

# UC Berkeley

## The Icelandic Federalist Papers

### Title

No. 3: On the Proposed Icelandic Constitution's Environmental Rights

### Permalink

<https://escholarship.org/uc/item/7742j4bw>

### Author

California Constitution Center

### Publication Date

2017-11-14

# The Icelandic Federalist Papers

---

## No. 3: On the Proposed Icelandic Constitution's Environmental Rights

### To the People of Iceland:

One of the basic purposes of constitutions is to place certain political commitments such as freedom of speech and religion, due process of law, and voting rights effectively beyond the reach of political contestation, as points of consensus among all citizens. In enumerating a set of environmental rights, the proposed Icelandic constitution has thus asserted that certain environmental commitments should be just such a point of consensus among all Icelandic citizens. Is it really the case that a functional liberal democracy requires a consensus on environmental rights in the same way it does basic civil and political rights? In the following, I will argue that it does—in fact, that this requirement was always implicit in the idea of constitutionalism, with the current era of environmental crisis having brought this to the fore. Indeed, I believe the proposed constitution should have gone much further in enumerating environmental rights.

There is, of course, no more elemental feature of a body politic than its geographic setting and borders. Constitutional framers must always confront the basic physical borders and stocks of resources, along with their locations, in considering the arrangements of their governments and constituencies. Geography, moreover, plays a key role in establishing federal relationships between local, regional, and national governments. In other words, even if a constitution does not explicitly address the physical setting of its body politic, that physical setting always situates any deliberations and negotiations from which the eventual constitution is the ultimate result. Yet constitutions traditionally have not explicitly addressed their physical setting. The practice of framing constitutions emerged contemporaneously with the rise of industrial capitalism and the development of liberal democracy. Both of these organizing principles tended to approach society in a highly abstract way: society was seen as a collection of self-interested individuals who act in a context where the physical setting and the continuity of historical time were not seriously considered. Thinking this way made sense in the late eighteenth century because humanity then lived in what ecological economist Herman Daly has called an “empty world,” by which he means that the human population and its impacts on the Earth’s ecosystem and climate were virtually negligible. This is no longer the world we live in, however. We now live in a “full world,” where the size of the human population and global economy have a profound and enduring impact on the Earth’s climate, ecosystem, and stock of nonrenewable resources. As a result, the traditional approach to framing liberal democratic constitutions urgently needs to be reconceived in a way that recognizes this reality. There are at least three levels of environmental rights that modern liberal democratic constitutions should enumerate: direct environmental rights among presently living citizens of the body politic; intergenerational rights, which recognize that future citizens deserve a healthy and sustainable world as much as presently existing citizens do; and general human environmental rights, which recognize that national boundaries are contingent and arbitrary constructs, while the Earth’s life-supporting environment is an immensely complex, interconnected system to which national borders have no relevance. We can observe how these three levels of rights play out as Iceland confronts the most pressing environmental challenge of our time: climate change.

Iceland has an unusual level of exposure to this environmental crisis, largely due to its unique geography and climate. The country is positioned directly in the path of the North Atlantic Current, a massive north-moving current of warm water originating far south. This positioning gives Iceland a more temperate and habitable climate than most locations at similar latitudes just south of the Arctic.<sup>1</sup> Much of Iceland's economy is in fact a direct consequence of the beneficial effects of the North Atlantic Current. The fishing industry, which is both a major food source and a key export industry providing substantial employment for Iceland's workers, would not be possible without the oceanic warming from the North Atlantic Current.<sup>2</sup> Icelandic tourism, which makes up significant portions of the economy and workforce, is also a direct consequence of the unusual effects of the North Atlantic Current's warming. Its famous natural beauty and remarkable scenery is in large part due to the unique way this warming has exposed and interacted with geological formations that were once arctic tundra. Climate change's potential to alter or even destabilize the North Atlantic Current is uniquely concerning for Iceland. Several recent studies have offered estimates of how climate change will affect the current. Some of the more cautious estimates suggest that if greenhouse gas emissions are not reined in over the next few decades, the North Atlantic Current could weaken by about 18 percent by 2100. If they continue to expand, the current's weakening could nearly double. By 2300, it could be 74 percent weaker, and potentially could collapse entirely.<sup>3</sup> This would essentially turn Iceland into an Arctic climate, roughly comparable to other cold regions at similar latitudes. Fishing stocks would be devastated, as the higher levels of warm and fresh water from the current decline, and as ocean acidification increases thanks to other climate change mechanisms.<sup>4</sup> While such estimates are sobering enough, James Hansen, et al. released a paper last year arguing that feedback loops in the North Atlantic Current could destabilize it or perhaps even shut it down by the end of this century.<sup>5</sup> Not only does this suggest Iceland's climate could collapse within this century, but the study also predicts that the feedback loop would set off nonlinear melting of glaciers in Greenland and the Antarctic resulting in a sea level rise of several meters. This would submerge large portions of Iceland, which is of course an island nation with a landmass a little larger than the U.S. state of Maine.

The threat climate change poses directly to Iceland illustrates how traditional notions of liberal democratic rights have become outdated in the contemporary environmental context. It is not just other citizens or the state that pose a threat to individual freedom in the modern world. Now, threats exist to the very land and climate that provide the space where individual freedoms are

---

<sup>1</sup> "The Dynamic Climate in Iceland," *Ólafur Ingólfsson's Personal Website*, (Accessed: May 25, 2017): [https://notendur.hi.is/oi/climate\\_in\\_iceland.htm](https://notendur.hi.is/oi/climate_in_iceland.htm)

<sup>2</sup> "Iceland," *CIA World Factbook*, (Accessed: May 25, 2017): <https://www.cia.gov/library/publications/the-world-factbook/geos/ic.html>

<sup>3</sup> Andrea Thompson, "Potential for Collapse of Key Atlantic Current Rises," *Climate Central* (Jan. 5, 2017), (Accessed: May 25, 2017): <http://www.climatecentral.org/news/potential-collapse-key-atlantic-current-21024>

<sup>4</sup> *Iceland's Fourth National Communication on Climate Change* (Mar. 2006), (Accessed: May 25, 2017), p. 11: [https://www.umhverfisraduneyti.is/media/PDF\\_skrar/Iceland's\\_Fourth\\_National\\_Communication\\_and\\_Report\\_on\\_Demonstrable\\_Progress.pdf](https://www.umhverfisraduneyti.is/media/PDF_skrar/Iceland's_Fourth_National_Communication_and_Report_on_Demonstrable_Progress.pdf)

<sup>5</sup> Robinson Meyer, "The Atlantic Ocean and an Actual Debate in Climate Science," *The Atlantic*, (Jan. 7, 2017), (Accessed: May 25, 2017): <https://www.theatlantic.com/science/archive/2017/01/what-a-real-debate-looks-like-in-climate-science/512444/>

exercised, threats that arise not necessarily from the intentions of other citizens or the state, but from global economic structures over which individual states have little power to regulate. However, it is also evident that the temporality implied in the notion of constitutional making—the fact that constitutions are not intended to govern present-day citizens alone, but also all future citizens—must be reckoned with in a much more explicit manner now. Indeed, in view of the fact that the impacts of climate change on Iceland will become increasingly more virulent in the coming decades and centuries, it is difficult to escape the conclusion that present-day citizens are violating the rights of future generations of citizens by failing to act to mitigate climate change and other environmental problems.

Yet fully realizing environmental rights even at the present day and intergenerational levels will require some form of global human rights framework. This is because the indirect consequences of climate change for Iceland—that is, the spillover effects of how it will impact other nations around the world—are at least as virulent as the direct consequences. If the current trajectory of carbon emissions is maintained, average global temperatures are expected to rise well above 4°C over pre-industrial levels by this century’s end, though if current policies were fully enforced temperatures are believed to rise between 3 to 4°C.<sup>6</sup> If the Paris Accord is fully implemented, it is believed that temperatures will rise to around 2.5°C. It should be noted that these are linear projections, and many climate scientists believe the climate is a highly sensitive system with effects that are self-reinforcing and difficult to predict. Thus, temperatures could plausibly rise even higher than these predictions. Furthermore, because greenhouse gases stay in the atmosphere for centuries, the global temperature will continue to rise in the proceeding centuries beyond 2100. Each 1°C average rise above pre-industrial levels corresponds to negative impacts that rise by levels of magnitude: the world’s already strained fresh water supply becomes increasingly scarcer via several different mechanisms; crop yields decline by 10 percent per degree; heat and weather patterns become increasingly more extreme; and sea levels rise.<sup>7</sup> As these conditions worsen, the lives of billions of people around the world will descend into misery, while the global political order quickly becomes destabilized. The past few years of economic recession and immigration crises have resulted in a marked trend toward right-wing populism and political isolationism, but this is only a taste of what the world will experience as global warming progresses. Stephen Cheney, former Marine brigadier general and CEO of the American Security Project, writes, “Climate change is what we in the military call a ‘threat multiplier.’ Its connection to conflict is not linear. Rather, it intensifies and complicates existing security risks, increasing the frequency, scale, and complexity of future missions . . . . [Its] effects will be particularly destabilizing in already-volatile situations, exacerbating challenges like weak governance, economic inequality, and social tensions—and producing truly toxic conflicts.”<sup>8</sup> Furthermore, though a 2°C rise is considered potentially destabilizing and dangerous, it is widely believed that a 4°C rise—which we are currently believed to be on pace to surpass—will almost

---

<sup>6</sup> Kornelis Blok, Bill Hare, and Niklas Höhne, *Climate Action Tracker* (Accessed: Jan. 16, 2017): <http://climateactiontracker.org/global.html>

<sup>7</sup> Lester Brown, *Plan B 4.0: Mobilizing to Save Civilization* (New York: W. W. Norton & Co., 2009); Naomi Klein, *This Changes Everything: Capitalism vs. The Climate* (New York: Simon & Schuster, 2014).

<sup>8</sup> Stephen Cheney, “Trump’s Choice on Climate Change,” *Project Syndicate*, Dec. 12, 2016 (accessed: Jan. 16, 2017): <https://www.project-syndicate.org/commentary/trump-climate-change-security-risk-by-stephen-cheney-2016-12>

certainly destabilize Earth's climate, with near-apocalyptic consequences.<sup>9</sup> Climate scientist Kevin Anderson writes: "It is fair to say . . . there is a widespread view that a 4°C future is incompatible with any reasonable characterisation of an organised, equitable and civilised global community. [It is] also beyond what many people think we can reasonably adapt to."<sup>10</sup> Such a destabilized global order would have profound impacts on the Icelandic financial system and economy, which is heavily involved in international trade, while refugee crises and spillover conflicts create frightening security concerns, erode standards of living, and strain the social safety net. In summation, the only way constitutionally guaranteed environmental rights can have any real value to Iceland's citizens is if they are understood to imply a broader commitment to environmental human rights.

While the proposed Icelandic constitution does not explicitly recognize all these levels of environmental rights, it should nevertheless be recognized as a forward-thinking and timely document thanks to its appreciation of the need to enumerate environmental rights at all. The mere existence of constitutionally enumerated environmental rights, once they begin to be dealt with in practical circumstances, will naturally lead to engagement with these further levels of environmental rights. Relevant constitutional jurisprudence is largely nonexistent, and one suspects that in the coming decades high courts and international law will increasingly be forced to recognize the need to confront questions of intergenerational rights and world citizenship. Failing to do so would effectively render these rights pointless.

—CIVIS

---

<sup>9</sup> Kevin Anderson, "Climate Change Going Beyond Dangerous—Brutal Number and Tenuous Hope," *Development Dialogue*, 61 (Sept., 2012), 16–38.

<sup>10</sup> *Ibid.*, 29.