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The Icelandic Federalist Papers

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To the People of Iceland:

This is the first in a series of essays in which questions and concerns about Iceland's draft constitution are addressed. The essays are respectfully modeled on the Federalist Papers, in which a nation debated its form of government and organic document; this essay, for example, is adapted from Federalist No. 1. These essays, all by Civis, will discuss the draft's particulars, address arguments, and quell fears. These essays will not feign indecision. Instead, conviction about the draft's rightness is frankly acknowledged, and the reasons therefor will be freely disclosed, that these arguments may be judged by all. They are offered in the spirit of truth. All this so that satisfactory answers may be given to such concerns as may trouble your mind. The question may rightly be raised, who is Civis? And the answer: You are, citizen.

While enduring seven years of ineffectiveness from the existing government and the current constitution, you were called upon to draft a new constitution that would create a new, better government. Nothing could be more important to a free people than self-determination of their mode of self-government: This is nothing less than deciding the nature of Iceland and the way Icelanders will live their lives. Other societies have faced the existential question whether people can by exercise of free will and after sober reflection create a good government, or whether we are fated to have government imposed on us. Happily, others have succeeded (always with some struggle), and Icelanders need only follow those examples that best suit them. Happier still will it be if, like them, Icelanders temper patriotism with philanthropy, unconcerned with any matter other than the public good.

This may be asking too much. Already debate about the draft is infected with selfish interests, local concerns, and prejudices foreign to its merits. These petty passions are a nation's enemies. Most hazardous of these infections is the opposition of that class with entrenched investment in the existing system, by which they profit. They resist all change, fearing a diminution of their power and privilege. They hold fast, like an octopus grips a clam. Their perverted ambition is to defend their position at the expense of those they consider as having lower status.

But the design of this essay and those that follow is not to dwell on the opposition of those who believe themselves privileged. A rich person, as well as a poor one, may be motivated by the best intentions and concern for the common good. And even an honest person can be led astray by fear, or a wise person by ignorance, so that persons of good intent and judicious mind can be found on either side of a fundamental question like this. Caution and respect dictate the purpose here: to address with moderation and candor the fair concerns and objections raised against the draft.

It may be that these essays will spark an angry conflagration of passionate opposition. Respond with calm patience alike to those who shout for and against the draft constitution. Be especially wary of those who by loud speech and bitter words seek both to prove their righteousness and to gain more converts. And be most careful of those whose arguments are in absolutes, whether expressed through a zeal for greater government control (always hostile to liberty), or by a passion for a people's democracy (invariably a populist ruse inimical to the public good). Look instead to the advocate of a strong, stable, balanced government; these essentials to guarantee

liberty can never be separated. A well-informed mind knows that a dangerous ambition can hide behind the mask of either zeal for the people's rights *or* for vigorous government. Both can lead to despotism, and those who have overturned republics have begun both by feigning concern for the people (commencing demagogues, and ending tyrants) and also by promising safety at the expense of liberty (sacrificing both and achieving neither).

These observations should serve to place you, citizen, on guard against attempts from any partisan to influence your mind in this matter of utmost importance to Iceland, by anything not evidenced by truth. And no doubt you have already seen unjust means deployed by those unfriendly to the draft constitution. But here we deal only with truth, and the truth is that on sober reflection and with wise counsel Civis believes that the draft is in your best interest. The alternatives here are two: doing what the people have desired for seven years and adopting the draft, or suffering the evils of the existing system until the glaciers melt. Adopting the draft is the safest course for your liberty, your welfare, and your happiness. The draft is the result of sober reflection and sound judgment. It makes cautious and important improvements on the current system. It can prevent another financial system collapse. Would you have that happen again? Surely not. So all should say: Althingi! Hold a vote, yea or nay, and let the people's will guide you.

Rather than describing the present system's inadequacies (which are well known), we begin with the restrained and necessary direct democracy provisions in the draft. First, some terms. The phrases "popular sovereignty" and "direct democracy" are not synonymous. Popular sovereignty is a first principle of some government systems, wherein the people have reserved ultimate political power to themselves and delegated some powers to the branches of state government. Direct democracy is either (anciently) the general concept of a government controlled by the people without agents, or (as here) refers to the institutional tools used by the people to effect that control. Similarly, the "people" and the "electorate" have distinct meanings. The electorate is the voting body of citizens, while the people is Icelanders together as a nation.

The draft grants Iceland's electorate some limited direct democracy tools. The three common direct democracy powers are the initiative, referendum, and recall. The initiative permits the electorate to place statutes or constitutional amendments on the ballot by petition and to enact such proposals into law by popular vote. A referendum commonly refers to the electorate's power to approve or reject statutes passed by the legislature. In the draft the term has a broader meaning, referring to any vote by the electorate to approve or disapprove something. The recall is the electorate's power to remove an elected official from office.

Several provisions in the draft invoke the electorate. None create an initiative or recall power. Article 19 leaves the matter of the state church to be decided by law, and any change to that provision must be approved by referendum. Under Article 60 bills that have been returned to Althingi by the president are subject to a referendum; this is the same under the 1944 constitution. Article 65 permits 10 percent of the electorate to compel a referendum on any bill within three months of its passage; this does not apply to "fiscal budgets, supplementary fiscal budgets, laws enacted to enforce international obligations as well as laws concerning tax issues or the right to citizenship." Article 66 (the most significant for this essay) does not create an electorate initiative power, as some have claimed. Instead, it only permits the electorate to *propose* bills to Althingi, which Althingi is not required to accept. On the contrary, Althingi may make a counterproposal and put both to a vote. Even if the electorate's proposal wins, Althingi still is not required to accept it. Under Article 78 candidates for president must be endorsed by at least one percent of voters. Under Article 84 the electorate reviews by referendum Althingi's decision to remove the president from office. Article 111 requires a referendum before "entry into interna-

tional agreements that include the devolution of state power to international institutions.” Once the draft becomes law, Article 113 requires a referendum for any amendment, but Althingi by five-sixths vote may amend the constitution without electorate approval.

The draft does not reserve sovereignty to the people. Nor does it grant general direct democracy powers to the electorate. There is no power to recall elected representatives. There is no power to initiate laws, only an option to suggest them to Althingi. Instead, the discrete, specific direct democracy mechanisms are activated only by an act of Althingi. And under Article 2, ultimate sovereignty remains with the “[H]olders of governmental power”: Althingi, the president, and the Supreme Court. At most, the draft *involves* the electorate in the process of governing.

These limited direct democracy provisions have caused those in power now to fear loss of that control they have exercised for so long and so completely. Commonly those in power fear that any new actor necessarily will mean a diminution of their own power, seeing the game as one of limited resources where one’s gain is always another’s loss. Not so. Power in Iceland is not a zero-sum game. Like any parliamentary system, it is based on proportional representation. New parties and shifting alliances are the nature of its design, as all players vie on equal footing to form a government. A win in this game is a majority. Nothing about these new provisions changes that, because the electorate cannot play this game. And these direct democracy tools are so limited and nonbinding that they pose no threat to any but the most cowardly lawmaker.

What these provisions mean is simply this: the electorate is not limited to merely voting for representatives and then watching events unfold. Lawmaking is a conversation, and the draft involves the electorate in that discussion. But still the electorate will have no direct lawmaking power. At most the electorate through the referendum may exercise a limited veto over unwise laws enacted by Althingi. And should the electorate be expected silently to suffer unjust laws, as they do now? Surely not. The ballot box has proved an inadequate remedy to remove members of Althingi who disregard the people’s will, as these past years of legislative inaction have proven. Indeed, direct democracy’s adoption in the United States was motivated by the same problem: an unresponsive government.

What consequences may flow from these limited direct democracy provisions? The fear of the unknown is the greatest source of objection to adding these provisions. And it is the most unfounded. The consequences are well known, from the experience of the many countries and states that have lived peacefully with various kinds of direct democracy for many years. They have flourished with even stronger direct democracy provisions than those present in Iceland’s draft constitution. The cantons of Switzerland, one of the best-governed countries in the world, have used direct democracy for 150 years. Half of the 50 United States have had direct democracy provisions in their state constitutions for the past 100 years, and their union still stands. And Japan, Poland, Turkey, the former West Germany, England, and Wales all have used popular assemblies. Switzerland’s electorate has the initiative power for both statutes and constitutional amendments, and in the Swiss experience that acts as a partial check on the representative government, allowing the electorate a measure of control that fosters outcomes closer to the community views. California’s electorate has such powerful direct democracy tools that scholars call it a fourth branch of the state government, and California is the sixth-largest economy in the world.

Some may contend that occasional appeals to the people, as when they vote for their representatives, is adequate. They will point out that Iceland is the oldest parliamentary democracy, and that Althingi has governed Iceland (without direct democracy) since 930 CE. Age alone is no proof of excellence. If it were, what of the ancient Athenians, who invented democracy in its most direct form? By its age is that not best? Surely the proof of any government is in its results,

its ability to satisfy the needs of its people. A nation's strength is its ability to solve its problems by adapting, not a stubborn insistence on clinging to how things have always been done. The sailor who adjusts to the changing wind survives.

Appeals to the electorate can be equally harmful if they are too frequently consulted, or too infrequently. Too frequent appeal results in the day's passions having excessive influence. And the governing process will grind to a halt as every decision is reviewed. If public appeals are too distant, the prospect of public censure will be a feeble restraint on power: Althingi will not be arrested by concern for censorial review of their conduct that may be five or ten years off. And in the meantime, the abuses will have completed their mischievous effects before a remedy can have effect. Yet the draft calls for *periodic* appeals, which are the proper and adequate means of preventing and correcting government infractions and keeping it within due bounds, while avoiding the risks of too frequent or too scarce consultations.

It is said that no one represents a people's interests better than the people themselves. And of all the possibilities, ultimate trust in governance is best placed in the people. True, direct democracy is a qualified (not an inherent) good; like any other power in a government, it may create problems. Even with democracy one can have too much of a good thing. Yet by adding a few limited direct democracy tools to its constitution, Iceland can benefit from the best aspects of both systems. Finding the best balance of governmental powers is an ongoing process, and the people should be involved—at formation, and as the nation progresses. This draft, these direct democracy provisions, may not be perfect, but they improve on what Iceland currently has. Do not wait for a perfect solution; do not let the perfect be the enemy of the good. It is worth doing now. You have waited long enough.

—CIVIS