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## The Icelandic Federalist Papers

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No. 16: The Conformity of the Plan to Republican Principles

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### Author

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## No. 16: The Conformity of the Plan to Republican Principles

### To the People of Iceland:

Before examining the republican character of the new plan, it is first necessary to explain the meanings of the terms and their relevance to the standards fixed in Iceland. The term *republic* originates from Latin “*res publica*,” “the common weal, a commonwealth, state, republic,” literally *res publica* “public interest, the state,” from *res* “affair, matter, thing” combined with *publica*, feminine of *publicus* or “public.”<sup>1</sup> From a constitutional perspective, a republic is a country in which the head of state’s position is not hereditary.<sup>2</sup> The president (or other chief executive) may be elected, appointed, or nominated to exercise the head of state position.

This concept is the opposite of a kingdom, in which a monarch exercises power because of filiation. Historically, the term “republic” was first used in ancient Rome and thereafter where power was not exercised by a royal family, as for example in the case of Venice. The term may refer to a system that is neither monarchical nor imperial. A republic does not necessarily mean democracy since the president may be designated through authority; there are many examples of undemocratic republics among Latin American dictatorships or in the former USSR. The foundations of a republic are based on a will, a desire to represent the social body. It also has a normative meaning connected to a judgment of values and the possibility for people to exercise their sovereignty. Even though the idea of both democracy and constitutional government emerged in Athens, the first known city republic took shape around 506 BC in India where, for the first time, a ruler was elected. The Republic of San Marino, among the oldest republics in the world, is the oldest in the modern era, having been in place without interruption since its creation with a constitution in 1600 that is still in force today.

The republic in Iceland was founded at the very beginning of 1944. From the 25th of February 1944 the Icelandic parliament (the Althing), decided to formally break the country (then the Kingdom of Iceland) away from the Danish monarchy. Iceland’s independence had already taken place according to the 1918 Act of Union, but the country maintained a personal link with Denmark: under that act the Danish king was also king of Iceland. In this way, within the very process of creating the republic of Iceland, the republican principle of the people’s sovereignty was applied through the prism of a consultative referendum, in which the Althing adopted a law allowing a referendum to be held between the 20th and the 23rd of May 1944 to confirm or reverse the parliament’s decision. An overwhelming majority of the population voted to end the Act of Union and to form a new republican constitution. The Republican Celebration (Lýðveldishátíðin) took place on the 17th of June 1944 in Þingvellir, where the Althing officially severed all links with the Danish monarchy.

And so Iceland’s constitution was born. It has been amended since and is now subjected to a new project of constitutional reform so as to better fit the country. This project is taking the shape of a proposed new constitution. In a national referendum held on October 20, 2012, a ma-

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<sup>1</sup> <https://www.etymonline.com/word/republic>

<sup>2</sup> <https://www.merriam-webster.com/dictionary/republic>

jority of the electorate voted in favor of the new constitution. Yet to date the Althing has made no move to adopt any constitutional change.

Whatever its form or content, a constitution is the highest rule of each country's legal system. It establishes and describes that country's governmental system; therefore the proposed constitution must be analysed to get to the country's republican principles and determine whether they adhere to the values expressed in the historiography of republican concepts. The term *republic* refers to a state where one obeys only laws that are supported by the general will.<sup>3</sup> And the supreme law of a land being a constitution, the correlation between the two terms is essential and needs to be analyzed, especially in the light of constitutional changes to ensure that the new plan respects the values and republican heritage of Iceland. At this stage of the argument, it is necessary to place a semantic shift, and this, according to the very terms of the constitution being reviewed: the proposal for a new constitution.

By writing in Article 1 of the proposed constitution that "Iceland is a republic governed by a parliamentary democracy," the drafters have underlined the basis of Iceland and its political regime, assigning in this way the constitutional text to a supportive role, the role of repository enabling the contents worthy to be inscribed there to be made sacrosanct. And yet, it follows from this article that Iceland has a known political system (a republic), and accepting it is closely correlated to the principle of parliamentary democracy. Article 4 refers to the election of the head of state, fitting a classic definition of a republican political system.

The correlation between a republic and a parliamentary democracy in Article 1 added with the preamble of the draft establishes Iceland's political system upon certain characteristics, certain inalienable values. The very fact that the proposed constitution originates from the people connects the draft and its republican values to the people of Iceland. "The elders, called Republic a society of free men gathered together to live well and happily (definition in which nonetheless is missing the three main points), which are, family, sovereignty, and what is common within a Republic."<sup>4</sup> In its most usual meaning, the republic expresses the body of values in which the nation recognizes itself, and which were built all along its history. The list is not exhaustive, but we can nevertheless focus on a few major themes among which we can find: institutions, universal suffrage, people's sovereignty, human rights, and indivisibility of the nation's territory. The current draft in Iceland enables the outlines and components characterizing the notion of the Icelandic republic and its principles to be determined.

Those principles are separated powers and popular sovereignty. Regarding the first institutional aspect, Article 2 in the proposed constitution determines the division of powers, a legal guarantor that complies with Montesquieu's theory in his main work: *L'Esprit des Lois*.<sup>5</sup> The president only holds executive powers, while parliament holds legislative powers. The principle of the people's sovereignty (which is thoroughly analyzed in another essay in this series) is found in the Preamble and in Article 76 (universal direct suffrage for electing the president and

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<sup>3</sup> Jean-Jacques Rousseau, *The Social Contract or Principles of Political Right*, Paris, 1762.

See: [https://www.ucc.ie/archive/hdsp/Rousseau\\_contrat-social.pdf](https://www.ucc.ie/archive/hdsp/Rousseau_contrat-social.pdf)

<sup>4</sup>"Les Anciens appelaient République une société d'hommes libres assemblés, pour bien et heureusement vivre; (définition dans laquelle il manque, toutefois, les trois principaux points), c'est à savoir, la famille, la souveraineté, et ce qui est commun en une République," Jean Bodin, *Les six livres de la République*, Paris, 1576. English version: [http://www.constitution.org/bodin/bodin\\_.htm](http://www.constitution.org/bodin/bodin_.htm)

<sup>5</sup> Charles Louis de Secondat, Baron de Montesquieu, *The Complete Works of M. de Montesquieu* (London: T. Evans, 1777). See <http://oll.libertyfund.org/titles/montesquieu-complete-works-vol-1-the-spirit-of-laws>

Articles 39–41 (representation through the legislature), and also with the possibility of resorting to referenda in Articles 65, 66, and 67. And to this we should add the principle of democracy, which appears in the new constitutional text as early as the Preamble<sup>6</sup> and Article 1.<sup>7</sup> The people will participate in forming governments and policy directly through a referendum, presidential elections, and elections to the Althing, and indirectly through the Althing’s representatives. The basis of all democratic republics is universal suffrage, which appears in the proposed constitution and is applied without distinction to Icelanders over 18 and resident in Iceland at the time of an election.<sup>8</sup>

The principle of indivisibility of a republic is closely linked to the republican aspect; indivisibility is an old principle that has been maintained throughout the ages. In ancient Rome the idea that the essential condition for the duration of a republic was limiting the size of its territory began with a law for the barbarian kingdoms under Roman rule, the “*lex romana Visigotorum*.” Territorial indivisibility is still a major principle. That the notion of indivisibility should be linked to the concept of a republic falls within a certain logic, if we see there a way of saying that indivisibility is the public’s business, in the primary meaning of *Res publica*, the public thing. It appears among the first dispositions of several constitutions: Italy 1947 (art. 5); Spain 1978 (art. 2); Portugal 1976 (art. 3); Norway 1814 (art. 1); Finland 2000 (art. 4); Luxembourg 1868 (art. 1); Romania 1991 (art. 1); Czech 1992 (art. 11); Cameroon 1972 (art. 1.2); Algeria 1996 (art. 1); the Congo Republic 2002 (art. 1); Turkey 1982 (art. 3).<sup>9</sup> As far as Iceland is concerned, this principle has been present in its current constitution since its adoption, and the fact that the draft reaffirms it is important for the Icelandic identity formed by a legal unity. This principle appears in this constitutional project, reinforcing in this way the latter’s conformity regarding republican values.

Article 6 added with the preamble underlines the principle of equality, liberty, and non-discrimination stating that “all people shall be equal before the law and enjoy human rights without discrimination with regard to gender, age, genotype, residence, financial position, disability, sexual orientation, race, opinions, political affiliation, religion, language, origin, family or position in other respects.” The human rights in the proposed constitution are reinforced by a provision that did not previously exist. Compliance with the UN Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the Charter of Fundamental Rights of the European Union, and the jurisprudence of the European Court of Human Rights enables this proposition to broaden its republican and democratic principles.

But the republic should not be limited to a body of republican values and principles. Within its historical sense, it also expresses a collective ambition, a principle of action, a move towards progress. The republic should shoulder a collective project, otherwise it will end up corrupted and withered. The notion of republic is related to the general will, the idea of conquest, of looking for the common good. Therefore the very fact that this proposed constitution comes from the people stamps it as conforming to the republican principles and gives those a new momentum and renewed vigor.

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<sup>6</sup> “Iceland is a free and sovereign state which upholds the rule of law, resting on the cornerstones of freedom, equality, democracy and human rights.”

<sup>7</sup> “Iceland is a Republic governed by parliamentary democracy.”

<sup>8</sup> Article 41.

<sup>9</sup> Félicien Lemaire, *Principe d'indivisibilité de la République. Mythe et réalité*, Presses universitaires de Rennes, coll. “L'univers des normes,” 2010.

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This draft correctly complies with the republican principles that are already present in the current constitution, but it also emphasizes and reinforces them. This draft is in absolute and clear conformity with republican principles.

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