



THE COMMISSION
ON STRENGTHENING
LOCAL DEMOCRACY

EFFECTIVE DEMOCRACY: RECONNECTING WITH COMMUNITIES



"It always seems impossible until it is done".

– Nelson Mandela



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INTRODUCTION

BY COUNCILLOR DAVID O'NEILL

Next month people in Scotland face arguably their most significant political choice in centuries. On all sides we have been invited to think again about the kind of country we want to be. Where should power lie? What values should underpin our future?

The debate has been intense and passionate. But, whatever the outcome, I believe that the vote on Scotland's constitutional future is only one chapter in Scotland's democratic evolution. There is another critical debate to be had with each other, whether Scotland decides to stay within the current political union or chooses independence.

That debate is about how we do democracy here in Scotland, and whether the way in which we do it now needs to be transformed forever.

Having served as a local councillor for more than three decades, I can see that our democracy is under real pressure. Just look at the warning signs - participation in elections has been falling for decades, and disaffection with politics is widespread.

As the President of COSLA, I decided to explore what might be going on. Late last year I convened an independent Commission to examine the evidence and engage widely about what should change.

In our interim report we showed that over the decades Scotland has become perhaps one of the most centralised countries in Europe. We built that view based on an open conversation with thousands of people across Scotland, the UK and Europe - all of our evidence is publicly available at www.localdemocracy.info. With little influence over what happens and how it is paid for, is it any wonder that fewer and fewer are taking part in democracy at all?

Today, the debate is not about whether Scotland is out of step internationally. Instead, it is between those who think that this is acceptable, and those who believe that it must change.

“Scotland has a choice to make, not just about its constitutional future, but about the way that it does democracy”.

But what should democracy be like in the years to come? Regardless of the outcome, are we prepared to let the Referendum perpetuate old ways of thinking?

This is not just about making democracy stronger, vital as that is. It is also about improving lives in the best ways possible. While outcomes have got better for many in Scotland, over the past 50 years the gap between the best and worst off has widened. For life expectancy alone, in some parts of the country, many can expect to live well into their 80s or beyond. Only a few streets away, some will be lucky to ever draw a pension.

When I first became a local councillor in 1980, I was shocked that in my own part of Scotland the gap was 14 years. Despite the best efforts of the whole of the public sector, the gap has increased to 24 years. Quite simply, we are depriving communities of their enormous potential and if we don't do something soon, inequalities in Scotland will start to overtake some third world countries.

No-one in Scotland set out to create these outcomes, but they are unacceptable in a modern democracy, and they have to change. Our focus is therefore not on any particular Governments or Ministers, but on tackling a 50 year trend in how we 'do' democracy here in Scotland. We have tried taking power to the centre and it has just not delivered. It is time for a much more local approach.

That is why a major transformation in local democracy should appeal to anyone committed to better and more equal outcomes for everyone in Scotland. So it's no surprise that there is a growing buzz about what might be achieved. Up and down the country, people and organisations are recognising that the top down approach has had its time.

It is going to be a tough journey; after all, everyone who is active in public life today has only ever experienced the current way of working. Yet in many ways, Scotland's historically local mind-set is already trying to break free. There is cause for optimism in the success that islands communities have had in identifying new ways of responding to their unique circumstances, and in the 'Clyde built' City Deal that is handing funding and power to councils to grow local economies and jobs, along with a great opportunity to ensure that these

empower communities. Power and resources are also being devolved in many parts of Scotland, and the recent Community Empowerment and Renewal Bill is a refreshing decentralising step. I also know that the quality of relationships between local and national government has largely been more positive and productive than in other parts of the UK. It's good news, too, that Scotland's political parties are putting their weight behind a more local future. For the first time in decades, there is a feeling that it is time to take a step back and think about the reform that will make a real difference to Scotland's communities.

However, Scotland cannot deliver on all that potential without radical new thinking. There now appears to be agreement that Scotland should have substantially more powers. But simply repositioning control nationally in Edinburgh or London will not tackle the complex opportunities and challenges that communities face. The shift needs to be decisive and far-reaching, not a trickle of power to councils, then to communities, all controlled from above.

In most of Europe, communities are already in charge of their spending, their services and how they are governed, but in Scotland that kind of thinking is still often viewed with suspicion or even hostility. Our report, we hope, will help bring in a new tide of local democracy that can wash that thinking away.

It is a prize worth fighting for. Achieve it and we can rebuild our current democracy and address the huge social and financial costs of persistent inequality in this country. Those costs affect every community, and so closing the gap will benefit everyone.

The Commission on Strengthening Local Democracy has set out evidenced, rational, and radical conclusions that can kick start the change. They come as a package, but while some can be started quickly, they will not solve all of the issues on their own, and all of them will require perseverance to think through, develop and deliver.

“If you agree with us, join us in building a better democracy”.

We will get the democracy we allow; the current period of debate and creativity is a real opportunity to get the democracy our communities deserve. Let's not forget that it is local people that have fired the debate about Scotland's constitutional future, and their power must not default back to the centre. That is why I want one legacy of this Commission to be an alliance of voices that are ambitious together, and that together can make change inevitable.

I want to work with anyone who is similarly interested in that task, and I would be delighted to hear your views.



Councillor David O'Neill
Chair of the Commission



LOCAL DEMOCRACY MATTERS

Communities are at the very heart of a strong democracy. Yet over the last 50 years, Scotland has become one of the most centralised countries in Europe. We believe that matters, and that radical change is worth fighting for.

All of us in Scotland share many common goals. We want the places where we live to be safe and healthy, socially vibrant and environmentally sustainable, and offer good, decently-rewarded jobs. We want older people everywhere to enjoy a fulfilling old age; the young to reach their full potential; the vulnerable to be protected.

The case for much stronger local democracy is founded on the simple premise that it is fundamentally better for decisions about these aspirations to be made by those that are most affected by them. Scotland is a diverse country: what works in

our cities will not suit remote rural communities, just as the priorities in our towns will not be the same as those on our islands.

Put simply, strong local democracy means putting local people in charge of their own lives, and leaving national government to focus on outcomes for the whole of Scotland, and the rights that all communities should enjoy.

Indeed, all of our evidence suggests that giving people a real say over what matters to them is the key to addressing poor electoral participation and revitalising the whole democratic process.

“Many people are understandably losing interest in a democracy over which they feel little influence, where decisions are taken far away from where they live, and where it is hard to see the link between what they pay and what happens locally”.

We have also heard that relying on national governments for direction and funding has contributed to a feeling that local government is accountable up to the centre, rather than out to its communities. That is not to underestimate the innovators who are demonstrating that there are new and better ways to participate in democracy. But the reality is that all of these still operate

within a system that tends to retain rather than share power. Our view is that if we want to truly empower local choice and control then we need to make democracy local by default.

In principled terms alone, the case for local democracy is therefore clear. But our argument is that for practical reasons too, Scotland needs stronger local democracy like never before. Resources are diminishing while demand for public services is rising fast, and increasingly difficult choices are required about what to do more of, less of, or differently – and about the resources to pay for these choices.

Until now, it has usually been hard for citizens to have a real say in that process. The evidence we received suggested that the prevailing logic has been to take decision making to the centre. For more than 50 years, Scotland has therefore seen power and resources become more and more distant. The perceived solution to better, more efficient and effective services has been that bigger is better, and that the centre always knows best, even though inequalities in Scotland have widened. But we also heard that the ‘dis-economies of scale’ of these big standardised services have meant that they have struggled to resolve major social challenges and the massive costs that they generate. Our sense is that the only way we can get better value from public resources is to let people and communities in.

We’ve heard from people across Scotland, the UK and Europe about why local democracy matters. Our work is about them, and the ideas they’ve provided.

You can find all the evidence, and watch webcasts at:

 www.localdemocracy.info/start-the-debate

THE CHALLENGE OF STRENGTHENING LOCAL DEMOCRACY

As a Commission, we therefore want to harness the power of a more local way of doing things, and rebuild participation in democracy in this country.

However, it's quite possible that you will find that idea preposterous. Even if you believe in devolving power to local people, it may feel so difficult that you might wonder how it could ever be achieved.

You would not be alone. While local democracy is often seen as the 'unfinished business' of devolution, there are powerful influences the other way too. Some politicians may feel that controlling the levers of power is the only way to carry out their mandate. Officials may fear that adopting local solutions is less efficient than a one size fits all approach. Communities may be worried about the implications of delivering services in different ways across the country, or question whether local democracy even matters when all the big decisions get taken nationally anyway.

These ways of thinking have become deeply ingrained in our society and culture. They are now so pervasive that any challenge to them is often condemned as hopeless idealism or even dangerous heresy. We've heard this described as a sort of Stockholm syndrome; after decades of power ebbing away, for many people it has become increasingly inconceivable to think that local communities could be in charge of their own affairs. Indeed, many people feel that democracy is so remote that they have disengaged altogether. Perhaps it's no surprise that less than 4 in 10 people now therefore think it is worth voting

on how their community is run. It seems that as a nation we find it very hard to break free from the top down centralist mind-set.

There's a danger that this report will go that way too. Rather than ignite a radical new approach to democracy, some people will choose to write that opportunity off. We may hear that the public doesn't care about local democracy, that the only way to improve outcomes is through ever larger services, or that a few tweaks here and there to some parts of the current system should be enough. It would not be the first time that attempts to strengthen local democracy have met this response.

Faced with that kind of challenge, it is easy to see why fundamental change is often traded away for more modest ideas that can be digested within the current system. Indeed, as a Commission we have had to resist our own eagerness to feel like we are taking action now by falling back on the usual wrangling over which institutions to empower, where boundaries should be drawn, and a top down view of how all this should operate.

Quite simply, that will not deliver the changes that Scotland needs. Our aspiration is about much more than just negotiating some short term changes that are possible now. Easy sounding fixes may look appealing, but tinkering around the edges has already led to uneven thinking about local democracy and, in our view, is likely to do little or nothing to fundamentally transform it in the future.

“If we are serious about radically strengthening democracy, we need to be equally serious about how we achieve it”.

As a Commission we have taken a different approach. Those seeking a simple blueprint for what strong local democracy 'is' will therefore be disappointed by this report. We make no apologies for that. The truth is, that kind of thinking has resulted in the majority of decisions that affect local communities becoming distanced from communities themselves, and in democratic participation becoming less and less important in the day-to-day lives of local people. To us, building a strong democracy is a journey, and the first step is allowing communities themselves to fully participate in decisions about their own governance.

As a Commission, we have set out the building blocks that we believe can help drive that change. As a country, if we are prepared to take those bold steps forward, we can start to transform our democracy, and improve outcomes for everyone in Scotland. If we simply revert to type and try to take change forward after the Referendum from the top down, not only will we further weaken democracy, but we will continue to under-deliver for our communities. As a nation, we cannot afford for that to happen.



SUMMARY

This report is about empowering communities, and putting the future into their hands. There is a simple idea up for grabs - that democratic power should be built from communities up, not drip down from above.

We have found many ways to begin the change. The purpose of this section is to distil our analysis down to the key preconditions that we believe are vital to strengthen and transform participation in Scottish democracy.

As a Commission, we considered at length whether we should make definitive recommendations at all. If Scotland is to rebuild its democracy from the 'community up', does a national Commission have the right to make recommendations about issues that should be resolved by communities themselves?

For that reason, we have not set out to prescribe everything that should happen. The kind of change we are talking about would allow the right local solutions to evolve rather than be designed top down. Instead, we have focused on what is needed for that process of evolution to be possible at all.

STRONGER DEMOCRACY IN SCOTLAND: KEY PRINCIPLES

In the end, all of our thinking has come down to seven fundamental principles that we believe must underpin Scotland's democratic future.

These principles may seem abstract, self-evident or simply anodyne, but we believe that if they are treated with respect and explored fully, they provide a powerful basis for renewing Scottish democracy. We have also concluded that the evolution of Scotland's democratic system across the past 50 years has more or less undermined or inverted all these principles, albeit often with good intentions.

The principle of sovereignty has been so inverted that it is now routine in public policy to talk about governments and local governments 'empowering' communities rather than the other way round. The principle of subsidiarity has been undermined by the progressive scaling up of local governance, and central control of local resources and functions. The transition from over 200 local councils in 1974 to only 32 'local' councils in 1996 is one of the most radical programmes of delocalisation that we can identify anywhere in the world. Moreover, Scotland's local democratic structures can be changed at will by any national government with a majority. That the Scottish Parliament is in exactly the same position with respect to Westminster illustrates how 'top down' the whole framework of democracy is.

SEVEN PRINCIPLES FOR STRONGER DEMOCRACY IN SCOTLAND



1. The principle of sovereignty:

democratic power lies with people and communities who give some of that power to governments and local governments, not the other way round



2. The principle of subsidiarity:

decisions should be taken as close to communities as possible, and the shape and form of local governance has to be right for the people and the places it serves



3. The principle of transparency:

democratic governance should be clear and understandable to communities, with clean lines of accountability



4. The principle of participation:

all communities must be able to participate in the decision making that affects their lives and their communities



5. The principle of spheres not tiers of governance:

different spheres of democratic governance should have distinct jobs to do that are set out in 'competencies', rather than depend on powers being handed down from 'higher' levels of governance



6. The principle of interdependency:

every sphere of governance has to support the others, and none can be, or should seek to be, self-contained and self-sufficient



7. The principle of wellbeing:

the purpose of all democratic governance is to improve opportunities and outcomes for the individuals and communities that empower it

It is because we want the sovereignty of local people to matter that we have emphasised rebuilding democracy around legally, and preferably constitutionally enshrined local competencies, rather than relying on powers being handed down from the centre. We are equally clear that this is insufficient if it stops at local government: subsidiarity is ultimately about communities' right to be full partners in local democracy and to be actively involved in local decision making about the places in which they live. However the scale of most local governments in Scotland today creates an enormous gap between the local level of representative democracy and communities, and this frequently makes participation in democracy difficult. As a country our 'local' governments are not local by international standards, and the Commission is clear that this needs to change.

This is made worse by the fact that many locally delivered public services are not locally democratic at all, and cover very large areas and populations too. The local public service landscape includes locally elected councils, but also a plethora of public corporations, agencies and quangos that are ultimately accountable to Scottish Government rather than local communities. That not only fundamentally limits subsidiarity, but it also undermines the principle of transparency. After all, it is at the local level, in the places where people live, that people have most contact with services and most opportunity and motivation to share in their governance. Yet many people have little idea about who does what locally, or about who is democratically accountable. This combination of scaled up public authorities

and fragmented roles and accountabilities is both bad for local democracy and bad for joining up services to meet the needs of individuals and communities.

A simple more transparent governance of local services is needed and, in line with the principles of subsidiarity and transparency, and to help integrate public service delivery, we have concluded that all locally planned and delivered services should be under a single democratically elected public body. However, integrating governance will only build a stronger 'local' democracy if the current geographic and population scale of local governments is reduced: Scotland needs more, smaller scale, local governments with responsibility for all locally planned and delivered services. From the outset, these must also be required to adopt shared service delivery arrangements where that is locally appropriate and will reduce costs or improve outcomes.

However, this is not enough to create real local choice and accountability. Across Scotland, just 18% of local income is currently raised through local taxation. Our view is that this is not a local, or a democratic basis for democracy and that, in line with elsewhere in Europe, local taxation should fund at least 50% of local income in the future. Our aim is not to promote more, or less, taxation and spending: it is simply to make sure that the decisions about these issues are made locally. Real local financial powers would allow communities to reduce tax and spending if they wanted to, not just to raise it. That would be their choice where currently they have no choice at all. We also entirely accept that national grant support will always be necessary to equalise variable local tax bases, variable costs of providing services, and variable patterns of need and demand.

We therefore believe that reducing the scale of local governments and making all local services locally accountable are necessary preconditions of a more vibrant, participative, local democracy. However on its own, that does not transform democracy in Scotland either. The right of individuals and communities to local democracy needs legislative expression through a clear duty in law to support and resource participation in decision making. Democratic innovations such as deliberative assemblies, participatory budgeting and citizen scrutiny of public services should also become the standards by which this is delivered in Scotland.

Given the experience of the last 50 years, significant investment and energy is also going to be needed to rebuild the eroded capacity and confidence of communities to participate effectively, particularly amongst those that are furthest from decisions at the moment, and to learn from countries where that is happening already.

Finally, our guiding principles of interdependency and wellbeing are captured in a key point. The Commission has pursued its work with two key priorities in sight: to transform participation in democracy, and to improve outcomes and reduce deeply embedded inequalities in Scotland. The two are closely linked in our thinking, and 50 years of centralism has failed to deliver on either.

Our interest in genuinely better local democracy is therefore not an end in itself. It is because empowering citizens, transforming trust in democratic institutions, and turning around social and political participation are the best ways to improve wellbeing and reduce inequalities for the whole of Scotland. For that to happen, local participation and elected representation both

need to prosper and fulfil their parts interdependently, rather than be seen as different standards to compete with one another.

National governments at UK or Scottish level have a key role to play; their cultures and behaviours create the context in which local empowerment can flourish (or not), and their macroeconomic and fiscal roles have a critical impact on inequalities and outcomes. Based on the international evidence, our conclusion is that outcomes are therefore best, and inequalities lowest, where positive macroeconomic and fiscal policies interact with highly localised, empowered and participative democratic arrangements. In our vision for democracy, both are necessary.

For example, highly localised and participative democratic structures in the USA interact with largely regressive fiscal and macro-economic policy. The result is very high inequality and very poor outcomes for a part of the population. In the UK, many approaches have offered positive fiscal strategies but a centralist democratic culture. Although some key targets have been met, such as a short term reduction in child poverty, wider inequalities of outcome have not significantly altered. The Scandinavian countries offer the best example of positive macro-economic and fiscal policies interacting with highly localised and participative democratic structures, and they have consistently had better and more equal outcomes, a more sustained pattern of economic growth, and fewer recessions than other developed economies.

In other words, localised, empowered and participatory democratic arrangements are all critical factors in improving people's lives and tackling the challenges and opportunities that Scotland faces. But they are not the only

factors. National policy has to be right for local democracy to fulfil its potential, and local democracy has to be right for national policy to have impact.

At the moment, even decentralising initiatives take place within a structure that requires the right relationships and context. This is as true of how local government relates to community councils and civic institutions as it is of national government. The issue for the Commission is not whether national and local governments are well intentioned in this regard. Relationships can be more or less empowering across Scotland, but the point is that they are not a basis for guaranteeing constitutional rights, financial independence and the right to make autonomous choices in the future.

Change therefore has to happen at all levels of our political system and for that reason, some of our recommendations relate to national government, and not simply to local democratic arrangements.

RECOMMENDATIONS

MAKING LOCAL DEMOCRACY LOCAL

- The Commission sees the current scale and functions of elected local governments in Scotland as limiting the possibility of participative local democracy and therefore recommends a fundamental review of the structure, boundaries, functions and democratic arrangements for all local governance in Scotland.
- We recognise that recommending another review may be seen as a fairly limp response to our analysis. We think that perception would be misplaced for two reasons. First, all previous reviews of public service structures and governance have

been fragmented and focused on particular services and sectors. As the issues of local democratic accountability and participation cut across all services, the review we propose is holistic and aimed at creating a system of local democratic governance that meets the seven principles that we have outlined, including the future role of existing community governance bodies such as Community Councils.

- Second, in line with our commitment to building democracy from communities up, the Commission does not think it can or should make prescriptive recommendations about the detailed shape of the future system. That needs to be determined by people and communities across Scotland. We therefore recommend that this review should be based around a participative, deliberative process, and should be focused on building momentum and consensus, not just analysis.
- Such a process needs to be very carefully designed, properly resourced, and given the time it needs to be effective. It is in essence a 'stocktake' of democratic governance in Scotland. If the Referendum decision is a 'yes', this would have to happen anyway. The Commission's view is that it is equally essential if the Referendum decision is 'no'. We therefore recommend that this review is jointly commissioned by Scottish Government and local government together, and fully resourced to operate on a participative and deliberative basis: put plainly, a national conversation throughout communities across Scotland about the future shape and character of our democracy.

Although we do not seek to prescribe the detailed shape of the review, we suggest four guiding principles:

- That time needs to be given to allow this to be an iterative process of engagement, analysis and reengagement with communities. We believe that three or more cycles may be necessary to build confidence and consensus around conclusions. We therefore recommend that the review should make recommendations for implementation following the 2020 Scottish elections, rather than be rushed through more quickly.
- That the review should focus on building debate, mapping positions and perspectives, and creating consensus rather than on 'taking evidence'.
- That particular care should be taken to ensure that groups who typically face barriers to participation are encouraged and supported to take part. We recommend that specific provision is made within the review to ensure that the diversity of all of Scotland's communities and people living in areas of multiple deprivation are supported and resourced to participate.
- That the review should map its conclusions to the principles laid out above and, if and where it departs from them, it should fully explain why.

CREATING LOCAL TAX AND SPENDING CHOICES

The most singular limitation on local democratic choice identified by the Commission is the lack of fiscal powers at local level. This seriously limits the tax and spend choices available to local citizens, and with no real choice available to communities it also holds back their participation.





This report is only a starting point and we know that there is more to discuss.

If you would like to get involved, you can join the debate at:

 www.localdemocracy.info/discuss

The Commission therefore recommends:

- That local people should decide on levels of local taxation in relation to the services they want; it is completely inconsistent with a strong local democracy for this to be determined or enforced nationally.
- That local government should have full local control of the whole suite of property taxes (Council Tax; Business Rates; Land and Property Transaction Tax) and the freedom to use these in ways that suit local circumstances.
- That local governments, accountable to local people, should have a general competence to set and raise new taxes, subject only to not duplicating taxes already set elsewhere.

SECURING LOCAL DEMOCRACY

- The Commission recommends that all of the principles and provisions of the European Charter of Local Self Government be adopted into law in Scotland in order to enshrine subsidiarity and the competences of local governance. We also recommend that an independent Commissioner is established to scrutinise the compatibility of UK and Scottish Government policy and practice with the law. We further recommend that Ministers are legally required to undertake 'subsidiarity impact assessments' on national policy and legislation.
- As fiscal and macro-economic policy directly affects people's life opportunities and outcomes, and their ability to participate, the Commission recommends that an independent Office of Wellbeing, akin to the Office of Budget Responsibility, is established to independently monitor and report on the wellbeing impacts of fiscal and macro-economic policy. 'Wellbeing' would be defined in social, economic and environmental terms, with a

particular focus on inequalities of wellbeing. We believe that this would enhance transparency and accountability for national decisions at local level.

- Within this framework, the Commission recommends that local government in Scotland, and all other public authorities providing local services, are given a clear duty in law to support and resource community participation in all local decision making about tax, spend and service delivery priorities. We further recommend that this general duty is supplemented by a specific duty to ensure that communities that are likely to face barriers to participating are supported and resourced to do so.
- The Commission recommends that these proposals are treated as an integrated package that provides the necessary legal framework for stronger local democracy in Scotland. They cannot be 'cherry picked'.

MAKING PARTICIPATION WORK

We recognise that the practice of participation has been neglected for much of the last 50 years, and that simply changing the legal framework, though important in itself, will not alter that. If we believe in participative democracy then we will need to invest in it.

- The Commission recommends significant re-investment in community development services in the public, community and third sector, and that particular priority is attached to supporting communities of need, interest and place who are likely to face barriers to participation.
- We further recommend that a Centre for Participatory Democracy is created in Scotland to consolidate the expertise we already have, capture effective approaches

from elsewhere, and use these to support the knowledge and practice of national government, local government and public agencies.

We do not believe that local democracy can be transformed without the significant structural, spatial and legislative changes proposed above. However, they should not become excuses for inaction in the present. Experiments in decentralisation, participatory budgeting, citizen scrutiny, and the co-design and co-production of services are already going on across Scotland. They are often patchy in coverage and variable in quality, but there is every reason to build on them and improve them right now. For that reason, we recommend that national and local government, and public agencies in Scotland begin to behave as though the framework of law set out above is already in place. Indeed, taking action now will force all those with an interest in strengthening democracy to address the tensions in the current system, and start to clarify the sequence of changes that is needed. It will also mean that wider support and capacity for participation, as well as developments such as the 'Centre for Participatory Democracy', can grow out of, and be shaped by, the practical needs of the system as it changes.

We recommend that this includes:

- Immediately putting in place deliberative arrangements that allow communities to engage in the development of policies and strategies that will affect their area and their wellbeing over time.
- Implementing arrangements for participatory budgeting that go beyond a consultation on predetermined options for budget cuts, and instead focus on local tax and spend priorities.

- Ensuring that all citizens are able to be involved in the scrutiny and improvement of public service performance so that accountability to local people is achieved on their terms.

- Local governments immediately reviewing and strengthening their arrangements for decentralisation created under the 1994 Local Government in Scotland Act.

The Commission's view is that these preconditions, alongside the other recommendations set out in this report, are an essential basis for creating a stronger local democracy in Scotland. All of our conclusions draw on the many creative contributions that individuals and groups have made to the Commission. However we recognise that not everyone will agree with them. We will welcome being tested and challenged, and alternative views being put forward: after all, that is what participation in democracy is about.

The rest of this report provides the evidence and analysis that has underpinned our thinking. The next section looks at how Scotland can get back to truly 'local' democracy and the changes to the scale, functions and duties of local governance that would be necessary to achieve this. We then examine how genuine local choices about the balance of tax and spending on local services can be created. Our final section explores how to improve and deepen participation in local decision making.

BRINGING DEMOCRACY CLOSER TO PEOPLE

Making Scotland a fairer, healthier and wealthier place will not be achieved without a democracy in which people can see how decisions are made, and where communities are active participants in that process.

Democracy, by its very definition, involves the whole population. We believe that communities give institutions power, and for democracy to have true meaning and value it has to be owned by communities. Yet as a country, we have found that our prevailing culture at all levels of government has not been built around putting communities in control, and that a much lower proportion of the population takes part in the democratic process in Scotland than elsewhere in Europe. The Commission's work is about re-imagining that experience of the world, and setting out on a fundamentally different journey.

We want to begin our report by thinking through this new culture of subsidiarity, and what it would take to rebuild democracy so that it delivers outcomes for Scotland in ways that make sense locally.

UNDERSTANDING THE PROBLEM

Our starting point is that what happens today will not deliver the kind of democracy required in a much more local future. As a Commission, the evidence we have reviewed has given us a clear sense that both the scale and style of decision making in Scotland has seriously weakened the electorate's democratic muscle. The most recurrent evidence we received was around the predominately very large scale and 'non-local' character of our local democratic arrangements. Scotland has the lowest ratio of councils to population in Europe, the lowest number of elected members to population in Europe and the largest average geographical scale of local governments in Europe. While there is a closer fit in some parts of the country than others, in anybody else's terms Scottish local democracy is not 'local' at all. This was not the case 50 years ago.

Our interim report showed that although local government has quite wide ranging functions in Scotland, these have also markedly reduced across the period with further education, police, fire, community health care and public health,

and water services all being removed across the past five decades. As importantly, a heavy framework of law and guidance determined by the UK and Scottish Governments means that there has often been little room for local creativity.

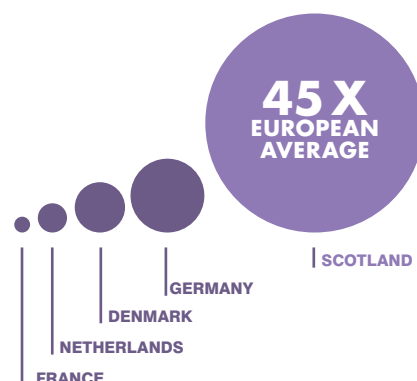
We recognise that the provision of public services changes and will continue to evolve in future. However, we believe that these factors have combined in ways that are entirely unhelpful from the perspective of a healthy participatory and representative democracy in Scotland, and completely incompatible with the principle of subsidiarity that successive UK and Scottish Governments have openly endorsed. We are clear that they have to change to (re)empower local people and local communities to have an active, rather than passive, role in their own governance.

The international experience we set out in our interim report is compelling here; where local democracy is truly empowered, its structures go on to empower those around them. When local democracy is regarded by citizens as important in their lives, then those citizens also tend to be more engaged and active in building a strong community.

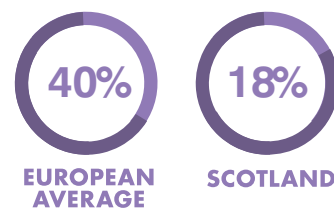
LOCAL GOVERNMENT IN SCOTLAND AND EUROPE

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AVERAGE SCALE (Km²)



LOCAL TAX REVENUE AS % OF TOTAL REVENUE



AVERAGE POPULATION



Although there is not a definitive link, in more centralised systems like the UK and Scotland, citizens have lower confidence in their ability to shape outcomes, and are less likely to engage in the democratic process at all.

A NEW WAY OF THINKING

If we are to have new arrangements for democracy then we need to understand the mind-set that has led to the current situation, and radically rethink it.

That culture has three key characteristics that we want to challenge and change. First, it was *technocratic and bureaucratic* rather than democratic and based on trying to get economies of scale and standardisation rather than responding to local diversity. Second, its *design principle was top down* and largely thought of local governance as a way of delivering nationally decided policy. Third, it *treated citizens and communities as recipients of services*, rather than as participants and co-producers of outcomes and democratic governance.

We are clear that this culture became characteristic of local as well as national government. Far less decentralisation of political structures and empowerment of communities took place than was actually possible. Community Councils and the third sector were often seen as local delivery mechanisms rather than as independent partners. Concern for efficiency, and economies of scale, often prevented the localisation necessary to be effective through engaging and working with communities on their own terms. Decisions about the design and delivery of service were often national and local government down, rather than community up.

Our view is that this has not worked at all in democratic terms, and has failed to reduce inequalities and improve outcomes as fully as possible. It has produced substantial alienation from the democratic system, and further disempowered communities that had already become economically marginalised. We believe that it has also created a sense of dependency on government, rather than support for people to participate in how they want their place to be.

All of our proposals therefore consciously seek to challenge the thinking that has made this possible. We have found four focal points for reform:

DEMOCRACY FROM THE COMMUNITY UP, NOT TOP DOWN

As a Commission, we want to shape a long term future where democracy is rebuilt around subsidiarity and participation. By that we mean that empowerment is from the community up, not national governments down, and good reasons have to exist if decisions are to be taken elsewhere. These might include the need to share assets across populations, or the need to ensure that people's rights are upheld consistently. However, where such reasons exist, the principle must still be to link these back to local communities rather than to national government.

COMMUNITY ACCOUNTABILITY FOR ALL LOCALLY DELIVERED SERVICES

We read our commitment to subsidiarity to mean that all services that can be locally planned and delivered should be locally governed and democratically accountable to local communities. The strategy of previous decades has been to seek efficiencies by creating bigger and bigger services, controlled away from where most people live. Our view is that better and more

efficient outcomes would be achieved by integrating locally. Centralisation has fragmented service arrangements and patterns of accountability; localisation would improve integration and simplify accountability for communities.

VARIATION INSTEAD OF ONE SIZE FITS ALL

To be effective, the scale, functions and powers of local government must not only be fit for purpose, but also fit for the context in which they operate. A large city has quite different requirements than a remote rural area. That is why decentralised systems in Europe combine large scale, strategic city governments with very small scale rural local governments. They often have different functions, powers and tax bases.

We have concluded that 'asymmetry' is therefore a vital dimension of subsidiarity: it means having the right powers and functions to get as close to communities as possible. In other words, subsidiarity is the opposite of uniformity and standardisation, and diversity and difference are positive features of democracy not something to be eliminated.

In our Interim Report, we explored why local democracy is under pressure in Scotland.

You can find out why a radical new way of thinking is required by downloading a copy at:



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DECISION MAKING AT THE RIGHT SCALE

If the principle of subsidiarity is to mean anything, then only communities can decide on how they want their local governance to change. However, the scale of local governance should minimise the gap between representative and participatory democracy. The evidence is that this comes together best with relatively small scale local governments. Where larger scale units are needed, for example in relation to city governance, these should still be designed to maximise participation through appropriate local political and management arrangements.

REIMAGINING LOCAL DEMOCRACY

As a Commission, we wanted to explore the kind of steps that could underpin these ideas. We faced the option of trying to make the existing system work more effectively, or exploring new ways of organising it. In the end, we have realised that both are required. We need a process of change that can bring democratic decision making much closer to local people, and we need to take steps now to confront and challenge a culture of centralisation at national and local level and deliver progress towards that vision.

Change is therefore essential, but it is a different kind of change from the top down kind that has been tried in the past. The irony of trying to specify the future of local democracy on behalf of communities is not lost on us, and history tells us that doing so would probably only serve to violate people's sense of place once again.

To us, that also means that change has to be an evolutionary process shaped by local needs and priorities, not a big bang, and it has to build progressively from where we are now.

There is no one size fits all model because the form and shape of governance is a local means to a local end; it must happen in ways that let people take control of what it would take to build more prosperous and fairer communities.

However, we believe that evolution should be guided by two priorities:

SCOTLAND MUST END THE CULTURE OF 'SUPER-SIZING' LOCAL DEMOCRACY

As a Commission, we did not start with any assumptions about the 'right' size of local governance, or the powers that they should exercise. Nevertheless, the average scale of local governments in Scotland is huge by European standards: 45 times the average. For example, in France the average local government covers 15 square kilometres, in Germany 532, in Denmark 440, but in Scotland 2449 square kilometres. The average population of a local government in Europe is under 20,000 and, if the other UK countries and Ireland are excluded, no other country has an average above 50,000. Scotland has an overall average population of around 165,000 per local government.

Clearly this needs to be read in context. Many very small local governments in Europe have limited functions and service responsibilities, and simply replicating their small scale would not improve the accountability of major services to communities (although the Scandinavian countries offer good examples of combining small scale and significant functions). Much of Europe also has more than one tier of local government, and the tier closest to communities often has more limited responsibilities. In addition, small scale local government does not in itself empower democracy without strong fiscal arrangements. In most of Europe, even small local governments raise a far higher

percentage of their income locally than in Scotland.

The key issue is that the 'super-sizing' approach to democracy in Scotland has had its day. 'Scaling up' has significantly altered the relationship between local communities and their local governments, and created a substantial gap between representative and participatory democracy, despite attempts to bridge the gap through Community Councils and other local approaches. As a result, the connection between local government boundaries and people's sense of where they live, has been broken. Local government decision-making is often seen as remote and detached from the people affected by it, and truly local accountability has been weakened by the removal of functions from local democratic control, national prescription and limited fiscal powers.

While the size of local governance, and the way in which it operates, would of course be a matter for communities themselves, local democracy that works elsewhere operates much more closely to communities. In conceptual terms, the idea that in Europe local communities of 50,000 or less have their own highly functional local democracies, supported through appropriate sharing and joining up of services, is a strong lesson for Scotland.

DEMOCRACY MUST BECOME LOCAL BY DEFAULT IN SCOTLAND

Scale alone does not put accountability for local services into the hands of communities. We have heard that when services are directed and funded from the centre they have a tendency towards uniformity rather than local circumstances.

Our evidence suggests that services that are driven by local priorities and relationships have greater potential to improve outcomes, break down



barriers, and make the best use of resources.

In our vision for a different democracy, the right place to start would be for local people and their representatives to make the decisions about all of the important issues that affect where they live. Accountability for those services that cannot, or should not, be localised would still be clearly linked back to communities.

That would turn our current culture on its head; instead of identifying which powers to hand down from the top, power would reside locally by design, and the only question would be about which services it is essential to aggregate and share from the bottom up. Our view is that approaching democracy that way round could really transform accountability and build it into the fabric of our society.

Many different options exist for taking this forward and we do not wish to prescribe any in this report. One could be a single tier system with a (much) larger number of smaller local governments responsible for all of the local services that can be governed, planned and delivered at local level. Alternatively, a two (or more) tier system could have a smaller number of large local governments responsible for large scale services, and a larger number of more local or community governments responsible at a highly local level for smaller service functions. In practice this might be the 32 council structure we have just now with a consolidated and empowered tier of 150 – 200 community governments with responsibility for local community services.

A single tier option would score well on integration as it would pull together the whole range of local public services, but there might need to be some compromise of scale if major services like education, health and social care were to be included.

A two (or more) tier option would score well on localisation for the lower tier but potentially at the risk of it being seen as less important and some critical services remaining remote from local choice and participation. Putting all of these factors together might suggest that a single tier, as local in scale as possible, and integrating the wide range of local public services that are currently subject to separate governance and management could become the ‘gold standard’ for the future. Simply as an indication of the kind of approach that would be comparable with effective local democracies elsewhere, a similar approach in Scotland might involve between 60 and 80 local governments, accountable for a wide range of local services.

TOWARDS A STRONGER DEMOCRACY

All of these ideas are offered as a model only. But they make the overall point that the current scale and functions of elected local governments in Scotland is limiting the possibility of participation in Scottish local democracy. The critical point for the Commission is that subsidiarity is pushed as far as it can go, and that local governance is empowered by, and accountable back to, local communities.

“We recommend a fundamental review of the structure, boundaries, functions and democratic arrangements for local governance of all public services in Scotland”.

This review should be based on strengthening local democratic accountability, subsidiarity and public service integration in order to localise and simplify how all public services are governed and accountable to local communities. Our ambition would be for such a review to create a holistic system of local democratic governance built around the opportunities and identities of different parts of Scotland. In our view this is now vital regardless of the outcome of the Referendum vote on Scotland’s constitutional future.

We recognise that this ‘stocktake’ of democratic governance will largely stand or fall on being designed, resourced, and delivered effectively. After 50 years of thinking the other way, building and deepening democracy will require substantial time, deliberation and focus. It will therefore also need to be resourced and carried out in ways that ensure that people from every background and every part of Scotland are able to participate, particularly those who are furthest from democracy just now.

Just as in Europe, questions about the right scale, coverage and functions of new local governments would need practical ‘asymmetrical’ solutions. For example, city authorities would be likely to require new levers over economic development using powers and resources currently vested in national agencies, or a central role in administering welfare. Equally, the challenges faced by Scotland’s most rural and island areas require different solutions to accommodate their remoteness and population sparsity. As the Our Islands, Our Future campaign has shown, this is likely to mean empowering communities to make decisions over the sea as well as the land. The Community Empowerment and Renewal Bill has already created a ‘right to challenge’ to take on new responsibilities where this would reduce costs or improve outcomes for communities.

We support that principle and believe that the same logic should run throughout the democratic system; including the right for local government to challenge for functions currently delivered by national agencies where it can be shown that doing so will improve local outcomes more effectively or efficiently.

We do not believe that these changes would work against efficiency; quite the opposite. To us, strong local democracy is about empowerment and decision making, not just about service delivery, and there is no contradiction in smaller local governments delivering some services themselves and commissioning others through larger shared services or the market. Indeed, the international experience suggests that the most extensive decentralisation is made possible by combining or sharing capacity between highly decentralised units of local government. In these countries, local democracy is able to operate efficiently and effectively by routinely sharing and aggregating appropriate services where that is right to meet local needs.

Bringing all locally delivered services under local democratic accountability would therefore have to happen within a clear duty to ensure efficiency, reduce costs and improve outcomes, including by adopting shared services or shared capacity where suitable opportunities exist to do so. Where appropriate locally, and with the consent of the electorate, economies of skill and scale in Scotland could therefore be gained by integrating currently separately managed and governed services under one roof, joining together with other areas to commission or share larger scale services and staff where appropriate, and aggregating functions into regional or national shared support services at the outset (possibly, for example, finance, human resources, and asset management).

Our feeling is that considerable savings would also be freed up by removing the need to bolt together increasingly complex governance and management arrangements across the maze of

different public services at the moment. In our evidence, we heard concerns about whether this retro-fitting of the system will be effective for the long term. Rather than building more and more agencies, authorities and quangos to co-ordinate different services from above, in our vision for strong local democracy, services and governance would be integrated at the level of the communities they serve.

In many ways, our thinking would also build on an existing journey in Scotland. The strengthening of Community Planning has championed the need for public services to come together to focus on local outcomes, and the creation of Health and Care Partnerships, Community Justice Partnerships, and other developments are usefully challenging pre-existing silos between different public services, though sometimes at the cost of creating organisations that lack a clear line of sight to local democratic accountability. The need for these developments suggests to us that the current architecture of public services and governance in Scotland is out of alignment. Our view is that it is time to rethink it for the future rather than simply patch it up for the present.

That said, some services for local people are not best delivered locally. For example, the Commission does not believe that hospitals could be localised, given that they are planned and operate as part of national and international networks of specialisms, and require large assets to maintain economies of skill and scale. In reality, they are nationally authorised at present and that seems appropriate. However, the creation of local Health and Care Partnerships has already created a legal and organisational boundary with hospital services, and it seems to us that there is good reason to build on this direction of travel further by making community health services and public health locally accountable, just as they were until 1975.

The Police Service and Fire Services have recently been merged into single national bodies. In our evidence, many regarded this as a striking expression of the centralist mind-set. A key task for both services now is to fully bed down new arrangements across the next period, and to consolidate new relationships and practice. The Commission honestly recognises that this poses a dilemma: the new arrangements would not have recommended themselves in terms of subsidiarity. However, we accept that the previous joint board arrangements were also flawed, particularly in terms of local decision making and accountability. Given a free hand, we would probably have sought to separate local services and functions from specialist services that were best organised at regional or national level. However we see little practical merit in inflicting serial disruption on Police and Fire Services, and think the best way forward is to strengthen local democracy within them. In particular, Police and Fire services need to demonstrate the same level of local choice and control that communities should expect of every public service, including the space for communities and their representatives to choose local priorities and co-design approaches to these.

At present, local representatives are able to scrutinise local plans for their areas, and the services have a duty to engage and consult local communities in the preparation of these. We recommend that local governments, having engaged with their communities, should also have the right to veto and require change in local plans. We believe that this is an important element in recreating and strengthening local democratic decision making and accountability, and in ensuring the interdependence of different spheres of governance.

UNDERSTANDING WHAT STRONG LOCAL DEMOCRACY MEANS TO YOU

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KEY FINDINGS

With Scotland now getting ready for more powers, local democracy must be at the heart of our new constitutional settlement, whatever form that takes. There needs to be a genuinely different approach that arrests decades of centralisation and fundamentally refocuses on bringing democratic accountability back to communities.

Based on the evidence that we have received, we believe that 'localising' local democracy and integrating all locally delivered services under local democratic control are fundamental pre-requisites for the sort of local democracy which other countries take for granted. We recommend:

- a fundamental review of the structure, boundaries, functions and democratic arrangements for all local governance in Scotland based on the principles of strengthening local democratic accountability, subsidiarity and public service integration in order to localise and simplify accountability of public services to local communities. (1)
- that this review should be jointly undertaken by Scottish Government and local government and designed and resourced to enable the full participation of communities across Scotland. (2)
- a new 'right to challenge' should run throughout the democratic system; including the right for local government to challenge for functions currently delivered by national agencies. (3)

- local democratic accountability for community health services and public health as part of the development of an integrated approach to prevention locally. (4)
- that local governments, having engaged their communities, should have the right to veto and require change in local Police and Fire plans. (5)

Putting this into practice will take time, not least because it must happen in ways that fit local communities and their priorities, rather than be imposed from above. For this to be possible at all, however, we will need to unlearn the centralist mind-set that has taken hold over the past 50 years. Much greater effectiveness could be achieved right now by recasting our thinking to become more collaborative and less adversarial at every level. Indeed, any change without a different culture may well bring about little or no positive impact at all.

Whatever the shape, strong local democracy must be about enabling communities themselves to participate, and so turning our democratic deficit into a democratic revival will require local people to be much more active in setting the agenda for their lives, and their community. Communities are not sufficiently empowered to make those choices today and so empowering local decision making is only a starting point; if nothing else followed, it would strengthen local governments but not communities too. We return to this fundamental issue throughout the rest of this report.

DEMOCRATIC FINANCIAL CHOICES

Strengthening local democracy means having the same freedom to make the local decisions about tax and spend in Scotland that already exist in other modern democracies. That does not mean paying more-it simply means the ability to choose what is right locally.

We approached the issue of finance within the same seven principles that have guided all of our work. While we have explored the extent to which communities can determine how much they are prepared to pay for the local services they receive, we are absolutely clear that improving those local financial choices does not mean higher taxes. Indeed, we found that in many international contexts communities have elected to pay less.

The evidence generated in phase 1 of the Commission's work repeatedly drew attention to the lack of choice at the moment. Scottish local governments have become perhaps the least fiscally empowered in Europe. 50 years ago they raised well over 50% of their own income through local taxation. As recently as 1998, around half was still generated this way. Today that has fallen to 18%. The average for Europe is around 40%, but for countries where local governments have the equivalent responsibilities to Scotland, the average is between 50% and 60% of income raised locally.

At the same time, virtually all taxation in Scotland and the UK is determined by central government. Only council tax (and, from April 2013, a proportion of business rates in England) can be considered local at all. By the next local government elections, the council tax freeze will have been in place in Scotland for nearly a decade, and there will not have been a revaluation of tax bands for approaching 25 years. Moreover, while non-domestic rates form a core element of the funding for local government, since 1990 they have been centrally controlled and local government's powers have been limited to collection and administration.

More recently, large scale reduction of 'ring-fencing' has given local governments substantial discretion over how to use the budgets that they are allocated. Nevertheless, in our evidence we heard that this greater discretion is also set against a framework of policies and duties that mean that in reality spending is often highly specified. We found that under the current arrangements, there are also few incentives for local communities to reap the rewards of local innovations and successes. Scotland is competing on a global stage, and in international terms, many municipalities elsewhere in the world are able to grow local economies and jobs by retaining a much greater share of the local tax base.

In other words, national governments, not communities, tend to have held the purse strings for local democracy in Scotland. The key issue is not only that this disempowers local government, but that it disempowers communities. Councils across the last few years have cut and reduced services not because local people chose this locally, but because government grants reduced in real terms and council tax was frozen. Stronger choice certainly does not imply a bigger tax burden in the

future, but we are clear that the weak links between taxation and representation today is not local democracy: the community may or may not be willing to pay a little more in return for better services, but that must be their choice.

In fact, these kinds of controls have already been found to be inconsistent with Article 9 of the European Charter of Local Self-Government, which amongst other provisions, states that local authorities are "entitled to adequate financial resources of their own, of which they may dispose freely" and to resources of a "sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of carrying out their tasks".

Instead, we heard about a dependency culture in which local government has looked to central government and the formulae used to determine grant allocations, rather than out to the needs and preferences of communities. Worse still, that creates the conditions for a cyclical blame game between councils and Ministers for what happens locally. We found much less evidence of these kinds of tensions in countries such as Denmark and Sweden, where local governments are much more financially autonomous.

The effect of this approach has been long understood. In 1976, the Committee of Inquiry into Local Government Finance chaired by Frank Layfield recommended a local approach to the level and pattern of expenditure on local services. Nearly 40 years later, and despite a series of further reviews, many of the same issues remain unresolved.

This is not primarily a criticism of successive Scottish Governments: currently, they have limited fiscal empowerment, and their allocations from Westminster have reduced as well in real terms. In turn, the UK Government's approach reflects

the present system of public sector finance. However, nothing better expresses the 'centralism' of the last 50 years than the fact that the best predictor of budget in a local council over time will be UK Treasury expenditure plans, not the priorities of local communities.

OPTIONS FOR CHANGE

The message we received was clear and unanimous: strong local democracy is a false promise without local fiscal independence, and urgent reform is needed if we are to end the current culture of dependency and transform democratic participation in Scotland.

We have not found any system where local governments raise all of the money they spend, and this would not be desirable in any case. We accept that there will always have to be national arrangements for 'equalisation' to compensate for different local levels of tax capacity, and variable costs in different parts of Scotland. Given wide variations in size, demography and other factors across Scotland, it would be impossible to provide services without this and so it is for good reasons that the principle is long established in Scotland and internationally, and enshrined in Article 9.5 of the European Charter of Local Self-Government.

However, the size of the 'fiscal gap' is unacceptably large and gives no choice about the balance of tax and spend to local communities. Our approach to fiscal empowerment is therefore set within an overall recommendation that the minimum requirement for strong local democratic choice and accountability is that at least 50% of income should be raised through local taxation.

The Commission received a wide range of proposals about how such a rebalancing might be achieved. We have distilled these into three broad options for change that are not exclusive or exhaustive. We are also aware that any new arrangements for the funding and financing of local democracy also need to reflect the job we imagine it will do in the future, and for that reason we have taken the view that each should be assessed on criteria of:

- **sufficiency** (they could raise enough to make real local choice possible);
- **efficiency** (they do not create excessive administration and collection costs);
- **equity** (they are fair and related to the ability to pay), and;
- **transparency** (people understand what they pay and what it is spent on).

The three broad options we have received evidence about are:

BUILD ON SCOTLAND'S HISTORY OF PROPERTY TAXES

Historically, Scottish local government has been financed by property taxes: the domestic rates/council tax and the non-domestic or 'business rate'. Initially, this was on the assumption that locally delivered services (water, sewerage, municipal gas supply, roads, etc.) were beneficial to property owners, but it still makes some sense. Property values are influenced by local preferences that shape supply and demand, and the quality of public services. As these values are, in part, locally generated, they still suggest some basis for local taxation.

The Commission sees this as a practical option for review subject to three conditions:

(a) That local government as a sector has autonomy over valuation methods for assessing property values. Successive governments have not undertaken a revaluation of the council tax base, which is operating using property valuations set in 1993.

(b) That local government has autonomy to set the tax rate and tax bands, where major equity issues exist with the current system.

(c) That, if local government is to be property tax based, it has ownership of all the property taxes including the new land and property transactions tax ('Stamp Duty').

Stamp duty was introduced in 2003 as a property transaction tax levied on the buyer. Since its introduction, tax rates have been set at UK level rather than according to local circumstances (and, we note, without any requirement for referenda). Amongst other tax powers, the Scotland Act 2012 has now devolved stamp duty, and we believe that, with appropriate decision making structures in place, this should be made part of the suite of property taxes that fund local democracy.

Together with council tax and non-domestic rates, if the full portfolio of property taxes was brought under local control in this way, over 60% of current spending could be funded locally, with all of the huge associated potential to promote and incentivise local business growth and regeneration, and to transform local democratic choices and priorities.



MOVE TO TAX SHARING

The tradition in the UK before and after devolution has been that each level of government has its own distinct and discrete taxes to levy. Internationally, it is common for different levels of Government to share taxes. This is done in two ways: local governments receive a fixed hypothecated share of the taxes raised by higher levels of government, or local governments have the right to locally vary tax rates set by national government (for example income taxes, purchase taxes, or corporate taxes).

We do not believe that the hypothecated share approach strengthens empowerment as rates and yields remain entirely determined by 'higher' levels of government. Tax variation, however, allows established tax collection mechanisms to be used to local effect, and means that a mixture of locally raised direct and indirect taxes is a major source of income in a number of countries with highly developed local governance.

Such variation of national taxes locally can be restricted (for example, by no more than 3% of the national rate) or unrestricted. If this option was pursued, the Commission would favour an unrestricted power to vary national rates locally as the best way to strengthen local choice and accountability.

In legal terms, there are European Union restrictions on varying VAT and excise duties within sovereign states. However, the Commission suggests that these could be addressed if local authorities were empowered to set new taxes. We explore this further below.

EMPOWER LOCAL GOVERNMENTS TO CREATE NEW TAXES

Local government already has a power of wellbeing to act in ways that improve the wellbeing of their area and its communities. However, the Act that conferred the power of wellbeing specifically excluded powers to raise additional resources. In our evidence gathering we heard about the irony of a wellbeing power that prevents local government from raising money to deliver that wellbeing.

The Commission regards this as unnecessarily restrictive and believes that the local electorate should be able to authorise their local government to create, set and collect local taxes. While the power to create small new taxes would be unlikely to generate large sums, to us there is a powerful argument for a local tax that could then be reinvested in local priorities, or used to tackle specific local issues or problems.

The international evidence suggests that many international countries operate one or more tax of this kind, including levies on tourism, betting and alcohol as part of their wider local basket of taxes. Australia, Austria, Canada, Germany and the United States already use these for a significant share of state revenues. Sales taxes are not used in Scandinavia, but contribute to local revenues in France, Italy, and Spain.

We recommend that strengthening local democracy in Scotland should include being able to explore and use local taxes, subject to the will of the local electorate. There is already permissive legislation to allow new taxes to be created in Scotland. We see no reason why local taxes, with the assent of the local electorate, could not be created at the local level by supplanting the existing power of wellbeing with a meaningful 'power of general competence'.

To address EU restrictions on varying taxes like VAT or Excise duty within member states we believe that this would need to be subject to the restriction that councils could not simply duplicate taxes already set and collected by other levels of government. For example, a 'bed night' tax levied on hotels or a luxury goods levy are purchase taxes, but separate from VAT. We believe that, for example, an alcohol or tobacco 'harm prevention' levy, separate from excise duty and decided locally in areas experiencing high levels of harm is compatible with EU law, because it would not be a variation of the national duty rates and it would have a dedicated purpose.

The final issue to resolve is about borrowing. Councils already have prudential borrowing powers and so the major restriction on their borrowing is the unpredictability of, or potential reductions in, future revenues in relation to servicing debt. Of course, if local governments were raising more of their income from local taxation then this would be easier to control locally in any case. However, it is possible that strong local fiscal empowerment will need to be supported by additional powers to address volatility in tax yields. For example, if councils raised 60% of their income through property taxes, including transactions tax, their tax yield would have sharply contracted between 2009 and 2013, and would now be gradually picking up. Councils would therefore have to be able to borrow to fund current spending during such fluctuations and a detailed assessment of future options needs to consider the empowerment necessary to do so. One option may be for local governments, again with the consent of their electorate, to raise bonds. The United States, for example, has a \$3.7 trillion municipal bond market, made up of over 44,000 state and local bond issuers.



KEY FINDINGS

The Commission sees all of these options as having merits, individually and in combination. Giving local communities the democratic power to look after their own financial affairs is fundamental to local democratic choices and participation, stimulating economies, and bring new thinking and capacity to bear on improving outcomes. We therefore recommend that:

- the minimum requirement of any options for change is that together they would be capable of raising at least 50% of income locally. **(6)**
- local government should have full local control of the whole suite of property taxes (Council Tax; Business Rates; Land and Property Transaction Tax) and the freedom to set these in ways that suit local circumstances. **(7)**
- local people should decide on levels of local taxation in relation to the services they want; it is completely inconsistent with a strong local democracy for this to be determined or enforced nationally. **(8)**
- where there is a clear community will to do so, local governments should have a general competence to set and raise new taxes that are suitable to the needs of the local community. **(9)**
- all of the above options for reform, singly and in combination, are fully reviewed. We recommend that the criteria of sufficiency, efficiency, equity and transparency are central to that assessment. **(10)**

Our remit has not been to assess the technical operation of these options, their yields or their financial and economic impacts in detail. Nevertheless, having diagnosed Scotland's weak local financial empowerment, as a country we now need action. The Convention of Scottish Local Authorities has separately decided on a fundamental review of local government finance and we recommend that all of the above options are addressed within this. We are also aware that the Scottish Parliament's Local Government and Regeneration Committee has recommended that a cross party Commission is established after the Referendum, with a view to a new system being identified before the next local government elections in 2017. We hope that all localists can unite in a clear voice.

None of these proposals are a way of imposing new financial burdens on unwilling communities. Culturally, we need to get past any idea that local financial choice means higher taxes. Instead, for the first time, local tax transparency would allow local people to see what their taxes pay for and give them the choice to pay less or more. The local electorate, not national politicians, would be in control and hold their representatives to account.

Central grants would need to reduce to rebalance any transfer of national taxes, for example, to the local level, and any local taxes would require clear local agreement and oversight, including the use of local referenda. Equalisation will also have to be transparently addressed in all of the above options in order to assure communities that strong local democracy would not result in them losing out. Our view is that a sensible and planned approach can find that balance; after all, other modern democracies have already managed to do so.

Finally, fiscal reform is part of a wider package of changes, not an end in itself. It is closely linked to the Commission's commitment to asymmetry, and so different solutions will fund different local opportunities and challenges. Most importantly of all, all of this must happen within an overall commitment to subsidiarity: peoples' right to decide locally on what they want and how it will be funded. Of course, that does not necessarily guarantee that sound choices are made. For all of these reasons, we need to bring decision making much closer to communities. We now turn to how that can happen in practice.

A NEW DEMOCRATIC PARTNERSHIP WITH COMMUNITIES



Over the past year we have witnessed the energy, creativity and resilience of people and organisations in all walks of life and in all parts of society. This report is about giving up power and passing it to them.

We have found that people are not apathetic about their lives or communities- they care passionately about their areas and the decisions that affect them, their families, and their local areas.

We have also seen how engagement in community life is taking new and diverse forms; by getting involved in social movements, by joining campaigns, or by starting new forms of associations, social enterprises, or community ownership projects. In fact, it seems to us that Scotland is teeming with people of every age and experience who are willing to play an active role in helping to shape their communities and decisions about stronger, better services.

The challenge is to tap into this huge resource and empower it to make a difference. That is why we believe that the biggest democratic question of all lies in how to transform people's participation in Scottish democracy.

RETHINKING SCOTLAND'S DEMOCRATIC CULTURE

One problem is that many people have got so used to being disempowered that they've come to think that the best they can expect is a trickle of power from national government to councils, then to communities – all controlled from above.

To make any progress at all, we need to break out of that mind-set so that democratic power lies with communities, who give some of that power to national and local governments to work on their behalf, not vice versa.

Language matters here: this is about empowering (a subsidiarity mind-set) not 'decentralising' (a centralist mind-set). The Community Empowerment and Regeneration Bill contains many interesting ideas, but its major thrust is still within a relatively centralist mind-set in this regard. Communities have the right to take proposals for asset transfer or outcome improvement to national or local government, but it is for them to decide and there is no appeal. In other words, communities have to persuade government and local government to 'cede' powers. This seems like the reverse of subsidiarity, and the Commission's view is that this tends to keep us where we are rather than taking us forward.

SCOTLAND IN 2030: SEEDING POWER NOT CEDING POWER

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One way of capturing this is the choice between 'ceding' power and 'seeding' power. Whatever the outcome of the Referendum, it looks certain that Scotland will have more powers. But there is a choice to make about how those powers are exercised. The centralist option is that powers rest with governments and 'higher' levels of government may periodically 'cede' some of their power to more local levels. The Commission's view is that power in a democracy lies with the people and should be 'seeded', with all the associated connotations of 'tending' and 'nurturing' the empowerment of citizens and communities.

CEDING POWER

In one direction lies the possibility that as a country we continue with the status quo and accept that Scotland remains one of Europe's most centralised democracies.

In this version of the future, most decisions are taken far away from where people live, and people continue to look to the government to make things happen. As a result, there are lots of national agencies to carry out that work, and there's talk of these taking on more services in the future. National government decides how money is raised and spent, and while there is no ring fencing of budgets, legal controls mean that many of the big decisions are taken nationally, but carried out locally. Consultations take place about how public services should work, but tend to attract the 'usual suspects' and most people still aren't very engaged in what goes on. Disappointingly, turnout at elections has fallen to a historic low.

The government is committed to the concept of ceding some of the powers that it has collected, and has brought forward various national strategies to describe this. For most people, though, it's not very clear who decides what, or how their taxes are spent. There are some examples of projects where communities have taken the initiative and successfully been able to 'win' some more local powers. Although these have tended to happen in wealthier parts of the country that already have a track record of organising themselves, it is still the hope that other communities will get involved in the future.

SEEDING POWER

In the other direction lies the possibility of a radically new way of carrying out democracy. Following a process of deliberation involving communities across Scotland, agreement has been reached to embed the right to self-government in law, and a major rebalancing in relations between the state, local government and communities has started.

Local democracy is being reimagined in lots of different ways, and lots of experiments are taking place. Not all of these have been successful, but because everyone understands the purpose of trying out new approaches, a culture of blame and risk aversion is giving way to a colourful new culture of learning and innovation. The principle of subsidiarity has meant that because most powers have been devolved locally, participation in local democracy has turned a corner, helped by a programme to give communities the confidence and skills to get involved.

While the big cities have kept their shape, there are new, more local decision making structures across the country. There is no one-size-fits-all model and a variety of approaches are emerging. Many of these are coming together to develop shared initiatives at regional and even national levels.

Democratically elected politicians remain at the heart of this democratic renaissance, but their roles have evolved. Nationally elected government has a clear locus to set national priorities and is legislating for national outcomes and supporting rights that everyone is entitled to. Local politicians are working closely with communities to arbitrate different perspectives and deliver their duty to deliver 'empowered participation' on the ground.

“These scenarios are inevitably caricatured, but they make the point that any fundamental discussion about Scotland’s future must include an equally fundamental discussion of local democracy”.

We do not propose either as the way forward. Instead, we are calling for all those with an interest in strong democracy to start a serious dialogue, with a timetable, about seeding power.



OPENING UP DEMOCRACY

Just as there is a danger that new powers in Scotland continue to be exercised from above, so too is there a danger that the structures and practices of an old fashioned type of democracy will characterise Scotland's future.

The Commission's strong view is that any empowerment of local government must therefore be conditional on its responsibility to actively empower citizens and communities. Simply empowering local services will not in its own right pass our test of a strong democracy; these also have to be planned and delivered in ways that build in democratic participation, and empower local people to drive decisions about their place and their future.

There are at least two dimensions to the kind of change that we wish to highlight:

A NEW KIND OF POLITICS

Our first observation is that whatever Scotland's local future looks like, it must promote a culture in which politics means more than party politics, and democracy means more than representative democracy.

No one should have to participate in order for their rights to be upheld, but for those that do, there needs to be an effective and constructive dialogue between local people and their representatives, each developing the others' work and ideas.

Building strong participation does not diminish the role of representative democracy. Elected representatives are fundamental to an effective democracy and will be all the more so in a context where more decisions and powers are held locally in the future.

However, to be effective in today's and tomorrow's world, the way in which that vital link between competing demands, and the responsibility for decisions which have to be made in the collective interest of the area and its communities, needs to change.

In ten years' time, our ambition is that as a nation we have therefore come to think of democracy not as separate or competing bodies of 'participation' and 'representation', but more simply a positive culture of collaboration in which everyone with a stake in the improvement of local outcomes - local and national government, the third sector, public services and communities - are empowered and energised to fulfil their part.

A DIFFERENT KIND OF ENGAGEMENT

Our second observation relates to how that collaboration takes place and is translated into the decisions that follow. Throughout our evidence, we heard that many people want to become more engaged and participate in the choices that affect their community, and are seeking new ways to do so. We recognise that countries with more devolved decision-making are also able to achieve better outcomes, not least of all because they are able to make much more of local connections, skills, and knowledge about how to tackle social problems.

To us this is not about engaging communities in the agendas of the politicians, but organising representative democracy to create the right conditions for community voices and participation to flourish. Indeed, even if nothing changed, local and national governments simply cannot tackle complex 21st century issues alone. It is local people who experience services, and know what should improve; whether as

parents of school children, recipients of personal care, housing tenants or users of any number of other vital local services. It follows that effective decisions about tackling inequality, setting local priorities, and holding services to account for what happens in their name cannot happen without local dialogue, knowledge and judgement from communities themselves.

Ideas around 'deliberative democracy' have featured heavily in the evidence we received in this regard, and we are clear that these are well suited to strong local governance in the future.

"Put simply, we want communities to have a new experience of democracy as active participants and problem solvers".

That requires a different kind of participation around local choices that brings communities and the people who live there fundamentally into the decision making process.

Our priority has therefore been to set out practical actions that we believe can start to deliver this change, built around a new binding duty on local governments, and all other public authorities providing local services, to support and empower individuals and communities to participate in local decision making about tax, spend and service delivery priorities. We also believe that this general duty needs to be supported by a specific duty to ensure all groups likely to face barriers to participating are supported and resourced to do so.

The ground is already prepared. The right to participate in the affairs of a local authority is encompassed in principle in the Additional Protocol



to the European Charter of Local Self Government, ratified in 2009 but not yet enacted by the UK government. Our preference would be that this empowerment is now enshrined in a written constitution as part of a new understanding of democracy overall, and we explore this further in the final chapter of this report. In the absence of that, the Commission's recommendation would be that a binding duty should have statutory force, potentially by supplementing existing 'best value' duties.

DELIVERING CHANGE

Getting this duty right will not be an easy, or a short term task. It will take time to build the habits of democracy, beginning with elected representatives and communities building mutual trust that they can act in concert to check and balance each other and foster active citizenship. As with the rest of our report, we also know that different local solutions, built around the different circumstances and assets of communities will be required.

However, that does not mean 'no change yet'. Communities need to be able to participate now too, and cannot wait for the system to catch up. That is why we believe that it is now essential to start investing in new ways of building this new democratic partnership if we are to grow the skills and capacity that will be required, and turn around apathy or distrust for the long term. As an initial step, councils will need to rethink and revisit the schemes of decentralisation that they developed under the terms of the Local Government in Scotland Act 1994 to ensure that they deliver a locally effective approach. We suggest that there are several other ways in which Scotland should start this journey:

A NETWORK OF NEW LOCAL DEMOCRATIC EXPERIMENTS

If we are serious about transforming participation, it cannot simply be a 'desirable add-on' when time or resources allow. That does not necessarily mean more opportunities for traditional forms of engagement; there are lots out there, but we found that quite often the quality and impact of these opportunities has been felt to be low.

Instead, we have come to understand the challenge as making sure that better, more systematic and more democratic collaborations start to become woven into everyday practices. In the short term, we expect to see new democratic experiments proliferate across Scotland and for these to grow rapidly in strength and number as the benefits of this way of working take hold.

“There is no reason why every area of Scotland cannot assemble a microcosm of the talent and insight of its communities, and give it the time and resources to tackle pressing local issues”.

Whether that is achieved through a citizens' jury, citizens' assembly, or another format, we know from research that these kinds of approaches can have a powerful impact on tackling complex local decisions where there are suitable opportunities to do so.

LOCALISING DECISIONS ABOUT TAX AND SPEND

We have already set out why Scotland needs to rethink local government finance. The underlying purpose of that change is to ensure that communities can make informed choices about the link between their tax and spending options.

Financial decision making must therefore be fully covered by the duty to empower and support communities to be involved in local decision making. We recommend that a process of participatory budgeting, covering tax and spending options, should be adopted by all local governments to help facilitate this. Doing so would empower local people to consider tough decisions about how resources are used and raised to deliver local priorities.

PUTTING COMMUNITY AT THE HEART OF COMMUNITY PLANNING

Community Planning Partnerships already bring together local public services to prioritise and resource the shared outcomes they must deliver with their local community. While we recognise the helpful trend towards outcomes and partnership, we have also heard from communities that have been frustrated that this has primarily been at organisational level and that public involvement has been felt to be low. We can see no better example of where a strong approach to deliberating and agreeing priorities with communities on their terms should take place now in order to ensure that every partnership has real local legitimacy.



We recommend that every Community Planning Partnership in Scotland demonstrates its appetite to deliver a step change in participation by working with their communities to design and then implement a clear empowerment scheme.

This will require a deep assessment of what happens currently and in our view is about fundamentally revisiting how participation takes place so that a wide array of citizens are directly part of the conversation about local outcomes and the priorities that flow from these.

BRINGING COMMUNITIES INTO THE 'ACCOUNTABILITY BUSINESS'

Finally, if the 'public' in public service is to be more than a rhetorical expression, then communities not only need to own the outcomes that are pursued in their name, but also how effectively they have been delivered. We believe that blending 'real world' experience with representative political scrutiny and technical audit would add a new transparency and improvement drive to public services in this regard.

We therefore recommend that all Community Planning Partnerships develop an approach to community scrutiny to complement their existing scrutiny approaches. While the specific format of how this is done will need to fit local circumstances, we would expect that this would result in a regular (potentially biennial) citizen review being undertaken that is focused on how effectively community planning is working for its local communities. Working alongside local elected representatives, we suggest that this would need to be undertaken in a highly participative way, potentially by bringing together a local 'mini-public' or similar approach. The job of this scrutiny would be to review the progress that has been made, look ahead to new priorities, and publish

recommendations about how local public services could work better in the future. We invite anyone with an interest in taking this forward to share their views and experiences with us.

MAKING SURE THAT EVERYONE CAN PARTICIPATE

We want changes like these to help create a new era of local decision making that looks outwards to communities rather than upwards to 'higher' levels of government. Participation is the heart of our local democracy but will only beat strongly if people from every community across every part of Scotland are able to play a role.

However, we have found that across Scotland the skills and confidence to create these habits of democracy still have to be developed. Where they exist, they are very unevenly distributed. In particular, we are very concerned that the most marginalised individuals and communities - who potentially have the most to gain from real choice and control locally - are the least ready to participate. Most worrying of all, some communities (of place and interest) are virtually absent in today's democracy altogether.

Our view is that after a long term trend of centralism, all parts of government and their institutions therefore need to devote significant effort and resources to giving every community the confidence that their empowerment is for real and that democracy is not simply for those that can organise themselves to demand it.

In our view, it is not that those furthest from democracy or facing the greatest inequalities are somehow less able to articulate what they need to happen for outcomes to improve in their communities. We found that

people are more than capable of doing so. Instead, the challenge is to make sure that this understanding is shared, heard and believed in, and that those voices are directly involved in developing the solutions.

Indeed, it is perhaps no coincidence that at the same time as powers have drifted to the centre, governments at all levels appear to have dis-invested in supporting communities to learn and develop. If democracy is to stand any chance, it is time to turn that trend around and recognise that continued failure to invest in participation is a failure to invest in democracy itself.

We therefore recommend that in each area of Scotland there now needs to be a significant and systematic reinvestment in community development, and in the co-design of democratic decisions that follows.

Building this empowerment, confidence and trust is a job for everyone with a commitment to subsidiarity and all parts of government. There is a wide array of talents and networks within the third sector, community learning and development, welfare rights, and of course amongst communities themselves that can be galvanised in that task, and a great deal can be achieved through proper joint planning, investment and delivery. A mixture of different processes will be needed, but what's important is that new approaches and resources are directed towards those communities where participation has the greatest potential to transform outcomes, rather than simply those that have the loudest voices.



Of course, different areas will want to proceed at different speeds on different issues, but there is also huge scope to share tools and experience in that task. Across the world, other countries are also forging ahead with innovations and we can build on these and learn from their success.

We therefore propose that a Centre of Excellence in Participatory Democracy should be established to research good practices and promote and support their use across Scotland's communities. We believe that this would kick start the learning, sharing and embedding of new democratic practices that is required across the country, and for the first time, bring together the skills of practitioners, academics, the third sector and local and national government for that common purpose. To be effective and credible, such an organisation would need to 'live' the culture that we are promoting in this report, including being co-designed and co-delivered. It could, for example, operate as a social enterprise in its own right.

NEW WAYS OF DELIVERING OUTCOMES

Finally, we want to support the direct participation of citizens in local services themselves. In Scotland, we have a long running culture of centralisation, but so too have we tended to assume that the public sector should take responsibility for most of the services that communities rely on. Rarely do we ask whether the state should have a role at all.

Internationally, the picture is much more varied. In many countries, it is already much more common than in Scotland for local citizens to be actively and directly involved

in delivering community services and facilities outwith the conventional public services model. Our sense is that if local democracy is to deepen its roots and become more vibrant then we need to make space for these alternative types of initiatives and foster a different kind of support for them.

We do not see these developments as an alternative to effective democratic representation and public services, but in our evidence gathering we heard about how the conventional links between citizens, communities and services are being supplemented by a burgeoning network of 'community entrepreneurialism'. In housing, for example, there are many community owned housing co-operatives and associations delivering high quality housing to people across Scotland. Numerous other ventures are springing up in many parts of the country across areas like social and health care, regeneration and environmental services, and through development trusts that have taken on and managed important community assets.

At this stage, we can see this movement and feel its growing impact. Indeed, looking ahead, strong participation is likely to invite an increasingly diverse configuration of local service providers. Local democratic conversations may become less about which part of the state – local or national – should deliver key services, but rather what solution would improve outcomes for communities most effectively. We believe that there are some exciting possibilities, and that more work should take place in Scotland to fully explore the possibilities and expand these activities if that is what would work for the local community.

In some places, and for some services, the best democratic outcome may simply be for existing public services to 'get out of the way' altogether and instead support communities to deliver better outcomes for themselves. We would welcome further discussion about what might be achieved, and what role local democracy would need to play in helping the community get the best from this mixed approach to service design and delivery.

KEY FINDINGS

Whereas the defining characteristics of the past fifty years have been uniformity and ‘the centre knows best’, we believe that Scotland’s new local democracy needs to happen not just where communities experience their lives, but in ways that let local people determine their priorities, their services and their spending.

Building this new kind of democracy will require a different kind of empowerment in which citizens can participate in shaping their own lives, rather than looking up to local or nationally elected representatives to shape it around them.

All of our conclusions flow from that single purpose. The ‘hard power’ of local democracy to address socio-economic and intergenerational inequalities and improve outcomes can only be achieved if communities have the voice to set out the changes they want for themselves and their area. Some of these changes are about opening up decision making - housing, planning, policing, education, health and beyond- and supporting communities to engage from the outset. But they are also about nurturing the ‘soft power’ of participation to foster social capital, and build confidence and action within communities themselves. Indeed, to us it is no coincidence that trust, participation and confidence in the democratic process is much higher in countries where power is much closer to communities.

To achieve that in Scotland, we need to change the democratic conversation. That does not mean downplaying the role of elected representatives, but it does mean fundamentally re-thinking participation in democracy and redefining how local democracy connects with people’s lives. For all these reasons, we believe that democracy is worth investing in.

We therefore recommend:

- a binding duty on local governments and locally delivered public services to support and empower individuals and communities to participate in local decision making. **(11)**
- a specific duty to ensure that all groups likely to face barriers to participating are supported and resourced to do so. **(12)**
- all local governments revisit and rethink the schemes of decentralisation that they developed under the terms of the Local Government in Scotland Act 1994. **(13)**
- that a process of participatory budgeting, covering tax and spending options, is adopted by all local governments to enhance local choices over tax and spend within a new system of local government finance. **(14)**

- that every Community Planning Partnership in Scotland works with its communities to design and implement a clear empowerment scheme. **(15)**
- all Community Planning Partnerships develop an approach to community scrutiny to complement their existing arrangements. **(16)**
- a significant and systematic reinvestment in community learning and development in each area of Scotland. **(17)**
- that a Centre of Excellence in Participatory Democracy is established to research good practices and promote and support their use. **(18)**
- that after these measures have been established, a stock-take is undertaken to determine their impact, and identify what further steps are required. **(19)**

These ideas are not exhaustive and we want people across different communities across Scotland to engage with us, adapt our ideas, and test our thinking. Each approach will inevitably change according to local circumstances, but in every case will mean the public shaping decisions at the very start, routinely sharing information on which decisions are made, and engaging not simply consulting people as part of that process. Whatever the solution, it must also work for all communities and citizens, not just the articulate and well resourced.

This is a different kind of approach from the past, but we do not believe that it is one to be scared of. Democracy is not a zero sum game in which more participation diminishes elected representation. Instead, communities that are active provide the platform for effective political decisions.

That does not, however, mean a short term burst of activity, with little to sustain it for the medium term. Nor does it mean creating beautiful ‘engagement plans’ on paper which fall short on delivery. If local democracy is to have any kind of chance, it will require sustained, long term focus and investment; after 50 years of moving in the other direction, as a country we will need to work hard to build confidence in communities that the local democratic process is theirs too.

Finally, transforming participation in democracy will not be effective unless democracy itself is transformed. The tools for better democratic conversations are in Scotland’s gift already. But our sense is that participation, however effective, will not revitalise local democracy without the power to make real choices; strengthening democracy requires the full package of changes in this report.

CHANGING HOW SCOTLAND DOES DEMOCRACY

Around the world, local communities have been enjoying the benefits of strong local democracy for generations. Scotland deserves the same, but to do so it needs to change the very way in which it ‘does’ democracy.

In this report we have explored how a culture that doesn't empower people locally has manifested in progressive centralisation, declining local participation, and lasting inequalities in communities. A massively more local system is possible and sustainable internationally, and the final question that we want to address is about what it might take for local communities to experience the kind of local choices and control that people across Europe already take for granted. In these countries, local democracy is not something to be debated; it is simply part of the landscape.

LOCAL DEMOCRACY IN SCOTLAND TODAY

Local democracy in Scotland and the UK is almost unique amongst western democracies because it has no status or protection in law and its institutions are wholly subject to the will of Parliament.

In practical terms, it is national government that sets the shape, size, powers and functions of local decision making, not communities and their locally

elected representatives. Neither does Scotland operate the basic constitutional protections that are available in other mature democracies. Bizarrely, local government in Scotland lacks the right to exist at all, and major changes to local democratic institutions can, and have, proceeded without the kinds of checks and balances that are legally required to ensure the assent of local communities in most other countries.

We have found that the combined impact of a constraining policy and financial framework, and the absence of these constitutional protections in Scotland is almost unheard of amongst developed democracies, and means that the system looks very directed by, and very dependent on, 'higher' levels of government. Campaigns such as Our Islands, Our Future or the Cities Alliance have demonstrated that it is possible to take the initiative and make the most of the current system. However, these initiatives still require the approval and consent of national UK or Scottish governments. In other words, while national governments may, and sometimes do, choose to empower local democracy, they can equally choose not to do so.

There's never been a better time to break this culture of disempowerment. It is now widely agreed that the kind of 'grace and favour' system we have operated in the past cannot continue. Where local democratic structures have been truly empowered elsewhere in the world, they have gone on to empower those around them. Our evidence is that the converse is true in Scotland; despite the establishment of the Scottish Parliament, we have continued to rely on the old way of doing things—ministers have effectively the same power to give powers or take them away as the Secretary of State for Scotland had prior to 1999. We believe that this is equally true of how local government is set up.

Many of Scotland's political parties have now committed to strengthening and protecting local democracy. We recognise that the Scottish Government has also published plans for local government to be included in a Scottish Constitution in the event of Scotland voting to become an independent country. Whatever the process, our focus in this chapter is on what it would take for such commitments to be effective.

PROTECTING DEMOCRACY

The principles of strong local democracy are already well established internationally at United Nations, Commonwealth and European levels. The European Charter of Local Self Government, for example, highlights that subsidiarity:

“should be at the heart of any debate about the nature of central/local relationships and the promotion of a new local democracy... this entails the existence of local authorities endowed with democratically constituted decision-making bodies and possessing a wide degree of autonomy with regard to their responsibilities, the ways and means by which those responsibilities are exercised and the resources required for their fulfilment”.

Other countries have long understood that these principles are essential, and across Europe we have seen the dramatic difference in culture that this has made. For example, in Germany, Article 28(1) of the Basic Law guarantees the existence of elected councils for counties and municipalities, and Article 28(2) guarantees *“the right to regulate all local affairs on their own responsibility, within the limits prescribed by the laws”*. It also guarantees 'self-government' within their areas of competence, and applies this



principle to “*the bases of financial autonomy*”. Article 1 of the French constitution states that the Republic “*shall be organised on a decentralised basis*”.

Article 72 states that “*Territorial communities may take decisions in all matters arising under powers that can best be exercised at their level*”.

Within the Spanish Constitution, article 137 stipulates that: “*The State is organised territorially into municipalities, provinces and the self-governing communities that may be constituted. All these bodies shall enjoy self-government for the management of their respective interests*”.

It’s not much to ask for Scotland to join this democratic family. Our starting point is therefore that if we are to protect local democracy in more than name then the principles and provisions set out in the European Charter on Local Self Government have to be put on a statutory basis within Scotland.

However, the more fundamental question for us is about what is holding this back. We identified at least three reasons. Firstly, in the UK, the European Charter is almost a dead letter; ratified in 1998 it has never been enacted in domestic law. Secondly, in Scotland we are set apart from most other countries because we operate without a written constitution. Thirdly, no country (except, in part, Poland) has simply transposed the Charter into their constitution, and building an effective approach requires a range of contextual factors and systems to be thought through.

We have therefore taken a step back and tried to rethink the problem from a different perspective. To us, one of the key problems is that even decentralising initiatives currently take place within arrangements that deny local democracy constitutional rights,

financial independence and the right to make autonomous choices. That influence comes in many different forms but we have found that it confuses the picture about who is, or should be, responsible for local decisions and local services. Because there is no standard interpretation of the relationship, it seems to us that energy and resources that should be spent on improving outcomes with communities have also often been sucked into wrangling over who does what.

It follows that if we want local democracy to be strong and prosperous, not dependent on the goodwill of the national government of the time, then we need to lock local subsidiarity into the heart of our democratic system. In the UK and Scotland, the current system operates without any map of powers and responsibilities. Corporate bodies such as parliaments or councils are empowered in law and are the legal entity that is held to account for decisions taken on behalf of citizens and communities. They can decentralise decision making to others, and frequently do, but they ultimately remain accountable for their decisions. We believe that this limits the extent to which some institutions have been prepared to ‘let go’ in the past.

MAKING DEMOCRACY CLEARER

Scotland needs to find a way out of this and be prepared to define the competencies of central, local and community governance in line with the basic assumptions and values we wish our system to embody. Real local choice and control means breaking the current log jam caused by this lack of clarity about who is responsible at the moment. We have concluded that strengthening

local democracy is therefore not just something for the ‘local part’ of the system on its own. It means rethinking the whole democratic system so that it guarantees a commitment to subsidiarity, local choice and control, and community empowerment.

One way to do so would be to borrow some understanding of the EU system of competencies and delegations by clarifying in law or in a constitution the roles and responsibilities of democratically elected bodies in Scotland. In federal systems or states with written constitutions, the basic rules of the law are codified and the relationships between different spheres of governance are clarified and set out. Advocates of the current approach in Scotland and the UK argue this provides a flexibility and adaptability that other systems lack. We disagree. If there are things that should be determined nationally, we should identify and state them, and guarantee what is properly local. We therefore recommend that the competencies of democratic bodies at all levels of the system should be codified in order to make our democracy stronger, clearer, more transparent, and more accountable to citizens.

Substantial negotiation would of course be required to explore and balance the shape that this takes in the event of a written constitution for Scotland. Such a process would have to be highly participative in its own right. However, we do not believe that a constitution is a prerequisite to clarify Scotland’s democracy in this way. We can see no reason why the same kind of thinking could not be codified in statute in a similar way to the Scotland Act 1998. Under that Act, the Scottish Parliament can make primary and secondary legislation in those areas not reserved to Westminster or protected from modification. While technically possible, it is almost inconceivable



that the Scottish Parliament would ever be abolished. In the same way, while a constitutional approach would deliver cast iron rights, a powerful and long lasting benefit to local democracy could still be delivered through a legislative route.

Whatever the vehicle, we believe that the benefits of setting out competencies would speak for themselves. For the first time, people would have clarity about what they can expect from different spheres of government, and be able to hold their elected representatives to account accordingly. Not only that, but it would provide a powerful opportunity to guarantee democratic practices too, for example by setting out the requirement on democratic bodies to support and actively build participation, and to drive forward the values that the Commission is pressing for – equal, decentralist, inclusive, and empowering– much more clearly than they are at present. Protecting democracy is therefore not just a technical exercise - it goes to the core of guaranteeing participation in democracy.

Because the Scottish Parliament, local government and community government would exist in their own right and have their own clear democratic mandate, it would also follow that no part of government could be abolished or significantly changed without a clear mandate. Indeed, the evidence that we have accumulated suggests that other countries that have taken this approach have a political culture in which many of the Scottish and UK debates around centralisation and empowerment that we have explored in our reports are puzzling and unfamiliar - instead, they simply get on with the job of using good democratic governance to focus on improving outcomes across the country.

The same principle would work across every level of policy and legislation. For example, with approximately 70% of domestic legislation emanating from the European Union, many European matters have a direct impact on local communities and their services. A robust approach to subsidiarity would improve how EU legislation affecting local communities is addressed in Scotland and the UK. Stable arrangements for local and national governments to jointly address EU policy developments are already in place in other European countries like the Netherlands, Denmark and Finland, and we believe could be effectively replicated in Scotland.

RIGHTS IN A STRONG LOCAL DEMOCRACY

We believe that codifying democracy from the ‘bottom up’ not ‘top down’ would therefore fundamentally reboot the relationship between central, local and community governance as equal and independent partners, and follow the principles of subsidiary to their logical conclusion. If we can set out democracy in these terms we can create a new ‘eco-system’ in which every sphere of democracy is reinforced, developed and enabled by the spheres that surround it. Local democracy would no longer be an ‘optional extra’ or a sub-branch of ‘national democracy’ - it would become a right for everyone in Scotland.

Just as with other rights, the democratic system would have to actively support this new way of working and ensure that the policy and legislative landscape upholds it. For that reason, we recommend that Scottish Ministers should be placed under a legal duty to ‘local proof’ all legislation through a subsidiarity test. We also recommend that an

Independent Commissioner is established to scrutinise compatibility of UK and Scottish policy and legislation with the provisions of the law. We believe that this would ensure that power is always designed to rest at the lowest possible level, and in cultural terms, that local democracy is high on everyone’s agenda.

However, protecting people’s right to local democracy is only one part of our wider thinking about social justice. The evidence we received suggests that it is no accident that highly localised systems of democracy elsewhere are also associated with greater social and economic equality.

Scotland can learn a great deal from this international experience. It is interesting, for example, that a country like Denmark devolves public services to a very local level yet can provide a consistently higher level of care, precisely because local communities are much more closely connected to the decisions that affect them.

We believe that this is possible because governments internationally recognise the value of local choice and difference within an over-riding framework of rights. While the competencies and functions of local governments vary internationally, legally specified duties in relation to national or human rights are common. In contrast to Scotland and the UK, however, in many other countries local governments are free to act on behalf of their communities within the constraints of such a framework.

For example, in Germany differences in the delivery of healthcare are constrained by a consensus that equality of provision has to be maintained. It is the shared responsibility of the federal government and the Länder to uphold and promote human rights, which are “*the basis of every community, of peace and of justice in the world*”, and that “*bind the legislature, the*



executive and the judiciary as directly enforceable law". This means that each Land can then govern and define the rights of people in its area via its own constitution and government, in addition to the Basic Law. In the USA, there are high levels of regional variation, but within an underlying federal regulation providing a minimum level of nationwide uniformity. In the Swedish model, central legislation establishes minimum standards for a range of social services, and Swedish citizens can challenge local authorities in court if they feel these legal standards have not been achieved. In all of these cases, national governments are also capable of taking steps to address any shortfalls that are identified.

The central point is that it is possible to establish highly empowered, localised and democratically accountable governments that work within a framework of fundamental human rights for citizens set out in law.

For many positive reasons, as a country we too are waking up to the fact that local difference is to be celebrated. Communities have passionate local identities, cultures and histories, and even where need is similar, different geography, different demographics and different local circumstances require different decisions. That is why we have argued that 'asymmetry' - functions, powers and structures that reflect the diversity of local areas and the people that live there - should be seen as a normal and positive consequence of a strong democracy.

At the same time, in Scotland and the UK there has often been a cautious approach to letting go of control from the centre, particularly when it results in varying service delivery - the so-called 'postcode lottery'. This asks the wrong question. In our view, as a nation we have too readily accepted

that powers can only be exercised in the same way, with the same structures and the same procedures wherever you live. Not only is it a myth that there is no difference of outcome for citizens within centralised services, but for the past 50 years that thinking has managed to produce inequalities that are far greater than in decentralised countries.

Put simply, local variation and accountability are the solutions, rather than the blockages, to better and more cost effective outcomes, and a surer route to overcoming the inequalities that remain unacceptably prevalent in many parts of Scotland.

That does not mean that national government should abdicate its responsibilities, or leave local areas to do whatever they want. As John Stuart Mill wrote 150 years ago in his essay 'On Liberty,' a democracy can only be considered 'strong' insofar as it is prepared to accord equal respect and fair treatment to all its citizens. Woven into Scotland's new democratic system must therefore be protection and enforcement of the national and international rights that everyone in Scotland is entitled to and that are established by statute and international law.

We believe that nationally elected government has a clear mandate to establish these priorities for the nation and to set and protect in law the frameworks that guarantee all of our rights as citizens. Those rights cannot be changed or diluted locally, but the ways in which they are upheld should be designed with

communities, delivered in ways that value and respond to local diversity, and contribute to improving outcomes for the whole of Scotland. People, locally and nationally, also need to know that they are getting good value from local services through a statutory expectation of continuous improvement, effective benchmarking and performance evaluation.

In other words, we see no contradiction between meeting local needs in local ways, and firmly upholding national human and political rights that are guaranteed for all citizens. After all, national politicians are elected to show national leadership, and in a stronger local democracy they should be freed up to focus on this task. National policy therefore has to be right for local democracy to fulfil its potential, and local democracy has to be right for national policy to have impact. For those reasons, we recommend that an independent Office of Wellbeing is established to independently monitor and report on the impact of fiscal and macro-economic policy on communities' wellbeing.



KEY FINDINGS

We have described how we can begin to remodel Scotland's democracy based on decentralising power and resources, embedding a 'community up' not 'national down' approach to government, and promoting local empowerment not dependency.

However, that vision for strong local democracy cannot be achieved by tacking reforms onto today's centralised framework. It is 15 years since the Scottish Parliament was established, and it is time for subsidiarity to be really embedded in communities.

As a country, we therefore have to let go of the thinking that dominates the current system. Instead, we need to reimagine the whole system of government and rebuild it so that local priorities and choices are resolved much closer to communities. We have looked at what it would take to cement that change and for it to take root. We recommend that:

- the principles set out in the European Charter of Local Self Government have to be put on a statutory basis within Scotland. **(20)**
- the competencies of democratic bodies at all levels of the system should be codified so that their roles are transparent and accountable to citizens. **(21)**
- Scottish Ministers should be placed under a legal duty to 'local proof' all legislation through a subsidiarity test. **(22)**

- an Independent Commissioner is established to scrutinise compatibility of UK and Scottish policy and legislation with the provisions of the law. **(23)**

- nationally elected governments have a clear mandate to establish priorities for the nation and to set and protect citizens' rights in law. **(24)**

- an Office of Wellbeing is established to independently monitor and report on the wellbeing impacts of fiscal and macro-economic policy. **(25)**

Rather than weaken equality or undermine rights, this new approach means focusing on what works locally and empowering communities to participate so that they can enjoy the same rights wherever they live. These observations do not warrant a naïve and exclusive localism either, or the view that national governments have no role to play.

To get the benefits in Scotland, however, we need a new culture in which fairness and local differences are not seen as opposing values. There is local variation in public services around the world, but the difference is that in most other countries this is seen as a positive consequence of a vibrant democracy.

CONCLUSIONS AND NEXT STEPS

A radical transfer of power to communities is essential if we are to rebuild confidence in Scotland's democracy and improve outcomes across the country.

We know that the ideas we have set out are very different from the democracy we have in Scotland today. For the past 50 years, power and authority has transferred upwards. Governments at national and local level have moved in the same direction, to the point that control from the centre has become the only way to think.

Many have become disillusioned with the whole democratic process, and are choosing not to vote at all. Deep down, they think that the system doesn't work for them. Yet we also know that it is difficult to approach our recommendations with an open mind about how democracy might change in the future. Most people have only ever experienced our current kind of democracy, and all of us in Scotland, the Commission included, are at least in part driven by the culture and values that we are used to.

In fact, our proposals are only radical if they are viewed from that out of date, centralist point of view. In international terms, Scottish local democracy now looks seriously out of step; large scale, with little or no financial autonomy and lacking the protection that many other countries take for granted.

We are clear that it is time to change all that. We've found that centralisation simply hasn't resolved the big social problems that Scotland faces. To us, it's no coincidence that where local democracy is strong,

communities have consistently experienced better outcomes- the opportunities and challenges in different places are different, and getting them right requires local choices and local accountability. Every year we are using money in 'one size fits all' ways rather than on what works locally, and quite often that has been taken to be a kind of Hobson's choice- you can either be local or you can be efficient - but not both.

That has made communities spectators not full participants in their own democracy, and shut out the resources and insights that they could bring to the table. Worst of all, compared to countries that have taken a much more local approach, this centralised approach has led to big and expensive inequalities in Scottish society, and those inequalities are not reducing. For a country with Scotland's relative wealth and strength, the level of inequality we have today is simply intolerable.

The weak state of local democracy has come into focus as Scotland debates its future, and as one part of that debate draws to a close, we believe that it is the right time for another phase to begin. Regardless of the outcome of the Referendum this September, Scotland can decide that it is time for a new kind of democracy and start to change now.

“We've set out some big plans that could really change Scotland. They are not just about the next few years, or tweaking the current system”.

We understand that it is impossible to specify all of the answers, and so we have set out the pre-conditions and processes that we think are needed for a radically more local and more democratic future. We want to put these ideas into the spotlight, and as we turn to how Scotland will look beyond the Referendum, make them the new standard for democracy.

However, to make any progress at all, we need to break out of a mind-set in which the best we can expect of democracy is a trickle of power from national government to councils, then to communities – all controlled from above. Instead, it is time to start recognising that communities make democracy, not institutions.

Our ideas are intended to begin the transformation, and are not meant to be seen as the final word. They come as a package; there is little point in having a right to local democracy, only for 'higher' governments to determine its functions and powers, and to hold the purse strings. All of them also hinge on a fundamentally different kind of participation in democracy in the future.

Together, they may seem radical, and to some improbable, and we look forward to engaging with every point of view. However, if our work as a Commission has taught us anything, it is that strengthening local democracy will not be a straightforward or neat process. That is why we are not attempting to impose a single blueprint; that kind of thinking is the product of a distinctly centralist way of thinking.

Real change is possible. If we can deliver these building blocks and consistently back them to succeed, we can create a vibrant new democracy for this century and a stronger, more equal society. The alternative is that we slip into the same mind-set that has come to characterise our current democracy, accept that disenchantment and poor participation are inevitable, and give up on the chance to build better lives for people across Scotland.

Communities across Europe have enjoyed the benefits of strong local democracy for decades. Scotland must be no different.

THE START OF A NEW CONVERSATION...

In the end, our conclusions are about local people and how democracy can be reconfigured around them. We hope that across Scotland, everyone with a stake in strengthening local democracy will start to embrace the changes that we have called for and reflect them in how they work now. However, we know that rebuilding democracy will take time and that creating the conditions for real localism to work may be a 10 to 15 year objective.

We have reached this point by listening to and working closely with a wide range of voices and expertise from community organisations, local government, trade unions, faith groups, the third sector, political parties, young people and communities themselves. Indeed, the Commission on Strengthening Local Democracy is only one of a growing clamour of voices that are calling for change.

Throughout our own work, we have also pressed home that strong local democracy does not start or stop in the council chamber, just as it does not stop in the Holyrood or Westminster parliaments. Our experience of engaging citizens in discussing difficult issues is wholly positive and we have witnessed first-hand the passion, enthusiasm and know how that exists across the country.

We would like to extend this kind of thinking into the future. While the detailed planning will require focus, what's important is that democratic innovation is at the centre of that transformation. To steer the process and reflect the kind of activity that could be emulated locally, we believe that a dedicated 'democratic alliance' should drive this change and help it to come alive. We will be seeking to establish this network as one of the legacies of the Commission's work. After all, the implications of our conclusions could fundamentally shape Scotland, and so if we are serious about local democracy, then more than just a few institutions or familiar voices should influence and benefit from what comes next.

We hope that this is an opportunity to galvanise the 'democratic sector' in Scotland and ensure that, for the first time, making democracy stronger becomes an open shop in which many voices and perspectives are empowered to come together to learn, challenge, and explore inspiring ideas. To be effective that must be genuinely inclusive of communities of interest and place, and with cross party buy in. We expect that the Scottish Government and parliamentarians would wish to take part; recognising that they too will wish to help such an alliance forward and use it to make good the pledges that they have already set out.

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THE COMMISSION
ON STRENGTHENING
LOCAL DEMOCRACY