, and the government places emphasis on unity being achieved regarding the process of the task.”

And that is the situation at present. In addition the prime minister has declared that she will submit proposals for amendments to the constitution later in this parliamentary year.

In recent years I have observed these development, taken part in meetings, and delivered addresses. At the opening of parliament in September 2017, about a year after the conference in Akureyri, I said:

There is strong support, both within parliament and outside it, for the view that provisions should be set on the protection of the environment, on the nation’s ownership of natural resources and on the holding 3 of referendums, to name some examples. In addition, political leaders, constitutional experts and others have often admitted, not least during this century, that our constitution should give a clearer picture of current political practice. It needs to be stated clearly that ministers exercise supreme executive power, each in the areas covered by their portfolios; and it needs to be stated in plain words what constitutional powers the president really has. On this point, attention should be given to presidential functions such as mediating in the formation of coalition governments, the president’s right to dissolve parliament and the part he or she plays in making appointments to various official positions. Finally, it is important that power and responsibility should go together. A constitutional provision stating that the president is not accountable, while at the same time obliged to endorse decisions taken by others, is not compatible with people’s sense of right and wrong and has no place in a modern constitution.

To continue with my broad-brush summary: in my New Year address nearly a year ago, I mentioned the opposing factions regarding the constitution. The most radical change is advocated by those who favour the new Constitution drawn up by the Constitutional Council, and the recent petition has contributed to growing support for that viewpoint. Those who advocate the least change feel that little or no revision is necessary. The issue will be resolved by the will of the electorate, and the representatives they elect to Alþingi, I said in my address.

Finally, I alluded to the constitution, directly and indirectly, at the opening of parliament at the beginning of October this year. I said that it is dangerous when the drive for unity impedes change and leads to stasis, and that it would not be acceptable, on major issues, for nothing to change year after year, simply because unanimous agreement could not be achieved. By the same token I said that it is hazardous to resist changes because they do not meet the preferences

and needs of the people in every way. To reject all compromises and progressive steps would not be the right thing.

All that having been said, I stated my view that the most urgent issue is that the members of Alþingi should debate and vote on the proposed amendments to the constitution to be submitted during this parliament. Assuredly, an inability to do so would be cause for concern.

To the watchers and listeners, I reiterate my congratulations on the new publication. We all miss our departed friend, but life goes on. In presenting his arguments, Ágúst Þór was cogent, courteous and open-minded; but I do recall him taking offence – not least if he was accused of conservatism or dogmatism. “It irritates me,” he said in the autumn of 2012, “because I’ve been fighting for constitutional reform for more than a quarter of a century. And then all at once one is presented as some sort of reactionary, simply because one is not prepared to plough on, blindfolded.”

Thank you for listening. Let us all take care over Christmas and New Year; take our own precautions against infection, follow the official guidance, and work together so that we will not unnecessarily increase the burden on the health service. Stay safe.