Inclusive Constitution-Making: Epistemic Considerations on the Icelandic Experiment

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Abstract: This paper offers some critical considerations on the recent Icelandic experiment in constitution-writing from the perspective of an epistemic deliberative democrat. While the novelty of the experiment presents a challenge to the observer, it is nonetheless possible to say a few things about the likely epistemic properties of the chosen institutional design. I argue that the Icelandic constitution-writing process was likely to produce a good constitution—that is a constitution meeting objective standards of quality—to the extent that it strived for inclusiveness through at least three different methods: (i) direct popular participation at various stages of the process; (ii) descriptive representation (or something close to it) where direct participation was not feasible; and (iii) relative transparency. The paper also discusses some epistemic weaknesses in the process that may have been at least partially responsible for the ultimate failure of the draft bill to be passed into law and speculates about the alternative ways in which the experiment could have been conducted or at least tweaked so as to be more properly inclusive.
The writing of a constitution is serious business. In the popular imagination (in the U.S., at least), it is the affair of a few illustrious white men clad in tights, neckties, and funny wigs, gathered during hot summer months in the confined rooms of a low brick building in 18th century Philadelphia.¹ These men were a select few, 55 in total, many of them public figures of high intellectual caliber and social and economic status. After months of hard work behind closed doors, they proclaim a text meant to be the unquestioned foundation of a republic for the ages, one that bears no trace of their compromises, hesitations, and changes of heart. The so-called “founders” are still remembered, celebrated, and quoted-- their heads are even carved into the side of a mountain.

Now picture something very different: a constitutional council of 25 individuals, 15 of whom are men, 10 of whom are women, most of them obscure (in the sense of being unknown of the larger public and having little to no political experience whatsoever). They gather in grey, concrete buildings in a suburb of 21st century Reykjavik, Iceland. In the picture taken of them as a group and posted on the Council webpage, one of the women appears in a special wheelchair for the severely disabled.² At regular intervals over the months it takes them to produce a text, the group seeks popular input about their successive drafts by posting them on a special Internet page and on Facebook. They expect their ultimate proposal to be put to a popular referendum before being passed into law by Parliament.¹

The contrast just painted is, arguably, that between two epochs and two styles of constitution-making, one elitist and secretive, the other inclusive and open. Iceland’s experiment of peacetime re-drafting of its constitution is unprecedented and revolutionary in many respects, but especially because, for the first time in human history, a country’s foundational text (or at
least a draft proposal for it) was written with the more or less direct participation of its people. Iceland, the oldest parliamentary democracy in the world, indeed came close to being the first to pass into law the world’s first most inclusively and transparently written constitutional text.³

This radically innovative democratic experiment has not been the success many initially predicted or hoped for, in part due to the many institutional hurdles that the final draft encountered towards the end of the process.⁴ In addition, there were also glitches and challenges along the way, as well as, unsurprisingly and perhaps unavoidably, some procedural design mistakes and compromises that may well be responsible, at least partially, for the ultimate failure of the draft to be passed into law.⁵ Regardless of this historical outcome, it is possible and important to take stock of what has happened so far and try to learn something from it on a theoretical and normative level. This should be specifically of interest to advocates of constitutional reform in the U.S (e.g., Levinson 2006 and 2012; Lessig 2012).

It is hard to judge with certainty, at this point, whether the final product was of substantive quality and would have worked as a foundational document for modern Iceland. Would it have lasted, in particular, for the ages and for generations of Icelandic men and women to come? Some researchers predicted that the Icelandic draft, if it had been turned into an actual constitution, would have had a life expectancy of over 60 years (Elkins, Ginsburg, and Melton 2012).⁶ Other criteria of quality were identified in the document, such as commitment to democratic principles and general temperance of the delineated political system.⁷ As a benchmark of relative quality, one would ideally want to compare the resulting draft to those previously or concomitantly put forward by experts.⁸

Since it may be too controversial to gauge the epistemic value of the output itself, at least for now,⁹ this paper only attempts to evaluate the likely epistemic properties of the process that
led to the constitutional draft. Recent work in the field of epistemic democracy has argued that it is the inclusiveness of democratic decision-procedures that actually gives them their epistemic properties. To the extent that democratic decision procedures are inclusive, it is argued, they are likely to benefit from a key ingredient of collective intelligence, namely the diversity of perspectives and ways of addressing unpredictable political problems that is bound to exist in a large population. This diversity of perspectives has been shown to be essential to groups’ problem-solving abilities. Extended to groups of citizens or parliamentarians, this logic suggests that deliberating groups that are truly inclusive or at least representative of the diversity of the larger group, are more likely to produce “good” or “right” or simply “better than worse” collective decisions.

While the reflection of epistemic democrats has thus far been centered on ordinary politics and the epistemic performance of ideally deliberative parliaments as the locus of democratic problem-solving and decision-making, there is no obvious reason the argument could not translate to the case of constitutional assemblies, and even the constitution-writing process as a whole. To the extent that constitution-writing is an attempt at squaring various circles, including expressing the common values of a diverse country and combining them into a coherent whole that all parties can be satisfied with, it is, just as regular politics, an exercise not just in compromise-building but in problem-solving as well. Thus, just as national legislatures ought to benefit from making decisions in ways that are as inclusive of the population as possible, so too, it would seem, should constitutional assemblies.

Assuming the epistemic argument for deliberative democracy is correct and can be applied to constitutional assemblies as plausible loci of deliberative problem solving, I want to argue in this paper that the Icelandic constitution-writing process was likely to have produced a
good constitution—that is a constitution meeting objective standards of quality for that country and the circumstances of its people—to the extent that it strived for inclusiveness. On the basis of what is empirically known of the Icelandic constitutional process, I will further argue that inclusiveness was aimed at, and at least partially achieved, through three different and complementary methods: (i) direct popular participation at various stages of the process, (ii) elements of descriptive representativeness where direct participation wasn’t possible, and (iii) transparency. All three aspects in theory combined to ensure not just procedural legitimacy but also some degree of epistemic reliability.

The first section of this paper offers a brief review of the various sequences of the constitutional writing process in Iceland. The second section examines the first inclusive dimension of the process, namely its participatory aspects, from the organization of a National Forum—the results of which formed the basis of the Constitutional Council’s deliberations—to the widely discussed “crowdsourcing” of some of the constitutional writing process. The third section turns to descriptive representation in the National Forum and in the Constitutional Council as one institutional choice that made for indirect inclusiveness where direct participation wasn’t possible. The fourth section considers the transparency of the process. The fifth section reviews the ways in which the process wasn’t as inclusive as it could have been and examines the various procedural flaws and weaknesses that should have, and to a degree did, challenge both the legitimacy and epistemic reliability of the process and its resulting outcome. The conclusion derives some lessons for future experiments of the kind.

1. Iceland’s constitutional writing process
In the fall of 2008, all four of the Icelandic national banks collapsed and Iceland entered into a deep financial and economic crisis. This crisis in turn spurred political protests against a government perceived as incompetent and corrupt, being in effect largely in cahoots with the small number of Icelandic entrepreneurs that had brought financial disaster on the country. The “pots and pans revolution” was born, with people protesting loudly, equipped with various kitchenware, in front of the Icelandic Parliament during the winter 2008-2009. While their main demands had little to do with a constitutional overhaul per se, the topic of constitutional change had been discussed for many years in Iceland, although not particularly in the years preceding the crisis. The change in political personnel the following spring brought to power proponents of such a constitutional change and gave the topic political momentum.

At about the same time, a grassroots association self-labeled “the Anthill” organized a large public event called a “National Forum” to discuss the future of Iceland. It gathered 1500 individuals, most of them randomly selected from the National Population Register, in a one-day exercise that consisted of articulating the values and priorities that should guide the renewal of government and public administration. The results of the national forum were made public and discussed in the news media and the larger public sphere. On 16 June 2010, the parliament passed a constitutional act initiating the constitutional revision process. On 6 November 2010, the parliament and the Anthill organized a second National Forum in cooperation with each other—National Forum 2010. This second forum gathered 950 randomly selected individuals tasked with establishing “the principal viewpoints and points of emphasis of the public concerning the organization of the country’s government and its constitution.” These findings were meant to inspire a constitutional draft reflective of the preferences of the Icelandic people.
The next step, the creation of a constitutional assembly, was a major source of controversy. Born as an assembly of 25 delegates elected by direct personal election in November 2010, this first assembly was then annulled in January 2011 by the Supreme Court in light of various procedural irregularities in the election process.\(^{16}\) The government and parliament decided to ignore the Supreme Court ruling and individually re-appointed the elected members by Parliament to a new body named the “Constitutional Council.” The plan was for the Council to produce a draft in three months (from April 6 to June 6) with a possibility of a one-month extension. In the end, the Constitutional Council used the one-month extension and the draft was presented to Parliament a few weeks later on 29 July 2011.

The last phase of the process consisted, first, of a non-binding national referendum on the constitutional proposal. Held on October 20, 2012, the referendum garnered substantial participation—half of the 235,000-strong electorate of Iceland participated—and secured a 2/3 approval of the draft as the basis of a new constitution.\(^{17}\) The Parliament was then asked to pronounce on the validity of the draft as a constitutional document. A draft bill was reviewed is at the Althingi and ultimately rejected. Had the draft bill been passed, Icelanders would have had to vote in a second non-binding referendum on whether or not to adopt the new crowdsourced constitution in the Spring 2013, at the same time as parliamentary elections were held. The newly elected Parliament would also still have had to approve the new constitution.

Below is a diagram (borrowed from Kok)\(^{18}\) recapitulating the steps and chronology of the constitutional process:
2. *A participatory process*

What is unique and striking about the process just described is that contrary to what has historically been the case in all known constitutional writing processes, a concerted effort at including the population at large was attempted at various steps. This inclusiveness may not have been as total as it could have been but it is still a noteworthy departure from established precedents. Contrary to the advice offered by some experts that the ideal constitutional writing should be hourglass-shaped-- that is, involve “a wide upstream debate before the election of delegates, a closed and secret debate among the delegates, and a wide downstream debate between the drafting of a proposal and its submission to referendum” -- the Icelandic process strived to be as wide-open as possible at every important stage, and particularly the crucial stage of drafting the actual constitutional text.¹⁹
This inclusiveness, I argue, took three forms: (i) openness of the process to popular participation, (ii) (relative) descriptive representativeness of the institutions and processes where direct participation of the population was not an option, and (iii) transparency of most processes.

Openness to the participation of the public at large was essential to the extent that the movement for a revision of the constitution was born from a popular movement—the Pots and Pans revolution—and further prodded along by grassroots associations and groups like the Ministry of Ideas, a think tank that began with informal meetings among group of entrepreneurs reflecting on the economic meltdown, and the previously mentioned collective known as “the Anthill,” which organized the first National Forum or National Assembly in 2009. The movement was situated outside of the official political institutions—parliament, parties, etc.—and the public would presumably not have accepted being excluded from a process that they started and rightfully thought belonged to them. From that point of view, the fact that the second National Forum was organized by Parliament did not so much signal a closing down of the process as it testified to the powerful momentum created by civil society in generating new demands and having them met by pre-existing institutions.

The participatory dimension of the Icelandic experiment allowed regular citizens to contribute ideas and input at several stages in the process. Upstream, at the very beginning, a second National Forum was created by Parliament in order to harvest the feedback of ordinary citizens on what the value framework and general principles of the new constitution should be. A budget of more than 550,000 Euros was thus allotted to bring together randomly selected individuals for a one-day exercise in brainstorming and discussion of key words, principles, and main ideas to be included in the constitution. Most of the Forum’s conclusions arguably reflected the views of the population of Iceland, among them: the importance of human rights, democracy,
transparency, equal access to healthcare and education, as well as a desire for a more strongly
regulated financial sector and for maintaining Iceland’s natural resources under public control.

This exercise was not directly participatory in that people had to be selected in order to be
included in the National Forum. One couldn’t just show up at this forum in order to participate.
However, as I’ll argue in the next section, the restriction on who could participate presented the
advantage of greater descriptive representation, which is arguably key in maximizing the
epistemic properties of a deliberating assembly.20 Despite the restriction on access and the low
number of people ultimately allowed to participate (which amounted to about .5% of the
population), the Forum did allow people with no experience of politics and no chance of ever
obtaining such an experience through regular means (elections, appointment) to contribute
shaping a major political document. Indeed, at the end of the National Forum, the results were
summarized and rendered into a “mindmap” made publicly available. The eight themes that had
emerged from the discussions were published together with the relevant aggregated suggestions.

Most importantly, a 700–page report summarizing the results of the National Forum was
produced by a Constitutional Committee and transferred to the Constitutional Council to serve as
the starting point of its deliberations. This report, problematically, did not just summarize the
views of the participants in the National Forum, but also included the perspective and advice of
various experts as well as the members of the Constitutional Committee themselves, who wrote
the report. Nonetheless the final draft of the constitution contained many of the ideas present in
the conclusions of the National Forum, such as the public ownership of Iceland’s natural
resources (article 34), an article on information rights (article 15), and an attempt to enshrine the
Parliament’s role in the supervision of financial management (article 68 to 72)21.
Downstream of the process, two referenda were meant to ensure participation of a more
direct and open -- though less constructive and more reactive-- type. One took place in the fall of
2012. It allowed the Icelandic people to vote on the suitability of the draft as the basis of a new
constitution and to answer some contentious issues, such as: Should the new constitution include
a mention of the national Church? Should natural resources be declared national property? The
other referendum was supposed to be held in the spring 2013, had the incumbent Parliament
approved of its being passed into law.

From an epistemic point of view, referenda are clumsy ways to gather the collective
intelligence of the people, as they give the people only an option to vote yes or no on a complex
question and aggregate views without building in any opportunity for deliberation (although
deliberation does happen to a degree beforehand, in the public sphere, including the media, and
in private exchanges among citizens). Empirically it is far from clear that referenda make that
much of a difference to the quality of a constitutional draft. But referenda do give the people a
chance to veto a draft that they do not approve of, as happened in the French and Dutch cases, to
the dismay of ruling elites. Epistemically speaking, referenda probably ensure that really bad
constitutions are avoided, even if they don’t necessarily lead to the adoption of the best possible
ones. Referenda also add an undeniable dimension of legitimacy to the whole process, in effect
signaling the consent of the people to the adoption of a fundamental law.

The most open and directly participatory part of the Icelandic constitutional process,
however, took place midstream of the process, during what has traditionally been the most
secretive moment in the history of past constitutions: the writing of the draft itself. The 25
members of the Council, far from isolating themselves from popular input, regularly posted
online, for the world to see and for the Icelandic people to read, the version of the draft they were
working on. All in all, they posted 12 drafts on a special Facebook page, all at various stages of completion. Anyone interested in the process could post comments and send feedback using social media like Facebook and Twitter or using regular email and mail. In fact, foreigners themselves were free to participate if they could find a way (e.g., Googlechrome) to overcome the language barrier.  

What is quite remarkable is the incremental way in which the draft was thus created. While there was no conscious intention on the part of the Council members to establish a systematic back and forth between them and the crowd, something close to such an epistemically virtuous feedback loop seemed to have emerged from the very first draft onwards. The first draft was thus not a full first draft and contained only the main “headings” or “chapters.” Once the structure was first exposed to comments, the Council proceeded to integrate some of the remarks and write up the actual texts corresponding to each “heading.” The text was fleshed out progressively, reactively, over several iterations of the same process: write a little more, show it to the crowd, integrate their comments when judged necessary or useful, and make changes according to suggestions, add a little more, etc. When time ran out, the Council generated a consensus on the draft they had, which was to a degree a compromise of the various visions and inputs.

This “crowdsourcing” of the constitution-writing process is the dimension of the Icelandic constitutional experiment that made the most headlines around the world. The technique of crowdsourcing was particularly striking in that it is both a recent technique (the word itself dates from 2006!) and – on the face of it – a deeply un congenial way of writing a constitution, which, historical precedent would seem to suggest, requires careful and unpressured deliberation among a select few. Crowdsourcing, by contrast, characterizes “an online,
distributed problem-solving and production model” by which an undefined group of people—the “crowd”—is invited to participate in an online task and help complete it by submitting knowledge, information, or talent. The group of people involved is undefined because there is no prior selection, or “selection at the gate,” of the participants, as in traditional outsourcing, where the people to whom a task is outsourced are both known and vetted ex ante. There is, further, no accountability mechanism ensuring that some ill-intentioned individuals in the crowd (so-called “trolls”) won’t try and ruin the effort by posting wrong information, useless comments, and generally drowning out the good suggestions with bad ones. While crowdsourcing has become a popular tool to engage people in processes ranging from urban planning to designing processes and solving complex scientific problems, it had never been applied to a task as seemingly complex and momentous as the process of writing a new constitution.

This is not to say, however, that the crowd “wrote” the constitution. The crowdsourcing involved in the constitution process was not comparable to what is called “commons-based-peer-production,” the kind of collaborative production typically illustrated by the way Wikipedia articles are written. In commons-based peer production, participants collaborate to achieve a goal, typically the writing of a piece of code or text. The process is fluid and open to participation by anybody. In the constitutional writing process, by contrast, members of the crowd were simply ask to provide feedback and suggestions on drafts submitted to them as tentative but stand-alone documents by the 25 members of the Constitutional Council. Members of the crowd operated as free atoms commenting independently from each other, rather than constructively and in collaboration with each other.
One could think that the members of the Council were at least nominally, as well as morally, constrained by the earlier guidelines set by the National Forums. In reality, though, the guidelines set by the National Forums were so general as to have very little constraining power on the Council members. Furthermore, these samples of 1000 people formed different crowds than the self-selected one that gave feedback on the draft. Although several versions were put online and open to comment, the process gave the crowd a mostly critical role. Nonetheless, the crowd’s comments and suggestions did contribute to shaping the substance and style of the draft in at least some ways and, sometimes, significant ones (for example the right to Internet expressed in article 14 came straight from the crowd\(^{31}\)). In that sense direct participation of willing citizens, in a country where internet penetration is one of the highest in the world, was not a mere legitimizing technique of anecdotal substantive impact. Whether the impact was ultimately large or not, it was real and is likely to have affected the epistemic quality of the final product.

Finally, one might argue that the fact that regular citizens could peek in the constitutional writing process, be kept apprised of the modifications on a regular basis, and receive personal emails from the Council members in response to their suggestions and comments may have created a sense of ownership of the document in the larger population, including amongst those who did not even try to participate in the experiment, but, crucially, knew they could have if they had been so inclined or had found the time. This may explain part of the margin of support in the fall 2012 referendum.\(^{32}\)

3. *Descriptive representation*
The second way in which the constitutional writing process was made inclusive in promising epistemic ways was, I would argue, in the (at least relative) descriptive representativeness of some of the procedures and institutional actors involved. Descriptive representation is, roughly, statistical representation. I have argued elsewhere that descriptive representativeness is a good guarantee that enough cognitive diversity is introduced in the deliberations of a representative assembly, thus increasing its problem solving and generally epistemic properties.\(^3\) This is so because the ability of a problem-solving group can be shown to depend on the cognitive diversity it contains.\(^4\) The more cognitive diversity, the smarter the group (at least up to a point). To the extent that a problem-solving group can only include so many people and that some mechanism must be found to select its members, random sampling of the larger population—that is descriptive representation—ensures maximal cognitive diversity in the absence of ex ante knowledge about the characteristics of the people who will bring in the relevant cognitive differences.\(^5\)

Another advantage of descriptive representation is that it allows for the participation of regular people, as opposed to professional politicians, while avoiding some of the biases associated with direct participation. Direct participation of the kind involved in crowdsourcing for example attracts people who are not necessarily representative of the larger population. This may be a good thing when what we are after is a set of competences that are best self-identified. But when we are after a systemic property of the group, like cognitive diversity, self-selection by the ambitious, motivated, and technologically-savvy can become an issue. The best way to obtain a descriptively representative sample of the population is, again, not through self-selection (what directly participatory mechanisms tend to yield), not through elections, which filter out the shy, the not-so-well spoken, the quiet people, but through random selection. That is the selection
mechanism chosen to form the National forums that were meant to frame and to a degree bind the work of the constitutional council.

The most accurately representative institution was the National Forum 2010, organized upstream of the constitutional writing process. The Constitutional Act had prescribed that the participants of the Forum had to be randomly sampled from the National Population Register “with due regard to a reasonable distribution of participants across the country and an equal division between genders, to the extent possible.” The Anthill group, which had organized the first National Forum, collaborated with Gallup Iceland, which then selected participants from the official directory of inhabitants by means of quota sampling. The idea was to ensure representativeness in ages, gender, and geographical origins. Gender turned out not to be an issue at all, but age and geography were an issue. The selected participants were contacted by letter and subsequently by phone. Because the response rate was low (20%), about 3000 people had to be approached in order to yield the resulting 950 participants.\(^{36}\) Furthermore, for each of the 1000 seats offered, there were four backup candidates in the same age/gender/geographical location bracket so as to ensure that, should the first, or second, or third candidate decline to participate, there was someone relatively similar replacing them.\(^{37}\)

As can be inferred from this description, there are some methodological issues in the procedure used to recruit the participants, to which I shall return in the last section. The selection process is more aptly described as quasi-random than truly random. Nonetheless the National Forum was undeniably more statistically representative than the participants to a regular referendum, the participants to the crowdsourcing process, or a gathering of activists.

Additionally, the Constitutional Council itself had some elements of descriptive representativeness to it, at least compared to more traditional constitutional assemblies. Instead
of appointed politicians chosen among elected representatives or prominent political or administrative figures (e.g., the members of the constituent assembly created to produce a constitutional text for the European Union), the constitutional council was made up of (mostly) non-professional politicians. Only 2 out of 25 were thus former Parliamentarians (although several did hold positions in various parties during or shortly after their involvement in the Council).

The 25 members of the Constitutional Council were initially elected out of a pool of 522 people who decided to run for elections, a pool from which, it is worth noting, parliamentarians and other professional politicians in function were officially excluded (by law). Ultimately the Council consisted of 9 women and 16 men and included the following self-declared professions: a university professor of economics, the director of the university of Iceland Ethics Institute, two media presenters, two physicians, a lawyer and radio presenter, two mathematicians, a farmer, a journalist, a manager, a lecturer in International Politics, a pastor, a reader of political science, the manager of the division of architecture at Reykjavik Art Museum, the chairman of Crowd Control Productions, a theater director, a university professor, a former museum director and teacher, a media presenter and university student, a lawyer, a trade union chairman, a political scientist and university student, a consumer spokesperson, and a film-maker and physician.\textsuperscript{38}

Of course 25 elected people out of a pool of self-selected 522 individuals (in elections, furthermore, to which only 36\% of the voting population participated) are not going to be statistically descriptive of the entire Icelandic population. The numbers are too small and there are additionally at least two selection bias problems. It is obvious from the list of professions listed above that this group was extremely educated and counted a disproportionate number of professors and students of politics (not necessarily a bad thing in other ways).
Nonetheless a concerted effort was made to ensure some descriptive representativeness, for example through a degree of gender parity. This in and of itself is no small feat compared to the composition of most national legislatures, let alone constitutional assemblies. The Constitutional Council thus reached the required quota of 40% women specified by Althingi.\textsuperscript{39} The Constitutional Council, however, was clearly not descriptively representative along other lines. For example, only 3 out of the 25 members were from outside of Reykjavik, compared to a little less than 2/3 of the Icelandic population.\textsuperscript{40} There was only one farmer and no member of the working-class.

The simple fact that the Constitutional Council included non-professional politicians, however, is remarkable. This fact, combined with the responsiveness of the Constitutional Council to the crowd’s contributions and input, made, one could argue, for a much more representative assembly even than initially planned. Although the Constitutional Council cannot be said to be descriptively representative in a scientific sense, it was arguably more inclusive of different perspectives and thus more representative of the Icelandic people’s views than more conventionally formed constitutional assemblies. Furthermore, as mentioned earlier, its work and deliberations were (at least nominally) constrained from the beginning by the guidelines set for them by the National Forums, which were (almost) statistically representative.

4. \textit{Transparency}

The last aspect of the Icelandic experiment that, I would argue, made for an inclusive constitution-writing process was its relative transparency. The drafting process took place under the almost constant and openly solicited watch of the people, a fundamental departure from the earlier and most common model of constitution-writing within secret meetings among an elite
few, as in the foundational examples of modern representative democracies like France and the United-States.

Transparency is distinct from openness to participation in that it does not require active participation of the citizens and can in fact characterize a process actually closed to the public’s input. Transparency simply means that the public was able to witness, observe, and thus make up their minds about the activities of the actors engaged in the constitutional writing process. Conversely, it also means that the actual drafters of the constitution were able to access the thoughts and input of the crowd when judged necessary. Transparency was thus a window, one might say, opened in the walls of the constitutional assembly and more generally onto the whole constitutional writing process.

The first example of transparency could be found early in the process with the streaming on the internet of the National Forum 2010. While it is not clear how many people actually watched the activities and discussions of their 950 randomly selected fellow-citizens, it is important for the inclusiveness of the whole process that this option was made available.

When it comes to the crowdsourcing part of the process, it allowed citizens not just to access the work done by the members of the Constitutional Council, who posted their drafts online at regular intervals, but also each other thoughts’ as well, as everything an individual wrote on the Constitutional Council’s Facebook page, for example, could be viewed, commented on, and ranked (via Facebook “likes”) by other citizens as well. Modern participatory technologies have arguably made it possible to transform what were usually closed and unidirectional processes into fully open ones.41

In the case of the Icelandic process, though full transparency was never a possibility, the traditional walls separating what Habermas calls the first and second “deliberative tracks”
(respectively Parliament and the larger public sphere) were thus made a little bit more porous to each other. From the first to the second track came the draft of the constitution itself, at various stages of revision and response emails to inquiries from the public; from the second to the first deliberative track came emails, Facebook posts, Skype chats and tweets.

Again, this relative transparency of the Icelandic process forms a radical departure from the opaqueness and secrecy that usually characterizes constitution-writing moments, whether due to technological constraints and circumstances (lacking TV and internet, there are only so many people who can attend and watch debates) or a deliberate choice (for example the participants at the Philadelphia convention met secretly to avoid outside pressures and passions).

Transparency in the Icelandic case was both made possible by new technologies, including social media, and by a deliberate decision to make the process as democratic and accountable as possible. The Icelandic people had clearly expressed a desire to break with the shady deals and corrupt ways of the pre-crisis era (which is not to say that the new ways are so different). Whereas some people have argued that publicity can harm the quality of constitutional debates and that secret deliberations favor more temperance and impartiality, the Icelanders obviously judged that light was a necessary disinfectant. Of course, the light reached only so far, as, at the end of the day, the deliberations among the 25 members were not actually visible. Further, only their general “open” meetings were filmed, recorded, and put out as PDF transcripts later on (in what is sometimes called “time-lag transparency). Their committee meetings, which involved the members of three subgroups of the Council that worked on different things, were not open in the same way. Only their minutes were recorded (i.e., a general written report of the agenda and decisions. There were also “informal” meetings, the content of which went entirely unrecorded. Nonetheless, there was as much access given to the larger
public as history has ever witnessed in a constitutional writing process. It would be hard to overstate the novelty of this transparency, especially in comparison with recent constitutional writing processes, such as the European or the Egyptian one.

5. Procedural epistemic flaws

The Icelandic constitutional writing process was more inclusive than other known constitutional processes. Unlike the sometimes recommended “hour-glass shape,” it was organized like a pyramid: consultation of a quasi-representative sample of about 1000 people at the beginning (rather than wide deliberative consultation of the public); an opening of the process to the whole Icelandic population at the writing stage (though only a few hundreds actually participated), and finally a wide (though non-binding) consultation of the public at large at the end of the process. Of course, the experiment was not flawless, at least from an epistemic point of view. Among the epistemic weaknesses, one can question the inclusiveness of the experiment along the three lines of participation, descriptive representativeness, and transparency.

As already said, participation of the public went only so far and in some cases was limited without much justification. A lot of the procedures and agenda were decided for the public, and not necessarily in a transparent fashion. While the National Forums were a great way to involve the public upstream of the process, their very structure, length, organization, and selection mode was not itself open for discussion. Not that everything should necessarily be up for discussion, but given the path-dependency created by the National Forum 2010 in particular, one may argue that some consultation of the public could have taken place, in a more widely inclusive and deliberative fashion.
Downstream of the process, the planned referenda (only one of which actually took place) were a similarly defensible way to involve the public. But their results were explicitly, and somewhat problematically, supposed to be non-binding. While the results could have created a de facto pressure on Parliament to accept the draft constitution as the basis of a new fundamental law, it seems that they had in fact no effect. The non-bindingness of the referendums potentially caused a bias in the work of the Constitutional Council, who knew that their draft would have to be ratified by the parliament, not by the general public, and who were likely influenced by their perceived ideas of what the parliament would accept as a legitimate draft. After all, the Constitutional Council openly admitted that gaining an internal 25-0 vote for the draft at the end of the process was likely to increase the probability of the parliament accepting the draft. By contrast, when the Supreme Court annulled the elections and a decision had to be made on whether to repeat the elections or do something else, there was no consultation of the public at large on the matter. The parliament simply took it upon itself to reappoint the members of the defunct Constitutional Assembly to a Constitutional Council. Finally, the role played by exclusive groups, such as the Constitutional Committee, a group of politically-selected experts in charge of writing the report summarizing the findings of the National Forum and wielding a lot of power throughout the process, puts in perspective the other participatory dimensions I have so far insisted on.

One may also argue that even where the process was truly inclusive, it was not as inclusive as it seemed or as it should have been. As already mentioned, the Constitutional Council held open general meetings but closed discussion sessions or “committee meetings” and “informal meetings,” where all the “real” deliberation arguably went on. Transcripts of the conversations were made available only for the “open” meetings and only weeks later-- too late.
for an immediate feedback loop to take place between the Council and the crowd members willing to read the transcripts. The format in which these transcripts were put out-- non-interactive PDF files of more than a 1000 pages-- were not either necessarily the most conducive to ease of analysis by outsiders.

While the crowdsourcing part of the process made the wall between the first and the second deliberative tracks more porous, as argued above, this opening of the process was not complete, let alone perfect, where it was attempted at all. The feedback given by the Constitutional Council to individual suggestions, for example, was irregular, informal, and limited, probably because the possibility of giving feedback to the public wasn’t properly institutionalized and funded. As a result, the Constitutional Council members did what they wanted with the proposals and comments they received, such that some argue that it is very hard to know whether crowdsourcing made a difference to the result. Were novel ideas-- in particular, those breaking from the preconceived notions of the Constitutional Council-- taken seriously at all?

One could also argue that the crowdsourcing dimension of the experiment was not bold enough and that the constitution should have been written as a fully collaborative experiment, on a Wiki. In other words, instead of crowdsourcing just the task of providing suggestions and feedback, it is the whole writing process itself that should have been outsourced to the crowd.

Even when the possibility of participation was real, another problem is that it was not taken advantage of by a large number of people (possibly because it was not sufficiently advertised). When it comes to the crowdsourcing part of the experiment, which gave to the constitutional draft its pedigree of the first participatory constitution in the world, it is worth noting that only 3, 600 comments were made on the Facebook page. Each of these comments
started a conversation of various lengths, consisting of threaded responses following the initial comment. Ultimately, only 360 suggestions emanated from a population of 320,000 or so. This is not exactly mass participation. If you think of it, though, 360 people are more than 25.\textsuperscript{42} On top of the weak participation, one may argue that not enough was done to ensure participation of older, less technologically savvy individuals.

The scientific representativeness of the institutions and procedures discussed earlier can also be questioned. If the gold standard of random selection is James Fishkin’s Deliberative Polls,\textsuperscript{43} there are certainly aspects of the National Forums that fell short of the standard. When people declined to participate, even though the organizers tried to replace them with demographically “similar” individuals, the fact that the less motivated ended up dropping out pretty much ruins the scientificity of the whole experiment. The only way to properly compensate for the bias in who typically likes to participate is to facilitate the participation of those tempted to decline rather than replace them by more motivated ones (by sending over messengers, paying for transportation, offering financial compensation, etc.).\textsuperscript{44}

Some have also questioned the way values and preferences were elicited from these 950 individuals. According to the description of the event available on the internet,\textsuperscript{45} the participants of the Forum sat in small groups of 8 at roundtables monitored by discussion leaders, all trained facilitators not contributing any personal view and merely there to ensure that everyone had an equal opportunity to voice their opinions. While the set-up lent itself to deliberation and exchange of arguments, most of the discussions proceeded by brief speeches recorded by the facilitators.\textsuperscript{46} The tight schedule, interestingly, had been laid out by the members of a company named Agora that specializes in crowdsourcing—not exactly, as we saw above, a technique fostering deliberative exchanges.
In the morning the job of participants mostly consisted in brainstorming potential values and visions that were aggregated into 8 main themes. The afternoon was spent on more concrete discussions between thematically specialized groups. That part seemed to have been more deliberative, although its goal was simply to generate another ranking of the content proposals in terms of “importance” and “[positively] new ways of thinking.” At the end, the participants distributed across various tables for the theme discussions returned to their initial table to share the experience of the afternoon. This part consisted more of a sharing and spreading of the information than a proper deliberation about substantive issues. Based on these exchanges, each table drafted up to five recommendations, out of which each table voted on the three best.

At the end of the event, the organizers had harvested a series of key values that the participants wanted to see figure in the new Icelandic Constitution; thematically selected one-sentence answers to the question: “What do you want to see in the new Icelandic Constitution?”; a jointly composed sentence containing the most important input within the theme addressed by the given table; three consensually voted answers per table to the question: “What are our recommendations, advice, and requests to those who will continue and finish the work towards a new constitution?”; and finally personal recommendations by the participant as well as the facilitators to the Constitutional Assembly. It is somewhat odd, it should be noted, that the facilitators, all part of a 200 volunteer group, all commendable but not part of the random selection process, should have been given a voice on a par and aggregated with the randomly selected participants. This arguably forms another violation of the scientific representativeness of the National Forum.

Some have argued against the methodological choice to simply aggregate views as opposed to generating genuine deliberation among the participants, as the word “forum” initially
seemed to promise. As the name of the “Anthill” group more accurately suggests (being reminiscent of the idea of the “hive mind”) and the crowdsourcing activities of the Agora group involved in the organization of the forum confirm, the whole event was governed by a faith in the virtues of mere judgment and preference aggregation, rather than an interest in the ways these judgments were formed and could be transformed through deliberation. Wherever this methodological bias in favor of aggregation over deliberation came from (one suspects it may have to do with the same blind trust in the market that made Iceland the most neo-liberal Scandinavian country prior to the crisis), it would at least have been worth debating whether something closer to an actual deliberative poll wouldn’t have been more appropriate to start off the debate about constitutional reform and discuss the guidelines any resulting constitutional assembly would have had to follow.

My own perspective, however, is that since the point of the National Forum was to take a snapshot of the Icelandic people’s shared values and norms in order to form the consensual background for the Constitutional Council’s deliberations, judgment and preference aggregation was not entirely inappropriate. The point was explicitly not to stir up controversial debates and was more along the lines of an exercise in self-clarification than in problem-solving. The question was, simply: What values do we actually share? (As opposed to: What values should we share?) Besides, one could argue that the deliberative, more controversial part of the process had to an extent taken place in the two years prior to the National Forum 2010, with the Kitchenware revolution and months of ruminating on the collapse of the economic system.

Transparency, finally, was not absolute. Some moments of the constitutional writing process were characterized by the opaqueness of more traditional processes. As already mentioned, the Constitutional Council’s work was itself accomplished behind closed doors,
although its output—twelve successive drafts—were posted on the Internet. Some argued that this way of doing things was not fundamentally different from the model on which Parliament functions, with general debates “open” to public comments and ideas (through the more traditional channels of letters and emails to one’s representatives) and more secretive committee meetings, where arguably the real deliberation and decisions take place.\(^4^9\)

I would also make a more general point in defense of the partial opacity of the process in this particular case. To the extent that the choice was made to delegate the task of actually writing up the draft of the constitution to 25 elected citizens, rather than set up a Wiki for all interested citizens to co-create a draft, there is something to be said for letting the 25 members enjoy the relative privacy of their group. This privacy ensured that they had the freedom to say what they wanted, change their minds, and try out all kinds of ideas, without the constant and possibly inopportune interference and judgment of outsiders. As long as the content of their discussions was ultimately disclosed and open for debate, the temporary opacity (or lag-time transparency) might have actually been an epistemic enhancer rather than an epistemic flaw.

Transparency of the larger process, however, was definitely damaged by what appears to be political games, lack of foresight in the organization of the whole process, or sheer incompetence. As to incompetence, it would appear that the national media did not know how to cover an election of 500+ individuals and therefore simply did not. Many well-known political scientists frequently and publicly (on national television) deemed the process “too complicated” before the elections were held, damning ahead of time the legitimacy of the process and probably affecting voter turnout.\(^5^0\) The lack of foresight is illustrated in the absence of a clear timetable and delineation of the forthcoming steps, which would have helped the public take the process more seriously than it initially did and would have brought greater clarity to the meaning and
importance of every step. Finally, and although this is controversial, some have suspected a
certain degree of power play in the latent conflict between the Supreme Court (when it annulled
the elections in January 2011 due to procedural irregularities in the elections) and the Parliament
(who simply decided to by-pass that decision by reappointing the elected members to a
Constitutional Council, minus one elected individual who declined to be part of what she saw as
a de-legitimatized institution). The arbitrariness of the solution and the lack of public
justification offered for it further damaged the legitimacy of the assembly in the eyes of the
public as well as the professional politicians whose support was somewhat important to the
success of the whole affair.

As already pointed out, the selection method for the constitutional assembly was never
discussed in the larger public sphere, although it was debated and decided in Parliament.51 Why
25 members? Why not many more-- say, a few hundreds? Why elected rather than, say,
randomly selected? Some have argued that the fact that the citizens who were ultimately elected
had to run a political campaign in order to attract votes turned them into professional politicians,
or at least ensured that only those acting like professional politicians would be elected, thus
ruining the whole premise of having regular citizens onboard the Constitutional Council.52 From
that point of view, a randomly selected assembly of a hundred or more people would have been a
better alternative.53 There may have been no perfect selection method but some public debate
about methodological choices would probably not have hurt. In particular, if the goal was to
achieve some descriptive representativeness, the assembly should have been somewhat bigger
(perhaps 100 people) and randomly selected to ensure (probabilistically at least) a better
representation of, for example, rural areas, the working class, and other categories clearly
underrepresented on the Council.
Finally, transparency was harmed by the ambiguous role played by experts at various stages. It is thus not clear exactly what role the constitutional committee put in place to advise the 25 members of the Constitutional Council performed. It certainly framed and primed the deliberations of the 25 members of the Constitutional Council by summarizing and adding to the conclusions of the National Forum. Later down the road, lawyers were brought in to help reword certain key passages of the constitutional draft, allegedly to make it more compatible with international treaties to which Iceland was already committed. In the process, they reworded some sentences to the point where they bended the meaning. For example, the Constitutional Council had decided to replace an archaic formula used in the old constitution “All ir skulu” (“Everyone shall”) with the more inclusive, more descriptive and also less gendered expression “Öll erum við” (“We are all”).\textsuperscript{54} In article 6 of the new constitutional draft, the lawyers reverted back the text to the old formula.\textsuperscript{55} While the members of the Constitutional Council reportedly disagreed over the role of the lawyers,\textsuperscript{56} they did not question their changes and never issued a public justification for them.

Conclusion

The Icelandic experiment of an inclusive and partly crowdsourced constitutional process has opened up a traditionally closed political process to an entire people in a historically unprecedented way. Besides its symbolic value, the constitutional writing process in Iceland had a number of properties that, especially in comparison with former comparable processes, presented epistemic advantages. The inclusiveness of the process in its participatory, representative, and transparent dimensions was thus, in my view, a strong guarantee that some degree of cognitive diversity entered the deliberating process and thus increased the chances of
good decision-making. I would thus surmise that the Icelandic constitutional writing process was minimally epistemically reliable in that it more surely tracked and availed itself of the collective intelligence of the people than a less inclusive constitutional writing process would have. Sociological legitimacy—a rather unconditional embrace of the draft by the Icelandic people in the fall 2012—seems to have validated the arguably normative legitimacy of an imperfect but bold democratic experiment.

Regardless of the fact that the Icelandic Parliament failed to turn the draft into law and thus put a negative end to the experiment, there are some lessons we can already draw from it. The first is that more could have been done along the lines of direct participation of the public, descriptive representativeness, and transparency. One possible improvement, for a future experiment of the same kind, would be to bookend the process with deliberative polls that would allow for public weighing of the arguments and the various aspects of the planned steps and procedures among a genuinely representative minipublic. At the very least if something like the more purely aggregative National Forums were to be attempted again, efforts should be focused on making the selection of participants more truly random. It would also be good to conduct some kind of opinion survey to be able to compare the representativeness of the National Forum, not just in terms of demographics, but in terms of views and opinions about various relevant subjects.

When it comes to the design of the constitutional assembly, there is no reason to be bound by the Icelandic template of the Constitutional Council, especially given its rocky beginnings (elected, then struck down, then appointed). It might be worth experimenting instead with a larger and randomly selected group of individuals.
It might even be worth considering foregoing a specific assembly at all and instead trying a fully crowdsourced constitution which uses the technique of commons-based peer production. This would be, of course, a much riskier strategy as nothing guarantees that the self-selecting participants would be descriptively representative in terms of views and opinions of the larger population. Further, for this to have any chance to work out, a lot more effort at publicizing the crowdsourcing process and involving as many people as possible would need to be implemented.

A hybrid solution would be to reverse the Icelandic model of a Council in charge of writing the draft and a crowd in charge of amending it and combine instead a fully crowdsourced process for the writing of the draft with a (randomly or otherwise selected) constitutional assembly put in a critical and advisory role.

It is likely that the constitutional process would have also benefitted from being made more deliberative throughout, which also means it should probably have been given more time overall, in particular in the actual drafting of the Constitution, which was supposed to take place in less than three months. One way to make the process more deliberative could have been to organize open meetings and discussions around the country on specific topics and perhaps also incorporate some participatory processes into the general process.

Another lesson is to make sure to rein in the experts, whether the professional politicians of the Constitutional Committee or the lawyers trying to reword the constitutional draft. Finally, some careful consideration for the conditions that must be met for a constitution to be modified or replaced might also be in order. In the Icelandic case, it seems that a consensus is emerging that the required approval by both the incumbent and new parliament was almost insuperable.

Notes
1 See the famous painting “Scene at the Signing of the Constitution of the United States” by Howard Chandler Christy.

2 See the picture of the Constitutional Council members here: http://stjornlagarad.is/frettir/lesa/item35473/ or on their Facebook page: https://www.facebook.com/Stjornlagarad

3 Some critics might point out that despite its having the oldest parliament in the world, Iceland has never known anything close to direct democracy. Independent until 1264, Iceland lived under colonial occupation until 1944, when it regained its independence from the Danish monarchy. Icelandic democracy was thus not so obviously a fertile ground for political innovations, being under the influence of both the Scandinavian and U.S. political models.

4 The incumbent Parliament thus failed to pass the draft into law, after which that law would still have needed to be approved in a national referendum. Had the draft been passed into law by the incumbent Parliament and the resulting law approved by national referendum, the next Parliament elected after that would also have had to approve the new constitution.

5 Although the proposed draft enjoyed reasonably strong popular support, having been approved as the basis of a constitution by 2/3 of the voters in an October 2012 referendum, the bill based on it ultimately stalled in Parliament. For the details of this election, see http://www.opendemocracy.net/thorhildur-thorleifsdottir/from-people-to-people-new-constitution.

6 Longevity, however, is only one marker of success, and a debatable one at that. Some have argued that the longevity of a constitution should be no longer than that of a generation (about 25 years). Researchers have shown that the average longevity of actual constitutions since 1789 is, interestingly, about 19 years (Elkins, Ginsburg and Melton 2009, p. 140). These same
researchers have shown that a constitutional process that is widely inclusive of various actors (whether individuals or institutions) tends to produce constitutions that last longer.

7 See Carey 2009 (specifically Chapter Seven entitled “Does It Matter How a Constitution Is Created?”) for a defense of such standards as the measures of the quality of constitutional documents. Specifically, Carey summarizes the three features of a successful constitution that the literature seems to agree on: “democracy,” a property of the institutions defined by the constitutional text that I would rather call, not very elegantly but more accurately, “democraticity,” as well as temperance and durability. Temperance refers to the fact that the foundational text defines limits to the power of office-holders, lowers the stakes of politics, and encourages moderation and measured deliberation.

8 My intention for the next paper is to obtain an English translation of the competing drafts proposed by professional politicians and lawyers in order to see how the Constitutional Council’s proposal fared with respect to those.

9 Especially for a foreigner who does not speak the language and has only a superficial acquaintance with the culture.

10 E.g., Landemore 2012, 2013a and 2013b.

11 E.g., Page 2007.

12 Here “good” and “right” are defined substantively as what best solves the political problems at stake given informational constraints and a set of shared norms and values.

13 The reason for the general dissatisfaction with the existing constitution had to do with the fact that it was an archaic and obscure text, dating back to 1944, when Iceland obtained her independence from the Danish monarchy, and amended seven times since then; in reality, however, it was a faintly modified version of an earlier 19th century colonial constitution and
marked by all sorts of idiosyncratic oddities. Many agreed that the resulting text was an awkward hybrid ill-fitted for the modern, independent, and democratic republic of Iceland.

14 Ólafsson 2011.

15 Kok 2011.

16 Among other problems, the Supreme Court pointed out that the ballot papers were marked with series of numbers that could make them traceable, that in some polling stations cardboard partition walls were used instead of traditional polling booths, making it possible to see the voter’s ballot paper by standing right behind him, that the ballot boxes could not be locked and thus were too easy to open up, that the counting of the votes had not been done openly, and that representatives of the delegates were not allowed to be present at the voting and the counting of the votes. Source: http://www.stjornlagarad.is/english/

17 Among the other questions put to the people of Iceland was, for example, whether natural resources that were not already private property should be declared national property.

18 See Kok 2011.

19 Elster 2012.

20 Landemore 2013b.

21 Article 72 on the “Assets and Commitments of the State” particularly resonates in light of the Icesave controversy. It reads: “No loans may be taken or guarantees issued that commit the state except by law. The administrative authorities are not permitted to guarantee the financial commitments of private entities. Such state guarantees may however be issued due to the public interest.”

22 See Carey 2009 for the relevant empirical evidence.
Thus an American citizen, using Google translate, respectfully submitted a Facebook query to the Constitutional Council asking them to include in the Constitution draft an article making it possible for foreigners owning property in Iceland (such as herself) to become Icelandic citizens (Finnur Magnusson showed me the Facebook post on March 11, 2013).

Thank you to Salvör Nordal for this information. Personal communication May 20, 2013.

Magnusson 2013.


See Brabham, 2008; Howe, 2006, see also Aitamurto 2013. A more recent and arguably more scientific definition clarifies it further as “a type of participative online activity in which an individual, an institution, a non-profit organization, or company proposes to a group of individuals of varying knowledge, heterogeneity, and number, via a flexible open call, the voluntary undertaking of a task” (Estellés-Arolas and González Ladrón-de-Guevara).

Brabham 2010; Aitamurto, Leiponen & Tee, 2011

Benkler 2006.

Aitamurto 2013.

“The public authorities shall guarantee the conditions for an open and informed discourse. The access to the Internet and information technology shall not be limited unless by a court verdict and subject to the same conditions as apply to the limits of the expression of opinion.” See http://www.stjornlagarad.is/other_files/stjornlagarad/Frumvarp-enska.pdf

I feel obliged here to register Salvör Nordal’s dissent with my interpretation. Her sense was that the crowdsourcing phase affected too few people to generate a sense of ownership in the larger population. The reason why the referendum came out the way it did, in her view, is
because people wanted to support what they saw as a new, interesting initiative, even if they were not at all involved in it.

33 Landemore 2012a and 2012b and 2013a and 2013b.

34 Page 2007.

35 In politics, indeed, the variety of problems is such that we cannot know in advance from which category of the population (men, women, rich, poor, etc.) the relevant information, perspective, and knowledge are going to come from. As a result, the best approach is to include in the group of representatives as much diversity as that presumably contained in the larger population. That is what descriptive representation does.

36 Kok 2011.

37 Thanks to Finnur Magnusson for this clarification. Personal communication (March 13, 2013).

38 Wikipedia.

39 Had fewer women been elected, up to six women closest to being elected under the regular method would have been declared elected to fulfill the quota.

40 About 196,000 out of 320,000 Icelanders live in the greater metropolitan area around the capital city Reykjavík.

41 It can thus be argued that the classical political “panopticon,” in which only the political leaders can watch the rest of the citizens but remain invisible to them, is being transformed into something like an “open” or “reciprocal” panopticon (Aitamurto 2012), in which the people can not only watch their leaders and delegates, the same way that their leaders and delegates can watch them, but also watch each other.

42 I assume, of course, though perhaps optimistically, that each suggestion was made by a different person and I also ignore the added difficulty of comparing numbers reflecting very
different selection methods (self-selection in one case, election in the other) and thus groups with different degrees of legitimacy.

43 Mansbridge 2010.

44 Another (minor) problem, at least in my view, is that the preference for stratified random sampling over simple random sampling possibly may not have generated as much cognitive diversity as possible by privileging some homogenizing dimensions like geographic origin over others (causing however probably only a minor reduction in cognitive diversity).

45 Kok 2011,

46 It is worth noting that a special word was created in Icelandic to refer to these “facilitators”--L’óðs (the closest meaning in English would probably be “pilot”)--so as not to imply that they were “leaders,” the only word available until then. Thanks to Finnur Magnusson for this information (personal communication March 12, 2013).

47 See Ólafsson 2011 and Fishkin 2013

48 Thus, the National Forum “was not aimed at stimulating controversial discussions in the sense of exchanging pros and cons to a given proposal” (Kok 2011).

49 It is worth noting that bill drafts are usually not made public at any point and parliamentarians never offer feedback on citizens’ comments and ideas.

50 In truth, the election procedures were complicated, new, and generally not user-friendly. The election procedures didn’t match the elections law, for example, which may explain why the Supreme Court ultimately chose to strike their results down.

51 The first draft of the bill actually supported a two-period sequence, with a break in the middle allowing the Assembly to pause and reflect on their work. The final version condensed the plan
to a 3-4 month period, in part for reasons of costs. One could argue that the first version of the bill planned for a more open process. Thank you to Salvör Nordal for this comment.

Ólafsson 2011.

A grassroots association named Alda actually suggested to the government and parliament that in light of the Supreme Court ruling and the cost of repeating the election process, a random selection would be a legitimate and economical option. Their proposal, however, was never met with any answer, let alone publicly debated. (Kristinn Már Ársælsson, personal communication on January 8, 2013).

Icelandic, like many European languages, is a male-biased language in the sense that the gender of anything is by default masculine unless otherwise specified. Here “all ir”—everyone—can also be read as “every man.” This subtle distinction will be more obvious to French speakers perhaps, where the equivalent of “all ir” would be “chacun” (masculine but also neutral or used to refer to any individual in a mixed group) as opposed to “chacune” (used to refer only to the members of an all female group).

Thanks to Finnur Magnusson for this specific piece of information. Personal communications, March 11 and May 9, 2013. Source for the revised version of the passage in question: http://www.althingi.is/altext/141/s/0948.html

The topic clearly divided the 9 members of the Constitutional Council that I met in May 2012.

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