Renewing Local Democracy in Scotland

Report by Andy Wightman for the Scottish Green Party

Picture credits

1. INTRODUCTION

Scotland is engaged in a debate about the merits or otherwise of becoming an independent country whilst at the same time we appear to pay little attention to how we are governed by the tier of government that arguably matters most to people - local government.

This paradox reveals a harsh truth about modern Scotland. This is an infantilised democracy where power is exercised by an elite political class - those in political parties - who are competing for a smaller and smaller share of the vote from an electorate that is growing more and more disenchanted with the political process.

Local governance is not a very engaging topic for most people but it is at the heart of a growing debate about democracy. As the part of government that is closest to the citizen and deals with most of their daily interactions with the public realm (education, culture, sanitation, housing, transport etc.) it is the part that should attract the greatest level of interest and engagement. The long term decline of local government over the past 40 years has been a slow and largely ignored phenomenon.

This report is about how we could restore, entrench and develop local government so that it becomes a valued and integral part of a new and invigorated democratic settlement in Scotland. The report is intended to stimulate debate, including within the Scottish Green Party, which has a long standing commitment to local democracy and which will be invited to debate these proposals at its national conference.

Whether Scotland becomes an independent country or remains part of the United Kingdom, we need to talk about the local and about the crisis of democracy, funding, power and status. The independence debate creates the opportunity to discuss the constitutional protection of local democracy, and the possible transfer of full powers to the Scottish Government could provide the stimulus needed to encourage Ministers of every party end their habit of controlling local affairs from the centre.

As the Convention of Scottish Local Authorities recently claimed,

> *"Scotland is one of the most centralised countries in Europe. It is no coincidence that our European neighbours are often more successful at improving outcomes, and have much greater turn out at elections.*
>
> *We cannot hope to emulate the success of these countries without acknowledging that they have more local councils, local elected councillors represent fewer people, and that these councils and their services are constitutionally protected and their funding secured by law, even with regard to national policy making.*
>
> *We should seek the same benefit, and the same independence that local government has in most western democracies."*[1]

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[1] COSLA, May 2013, Local Matters

2. LOCAL GOVERNMENT IN SCOTLAND to 1996

This report and its proposals for a revitalised local democracy looks to the future but it is important to understand how Scotland got to where it is today.

The origins of local government in Scotland are found in the Royal Burghs established in the 12th century as centres of trade and commerce. A Royal Charter set out the powers of the Burgh and granted land suitable for the growing needs of the citizens. For centuries these Charters represented the sole governing statutes of Scotland's towns and cities. Meanwhile in rural areas, barony courts, the Sherrifdoms, the heritors of the parish and the kirk session were responsible for almost all parochial affairs.

Burghs

Scotland's early Royal Burghs enjoyed a limited democracy. Burgesses (those owning land in the burgh) voted annually to elect the magistrates and councillors. Over time, there developed demands for a wider franchise at the same time as many of these annual elections fell into abeyance. In response to complaints that elections were not being held, Parliament passed the Officers of Burghs Act 1469 which, rather than upholding the existing law requiring annual elections, promptly abolished them. In its place, the old council chose its own successor and together they appointed the officers of the council.

> *"As touching the election of aldermen, bailies and other officers of burghs, because of the great disturbance and contention each year for the choosing of the same through the multitude and clamour of common simple persons, it is thought expedient that neither officers nor council be continued according to the king's laws of burghs for more than a year, and that the choosing of the new officers occur in this manner: that is to say, that the old town council shall choose the new council in such number as is suits the town, and the new council and the old one of the previous year shall choose all officers pertaining to the town, such as aldermen, bailies, dean of guild and other officers."* Officers of Burghs Act 1469

This system of elections endured for over 350 years until the Royal Burghs Act 1833 and led to much nepotism and corruption in the municipal affairs of Scotland's Burghs. As Erskine May noted,

> *"Neither of these [two] classes of municipalities had enjoyed for centuries the least pretence of a popular constitution. Their property and revenues, their rights of local taxation, their patronage, their judicature, and the election of representatives in Parliament, were all vested in small self-elected bodies.*
>
> *The administration of these important trusts was characterised by the same abuses as those of English corporations. The property was corruptly alienated and despoiled: sold to nobles and other favoured persons, —sometimes even to the provost himself, —at inadequate prices: leased at nominal rents to members of the council; and improvidently charged with debts. The revenues were wasted by extravagant salaries, — jobbing contracts, public works executed at an exorbitant cost, —and civic entertainments.*

By such maladministration several burghs were reduced to insolvency. Charitable funds were wasted and misapplied: the patronage, distributed among the ruling families, was grossly abused. Incompetent persons, and even boys, were appointed to offices of trust. At Forfar, an idiot performed for twenty years the responsible duties of town clerk. Lucrative offices were sold by the councils. Judicature was exercised without fitness or responsibility."[2]

In the late 18th century, Parliament began investigating the affairs of Scotland's municipal government and the Burgh Police (Scotland) 1833 abolished these corrupt practices and introduced a system of formal elected town councils (by those enfranchised by the Scottish Reform Act of 1832) and a series of statutory powers including paving and cleaning streets, water and gas supplies, land acquisition and employing professional staff. A Royal Commission Inquiry into the State of Municipal Corporations in Scotland was established in 1833 and reported in 1835, laying bare the state of Scotland's cities and towns.

The new system could only be established following a referendum with a 75% majority in favour. Electors were also free to choose which new powers they wished to adopt. Further Acts in 1847 1850 and 1862 extended the powers of Scotland's burghs. The Burgh Police (Scotland) Act 1892 repealed earlier legislation and established the modern framework of local government in Scotland's towns. By now, and following further acts in 1900, 1903 and 1929, Scotland's towns had a full range of statutory powers.

The Local Government (Scotland) Act 1947 modernised town government and established four Counties of Cities (Aberdeen, Dundee, Edinburgh and Glasgow) and town councils in 21 large burghs and 177 small burghs. The Town Councils were abolished by the Local Government (Scotland) Act 1973.

Counties

Scotland's counties trace their origins to the Sherrifdoms of the medieval period. Landowners were appointed from 1667 as Commissioners of Supply to collect the land tax. Over time they took on further functions but it was not until 1890 that 37 elected county councils with a range of statutory powers were established under the Local Government (Scotland) Act 1889. In 1930 the number was reduced to 33 county councils together with 204 landward districts.

Parishes

The final piece of the local government jigsaw was the establishment of 871 statutory parish councils under the Local Government (Scotland) Act 1894. Parish councils inherited the statutory responsibilities of parochial boards (poor relief) and were also responsible for matters such as local roads and recreation. Councils had the power to raise a rate not exceeding sixpence in the pound on the annual value of lands in the parish and were enabled to acquire and hold land and property.

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[2] Erskine May. The Constitutional History of England since the accession of George the third 1760 - 1860 Vol. III p288

Fig 1 Counties, Districts and Town Councils in Scotland, 1947

In a legal guide to the 1894 Act written by James MacDougall, the legal secretary to the Lord Advocate and James Dodds of the Scottish Office, they highlight in their Introduction the significance of the Act for the scheme of local government in Scotland.

> "The Local Government (Scotland) Act of 1894 has reformed the constitution of the bodies set up for poor-law administration in 1845; has entrusted them, in rural districts, with additional powers; and has placed them in such relations towards governing bodies of wider range as to suggest to the legislator of the future the completion of a scheme of graded representative institutions, ascending from the parish council through the town and county council to the great assembly of the nation in Parliament."[3]

From 1894 to 1930 (when Parish Councils were abolished), Scotland was represented by 1109 councils at the lowest (most local) tier of local government. Table 1 illustrates the decline in the local tier from 1894 to the present day - a 97% reduction in the number of local level councils.

Year	Lowest Tier Units	No. local	av. population
1894 - 1930	Parishes & Town Councils	1109	4353
1930 - 1975	Districts & City & Town Councils	406	12,874
1975 - 1996	Districts	53	96,075
1996 - present	Unitary authorities	32	164,212
Table 1 Development of lowest tier of local government since 1894			

Alongside this decline in statutory institutions of local government has been a growing centralisation of political and fiscal power. In the 19th century, the great bulk of matters concerning the citizens of Edinburgh or Glasgow were the responsibility of the Corporations of the two cities. As Simon Jenkins commented,

> "The stage of political leadership in Britain has depopulated of all personalities other than national ones. At the root of the scandal has been a transformation in the role of a member of parliament: MPs have become the leading citizens of their municipalities. They are the first port of call for citizen complaints. Their surgeries deal almost entirely with local matters requiring complex negotiation with councils and agencies. They are expected to turn up at local civic functions. In the process they have become what in any other European democracy would be the local mayor, the best-known elected person in town." [4]

This report is a response to this hollowing out of democracy.

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[3] MacDougall & Dodds, 1895. The Parish Council Guide for Scotland. A Handbook to the Local Government (Scotland) Act 1894. Blackwood, Edinburgh
[4] http://www.theguardian.com/commentisfree/2009/may/20/parliament-reform-local-democracy

3. EUROPEAN EXPERIENCE

Local government in Scotland is very different from most of the rest of Europe. The most obvious contrast is in the straightforward number and scale of local councils. Other European countries (including England) have many more councils with significant powers serving smaller populations as Table 2 illustrates.

Country	No. Councils at lowest tier	Population	Mean pop/council	Sq km per council
France	36,786	65,633,194	1784	15
Austria	2354	8,451,860	3590	36
Spain	8167	46,704,308	5719	62
Estonia	226	1,324,814	5862	200
Germany	11,252	82,020,578	7289	32
Italy	8092	59,685,227	7376	37
Norway	428	5,051,275	11,802	900
Finland	320	5,426,674	16,958	1058
Latvia	119	2,023,825	17,007	543
Belgium	589	11,161,642	18,950	52
Sweden	290	9,555,893	32,951	1552
Netherlands	408	16,779,575	41,126	102
Lithuania	60	2,971,905	49,532	1087
Denmark	98	5,602,628	57,170	440
N. Ireland*	26	1,823,600	70,138 (165,782)	532 (1258)
Wales	22	3,100,000	140,909	944
England	353	53,493,700	151,540	369
Scotland	32	5,313,600	166,050	2449
EU27	89,149	501,465,000	5625	50

Table 2 Municipal Government in 14 European countries at the most local level

Sources: CCRE CMRE, 2012. Local and Regional Government in Europe. Structures & Competencies. Eurostat Population data 31/2009.
* In April 2015 the number of local authorities in Northern Ireland will be reduced from 26 to 11. The figures in brackets reflect the position in 2015 with 11 councils.
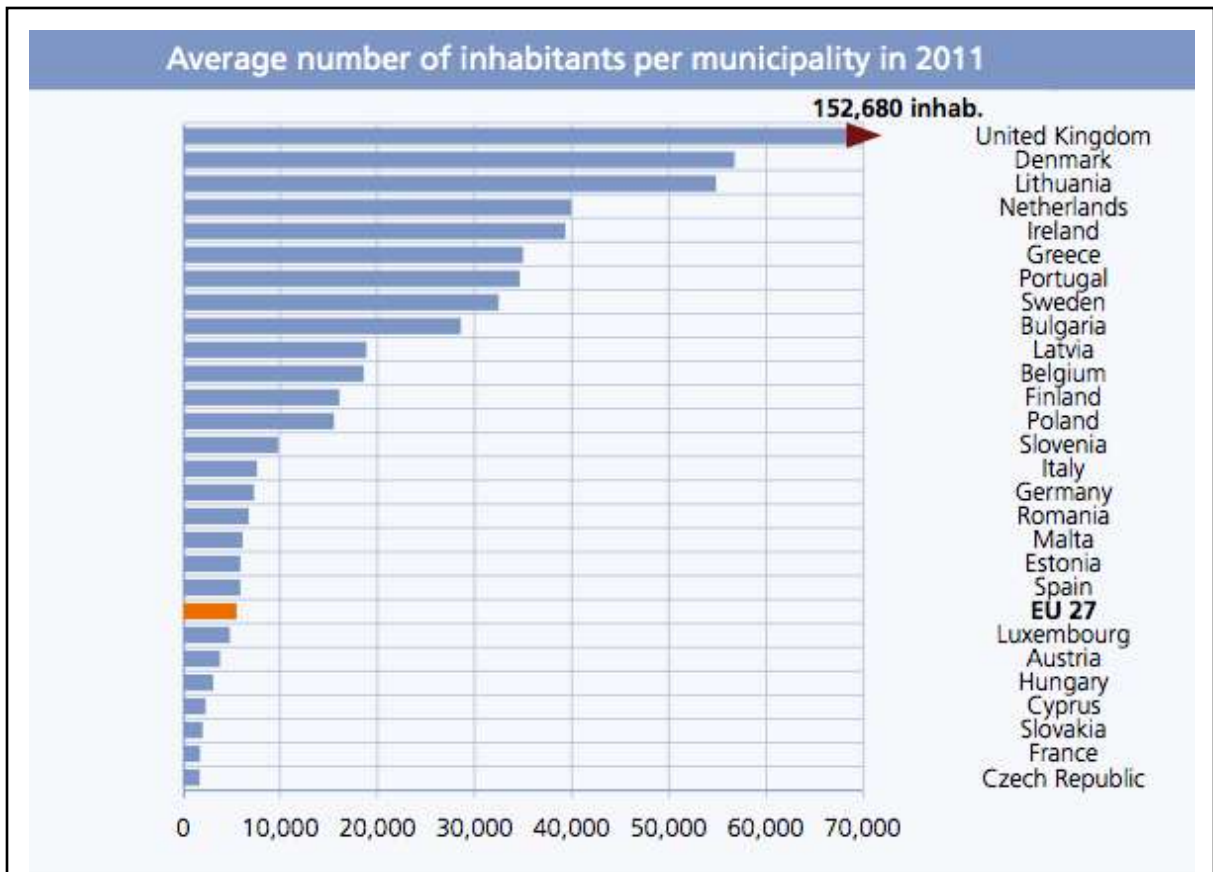
Figure 1. Population per Municipality in the EU.
Source: Subnational public finance in the European Union. Council of European Municipalities and Regions, 2012.

Country	1950	2012	% change	Average population
Austria	4065	2354	- 42%	3590
Denmark	1303	98	- 92%	57,170
France	37,997	36,786	- 3%	1784
Germany	33,932	11,252	- 67%	7289
Italy	7802	8092	+ 4%	7376
Switzerland	3097	2409	- 22%	3337
Norway	744	428	- 42%	11,802
Scotland	406	32	- 92%	166,050

TABLE 3 Contraction of Local Government in Europe

Source: Bort, 2013. Putting Local Democracy at the Heart of Scotland's Constitutional Future. (with 1950 Scotland figure corrected). Switzerland Swiss Federal Statistical Office

Scotland has the most concentrated local government in the whole of the European Union. Figure 1 illustrates just how limited local democracy is across the UK. There is not even room on the axis to incorporate the UK data.

As Table 3 shows, local government has been contracting across Europe over the past 50 years but the scale of the contraction is most marked in Scotland with a 92% reduction in the number of lowest-level councils.

The scale of local government also influences the participation of citizens in both standing as candidates and in the level of representation. As Table 4 illustrates, Scotland has a lower level of participation in local elections with only 1 in 2,071 of the electorate standing in local elections and an average of 2.1 candidates per seat.

Country/Region	Population	No. Candidates	No. Seats	Population standing	Candidates per seat
Norway	4,800,000	59,505	10,785	1 in 81	5.5
Finland	5,400,000	38,509	14,412	1 in 140	3.7
Baden-Wurttemberg	10,700,000	75,726	21,279	1 in 141	3.6
Sweden	9,400,000	64,810	14,631	1 in 145	4.4
Scotland	5,200,000	2607	1223	1 in 2071	2.1
Table 4 Participation in Local Elections expressed as proportion of population standing as candidates and number of candidates contesting each seat.					
Source: Bort, 2013. Putting Local Democracy at the Heart of Scotland's Constitutional Future.					

Perhaps the most obvious contrast with many European countries, however is in the turnout at local elections. Despite the fact that turnout is declining in many other countries, nowhere do so few citizens turn out to vote than in Scotland.

Country	Year	% turnout
Austria	2004	73%
Denmark	2005	69%
Finland	2008	61%
Germany	2008	60%
Italy	1999	75%
Norway	2007	62%
Spain	2007	73%
Scotland	2012	39%
Table 5 Turnout at municipal elections		
Source: Silent Crisis, 2012. Jimmy Reid Foundation.		

As an illustration of the importance people attach to local government, it is instructive to consider the experience in Iceland. Iceland, With a population of 300,000, Iceland has 79 municipalities which raise 92% of their own revenue. As far back as data has been collected, turnouts at municipal elections has been between 82% and 88% until the 2006 elections when it dropped below 80% for the first time.[5] (See Fig. 2).
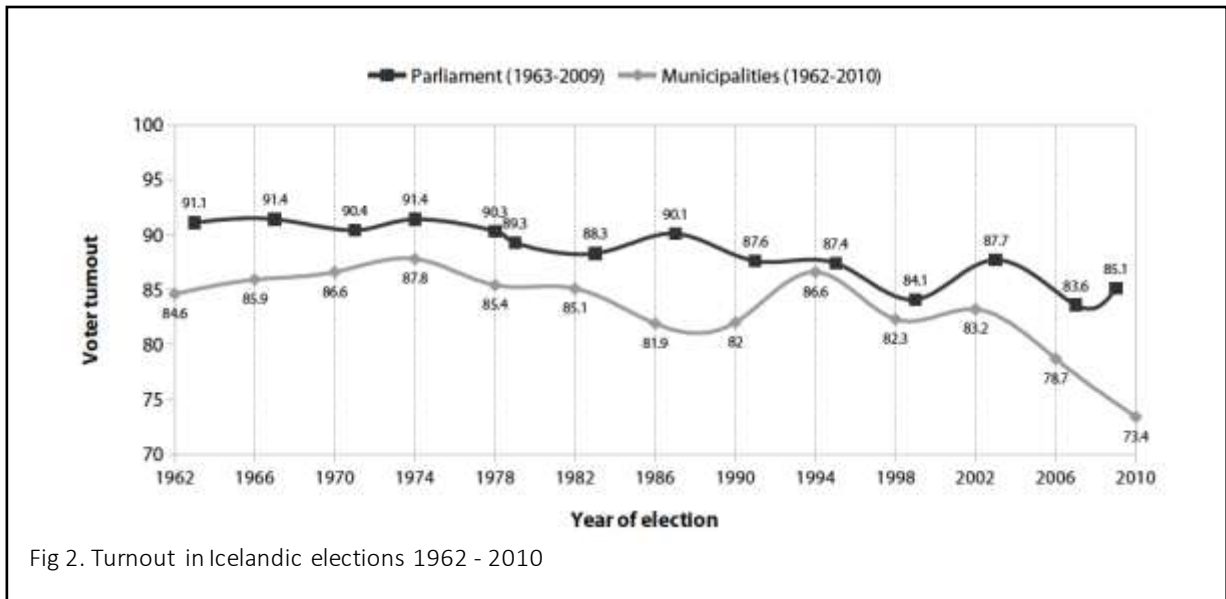
Fig 2. Turnout in Icelandic elections 1962 - 2010

In a 1998 study prepared for the Commission on Local Government and the Scottish Parliament (the McIntosh Commission), the authors identified the key differences between local government in Scotland and in 9 other countries (Australia, New Zealand, USA, Germany, France, Netherlands, Denmark, Sweden and Switzerland).[6]

They observed that in most of these countries:

1. local authorities have a wider range of powers and responsibilities than those in Scotland and often the range of powers and responsibilities in these countries is increasing;

2. the basic unit of local government is smaller (and seen, therefore, as closer to the people) than in Scotland.

3. local authorities are much more likely to co-operate with each other, with the private sector, and with their own citizens (the voluntary traditions in the USA and Switzerland for instance) than has typically been the case in Scotland;

4. local authorities typically raise a higher proportion of their income than do local authorities in Scotland;

5. there is some form of proportional representation in local/or national elections;

6. arrangements for voting are more accessible (and in some cases obligatory).

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[5] Eyþórsson, & Kowalczyk (2013) Explaining the low voter turnout in Iceland's 2010 local government elections. Samtíð 1 (2013), 2

[6] Hughes, Clarke, Allen & Hall, 1998. The constitutional status of local government in other countries. Report prepared for the Commission on local government and the Scottish Parliament. CRU, Scottish Executive.

Despite some changes since 1998 (most notably in the voting system) these observations continue to hold true.

In 2009, the Communities and Local Government Committee of the House of Commons published a report on the balance of power between local and central government. In it, the committee observed that local government in England differs from other European countries in three key respects.

> *"The relationship between central and local government in England deviates from the European norm in at least three areas – the level of constitutional protection, the level of financial autonomy, and the level of central government intervention. All serve to tilt the balance of power towards the centre." (para38)*[7]

The remainder of this section will explore the issues of constitutional protection and fiscal autonomy.

Constitution

The Scottish Parliament has the power to reform the existing system of local government. It could even, if it wished, abolish it entirely. Equally, the UK Parliament has the power to legislate over all devolved matters and to abolish the Scottish Parliament. This absolute authority to decide the shape of local government and to interfere in its affairs is a characteristic of the UK not shared with many other countries.

In states with a written constitution, the status and powers of local government are usually enshrined with the result that it is rather more difficult for higher tiers of government to interfere in their affairs. In Sweden, for example, Article 1 of the Instrument of Government states that,

All public power in Sweden proceeds from the people. Swedish democracy is founded on the free formation of opinion and on universal and equal suffrage. It is realised through a representative and parliamentary form of government and through local self-government.

Article 7 states that,

"Sweden has local authorities at local and regional level."

Chapter 14 states that,

Article 2 - *"local authorities are responsible for local and regional matters of public interest on the principle of local self-government"*

Article 3 - *"any restriction in local self-government should not exceed what is necessary with regard to the purpose of the restriction"*

Article 4 - *"local authorities may levy tax for the management of their affairs"*

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[7] "The Balance of Power" Central and local Government Sixth Report 2008-2009 HC33-1 Although this report is concerned with England, this key conclusion is just as relevant for the situation in Scotland. http://www.publications.parliament.uk/pa/cm200809/cmselect/cmcomloc/33/33i.pdf

And,

Article 6 - "*Regulations regarding grounds for changes in the division of the realm into local authorities are laid down in law.*"

Importantly, the constitution can only be amended by the Riksdag passing two identically worded resolutions to this effect on two different occasions, separated by a general election. No other laws are allowed to come into conflict with the constitution.

This constitutional protection means that any attempt by the Riksdag to pass laws which interfere with the rights of local government (for example to abolish the local and regional levels and create new "unitary authorities" as happened in Scotland in 1996), would be beyond its powers and would necessitate an amendment to the constitution. Swedish citizens are thus protected against any attempt by their national parliament to abolish or restructure local government in violation of the constitution.

Such constitutional underpinning also restricts higher tiers of government from interfering in the affairs of local government. For example, during the 2011 Holyrood election, both the SNP and the Labour Party promised that, if elected, they would freeze the level of the council tax despite this being a local government competence. Evidence suggests that this was a popular policy but the council tax level is not set by the Scottish Parliament but by each of Scotland's 32 local authorities.

The fact that politicians seeking election to a national parliament could so easily usurp the powers of local government in pursuit of their own electoral success is an illustration of the crisis that is local democracy in Scotland. Had Angela Merkel made such an appeal to German voters in the Federal election of 2012, she would have been advocating a clear violation of the German constitution, specifically Article 18(2).

> "*Municipalities must be guaranteed the right to regulate all local affairs on their own responsibility, within the limits prescribed by the laws. Within the limits of their functions designated by a law, associations of municipalities shall also have the right of self-government according to the laws. The guarantee of self-government shall extend to the bases of financial autonomy; these bases shall include the right of municipalities to a source of tax revenues based upon economic ability and the right to establish the rates at which these sources shall be taxed.*"
> Article 28(2) Basic Law for the Federal Republic of Germany

Financial Autonomy

Another key difference between local government in Scotland and the rest of Europe is the very low proportion of revenue that councils in Scotland are responsible for raising themselves. Across the UK only 12.7% of local government revenue is from local taxation (the council tax) and in Scotland, it only accounts for 10.7% of revenues.[8] As Figure 3 shows the EU average is 41.6%.

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[8] House of Commons, 2012. Prospects for codifying the relationship between central and local government. Third report of Political and Constitutional Reform Committee 2012-2013 para 104.
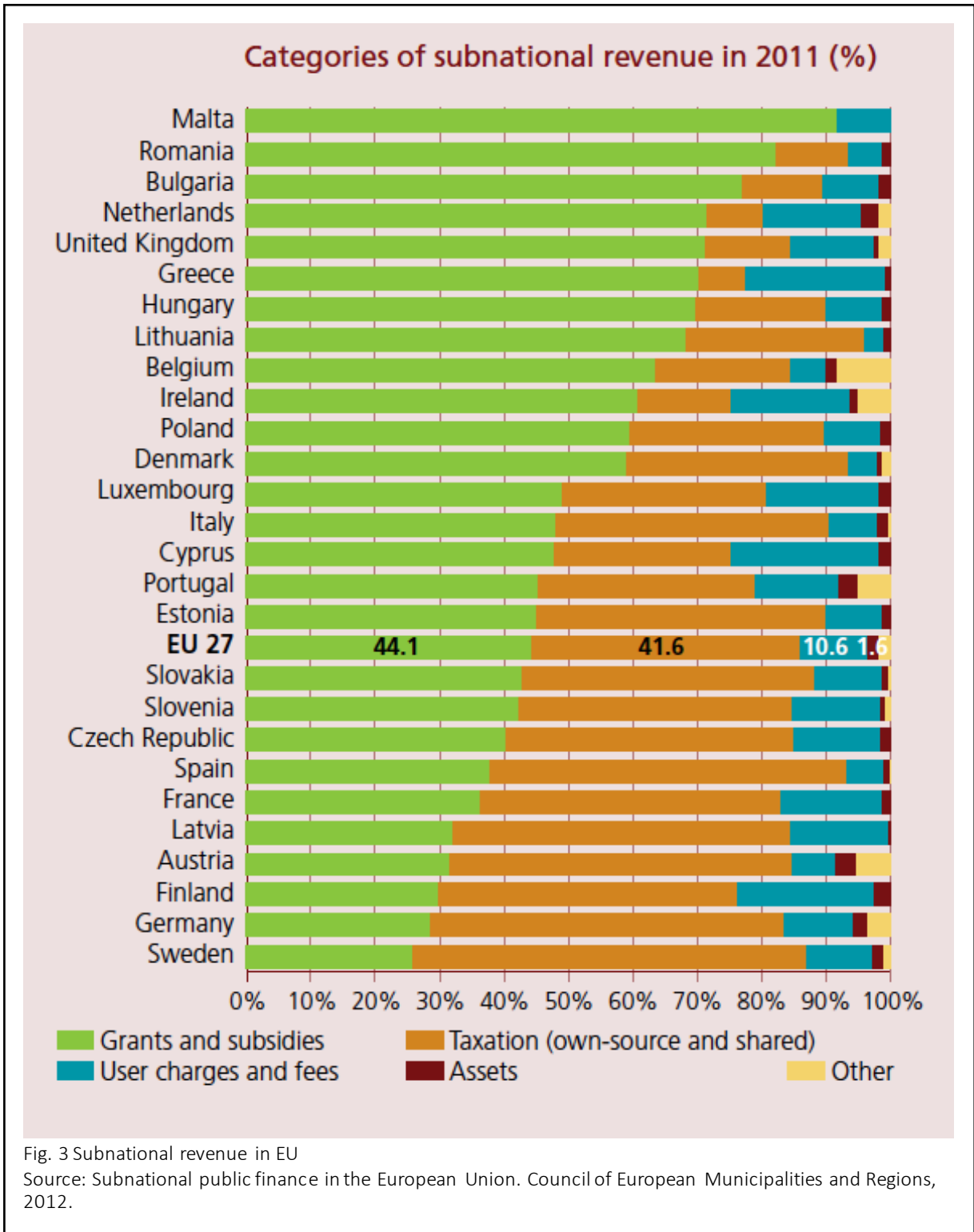and Scottish Local Government Financial Statistics, 2011-12 Table 2.4

Fig. 3 Subnational revenue in EU

Source: Subnational public finance in the European Union. Council of European Municipalities and Regions, 2012.

Moreover, most municipalities in Europe have a range of possible fiscal powers including local income tax, a statutory share of national income tax, a range of land and property taxes, sales taxes and visitor levies. An illustration of the range is given in Figure 4.

Chart 1: Share of tax income by type
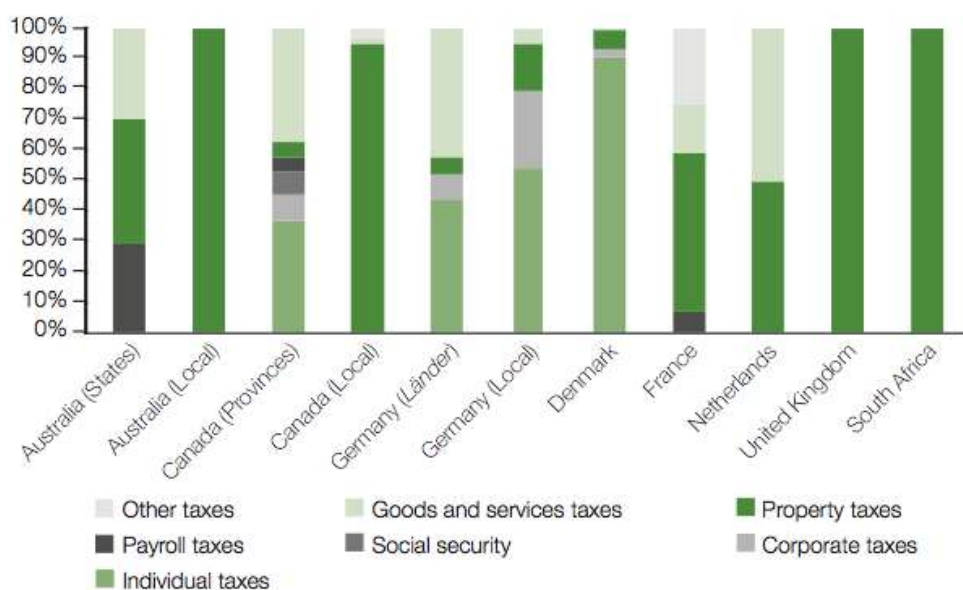
Source: OECD (2008), Statistics South Africa (2008). Data is for 2006.

Fig 4. Local government tax income by type
Source: Gough, 2009. With a Little Help From Our Friends. International Lessons for English local Government. Locality, London.

Currently, Scottish local authorities have virtually no discretion over how they raise finances. The council tax level has been frozen in response to pledges made in Scottish Parliament elections and implemented as part of negotiations between the Scottish Government and local authorities over their block grant. Non-domestic rates are now set by the Scottish Parliament and collected centrally. As far back as 1999, the McIntosh Commission concluded that *"in the long term the proportion of revenue raised locally needs to be increased substantially."*[9]

In 2011, Green Councillors on the City of Edinburgh proposed a visitor levy which would be raised by a levy on overnight accommodation in Edinburgh's hotels. The council does not have the power to introduce such a levy and the Scottish Government Tourism Minister, Fergus Ewing, announced that there were no plans to give the council the power they sought, claiming that *"there is a high risk that a visitor levy could damage the industry's competitiveness, especially in the current economic circumstances."*[10]

Whether such a levy would be a good idea or not is beside the point. In most other European countries such decisions would be a matter for the relevant local authority. What is striking in this example is that central government is stating explicitly that it denies local government the right to a degree of autonomy that most other European cities take for granted.

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[9] Moving Forward: Local Government and the Scottish Parliament. Report of the Commission on Local Government and the Scottish Parliament, 1999. pg. 5
[10] Edinburgh tourist tax plan not legal, say ministers. BBC Scotland News 15 December 2011
www.bbc.co.uk/news/uk-scotland-edinburgh-east-fife-16205339

4. LOCAL DEMOCRACY IN SCOTLAND 1996 - PRESENT

The current structure of local government was established by the Local Government (Scotland) Act 1994 which came into effect in 1996 and abolished the 12 Regions and 53 Districts and replaced then with a one-tier system of 32 unitary authorities (see Annex I for details).[11] For the first time in history, Scotland now has only one tier of local government.

Following the referendum to establish a Scottish Parliament in September 1997, the Scottish Office established the McIntosh Commission in January 1998 to explore the future relationship between the Scottish Parliament and local government. It reported in June 1999 and among the recommendations were a new concordat between the two institutions, an inquiry into local government finance, proportional representation for elections, and strengthening the role of community councils.[12]

The McIntosh Report observed that,

> *"It could be said that Scotland today simply does not have a system of local government in the sense in which many other countries still do. The 32 councils now existing are, in effect, what in other countries are called county councils or provinces"*[13]

The McIntosh Report was followed in 2000 by the Kerley report which examined how council membership could be made more attractive to a wider cross-section of the community, what the appropriate numbers of members should be under a new proportional system, and what would be an appropriate system of remuneration for elected members.

Since devolution, there has been reform of how the existing structure of local government operates. The voting system, remuneration and timing of elections have all been modernised. Attempts to reform local government finance have failed, however. The Local Government Finance Review Committee (the Burt report) reported in 2006 but its recommendations have never been implemented.

These matters, important as they are, have contributed little to the democratic renewal of local government. In the wake of the disappointing turnout in the 2012 local elections, the Scottish Parliament's Local Government and Regeneration Committee undertook an inquiry into the poor turnout (39.8%) at the election.[14] The Committee looked at voting methods, voter registration, the design of the ballot paper and various other technical questions. The one issue that they did not examine was whether in fact voters had any motivation to vote in the first place. As the co-author of the Silent Crisis report[15] observed recently,

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[11] Until 1996, the geographic territories covered by Scotland's local councils had geographic names such as Parishes, Districts, Regions, Burghs. The 1994 Act curiously did not provide a geographic name for Scotland's new authorities. Henceforth they were to be known solely by the name of the authority. For example, whereas Roxburghshire was a county until 1975 and a district until 1996, Scottish Borders Council is not a region, a district or anything.

[12] Moving Forward: Local Government and the Scottish Parliament. Report of the Commission on Local Government and the Scottish Parliament, 1999.

[13] McIntosh et al., 1999: Ch. 6, Line 155

[14] Report on the 2012 Scottish Local government Elections. Scottish Parliament Local Government and Regeneration Committee 8th Report (Session 4)

[15] The Silent Crisis: Failure and Revival in Local Democracy in Scotland. Jimmy Reid Foundation, 2012.

> *"Scottish local democracy has been compared to a ladder, with the lower rungs missing. It is excluding Scots from running their own local affairs, denying them access to democracy. What we have instead is the reduction of citizens to customers – a marketisation of local governance, exacerbated by out-sourcing and privatisation of services. No wonder that turnout at local elections is catastrophically low – Scottish voters clearly experience local government as something they're being excluded from and ignored by."[16]*

The turnout in the 2012 Local Government elections (39.8%) is the lowest ever recorded since the local government reforms of 1975. Clearly there is more at stake that simply the design of ballot papers or voting systems.

In 2013, COSLA established a Commission on Strengthening Local Democracy. The title is important - the commission is about democracy not simply local government. In a paper published earlier, COSLA commented that,

> *"Local democracy is weak compared to Europe Our starting point is to develop a new understanding of how all parts of government should work. Scotland is one of the most centralised countries in Europe. It is no coincidence that our European neighbours are often more successful at improving outcomes, and have much greater turn out at elections.*
>
> *We cannot hope to emulate the success of these countries without acknowledging that they have more local councils, local elected councillors represent fewer people, and that these councils and their services are constitutionally protected and their funding secured by law, even with regard to national policy making.*
>
> *We should seek the same benefit, and the same independence that local government has in most western democracies."[17]*

This re-invigorated debate is welcome. The status quo is no longer an option and proposals such as those made by the think tank Reform Scotland to reduce the number of councils in Scotland do nothing to enhance local democracy.[18]

After decades of erosion of the powers of local government and the removal of responsibility for water, further education, courts administration and policing, it is time to reverse remorseless centralisation and design a new democracy fit for the 21st century.

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[16] Bort, 2013. Putting Local Democracy at the Heart of Scotland's Constitutional Future. Scottish Constitutional Futures Forum
[17] COSLA Local Matters May 2013
[18] Reform Scotland, 2012 Renewing Local Government

THE EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT

The European Charter of Local Self-Government was developed and adopted by the Council of Europe in 1985 and came into force in 1988. The UK signed the Charter on 3 June 1997, ratified it in April 1998 and it came into force on 1 August 1998. (1) Among its articles are the following.

Article 4 (4)
Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.

Article 8 (3)
Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

Article 9 (3)
Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.

The Charter is an international treaty and both the UK and Scottish Parliament are bound by its terms. The Congress of Local and Regional Authorities of the Council of Europe has a legal mandate to monitor local and regional democracy in member states.(2)

In its 1999 report on local and regional democracy in the UK, the Council highlighted a number of areas of concern where the UK had further work to do to comply with the Charter. (3) In terms of the treaty obligations, the council tax freeze which has been in place since 2006 is arguably a fairly clear breach of the articles cited above.

More generally, the Council of Europe has questioned whether the limited (approx. 20%) of local government finance that is raised locally is compatible with Article 9 of the Charter which entitles local authorities to "adequate financial resources of their own."

The Scottish Parliament is also bound to ensure that "the principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution." (Article 2)

(1) See http://conventions.coe.int/Treaty/en/Treaties/Html/122.htm
(2) Congress of Local and Regional Authorities. See also Chris Himsworth, Treaty-Making for Standards of Local Government: The European Charter of Local Self-Government and its Possible Application beyond Europe (Edinburgh Law School Working Paper No. 2011/4) for further background.
(3) See Section 4.2 of the Council of Europe, Report on Local and Regional Democracy in the United Kingdom (26-28 May 1998) https://wcd.coe.int/ViewDoc.jsp?id=887457

5. DESIGNING A NEW DEMOCRACY

PRINCIPLES

To have a meaningful debate about the future of local governance in Scotland requires some agreement on the principles that should underpin a revitalised local democracy. In this section of the report we set out principles for a renewed democracy.

1. Local government should be local

As many commentators have observed, local government in Scotland is not local and it does very little governing. The term is a misnomer. A revitalised democracy must be local. Proposals for reform must reflect this.

2. Local government should be universal and "hard-wired"

Many initiatives have been launched for greater community participation, involvement and empowerment in the 13 years of devolution including community planning and the community right to buy. Such efforts reflect a preference for the voluntarist approach whereby opportunities and rights are framed and presented for communities to take advantage of if they feel so inclined. This approach favours places where the people have the time, capacity and skills to make use of what are often a confusing and complex set of rules.

Real local democracy, on the other hand, requires a clear set of meaningful statutory powers that are available to all and can be exercised through recognised statutory bodies by elected representatives of the people in the local community.

3. Local government should govern

Currently local government in Scotland is little more than a regional service delivery vehicle. To govern is to exercise authority over the affairs of a place and to respond to the needs and aspirations of those who live there. The powers that Scotland's existing local authorities have to do this are, in fact quite substantial. Part 3 of the Local Government (Scotland) Act 2003 provides local authorities with wide-ranging powers to advance well-being. This term is not defined in the Act but Scottish Government guidance on the topic highlights economic, social, health-related and environmental factors as being among those that contribute to well-being.[19]

4. Local government should enjoy a large degree of fiscal autonomy

To govern effectively and to take advantage of such powers, local government needs some of the powers that national governments enjoy, namely the power to raise revenue and the autonomy to decide how best to do so.

5. Local government powers should be entrenched

It is one of the most remarkable features of local government in the whole of the UK that it enjoys no constitutional protection. Local government must of course operate within the rule of law established by Parliament but to change its fundamental characteristics (in extremis to

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[19] http://www.scotland.gov.uk/Publications/2004/04/19276/36158

abolish it) is a reform that should be subject to additional safeguards and checks. This is normally done by provisions in a written constitution.

6. Local government should carry out local functions

Local government should carry out all those functions that are best carried out locally. This is a restatement of Article 4(3) of the European Charter of Local Self-Government,

> *"Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy."*

7. Local government should enjoy stability

In 1975 and 1996, local government reform in Scotland involved significant structural upheaval with powers transferring to new entities en bloc and boundaries redrawn overnight. The disruption typically caused by such changes acts as a powerful disincentive to undertake changes that might otherwise be beneficial.

In order to enjoy stability and enable local government to plan for the long term we propose a new system of "hard-wired" local councils with the flexibility to configure, and easily re-configure, how they collaborate with each other to deliver services.

*

Silent Crisis, the report published by the Jimmy Reid Foundation made the following recommendations about the future shape of local government.

> *Above all it is imperative that local democracy should be universal and not reliant on a community 'opting' for democracy. A 'voluntarist' approach favours communities where people have time, self-confidence and experience – often this means affluent communities.*

> - *There must be a clear recognition that elected politicians are central to democracy; while modern technologies may offer new ways to gauge public opinion they do not offer a means of holding democratic institutions to account.*

> - *Ultimate responsibility must lie with the democratic body and not with paid officials. The instinct of professionals to prevent elected officials 'making mistakes' must be curtailed;*

> - *Communities must be free to make their own decisions and live with the consequences.*

> - *We should accept that consistency is not the primary goal and that different kinds of democratic bodies suited to different areas and communities is fine.*

- *Similarly, diversity of outcome is an inevitable and desirable result of democracy and 'managing out' difference should be avoided wherever possible*

- *The assumption that homogeneity and size are synonymous with efficiency must be rejected. Outcome must come first; the role of efficiency must be in delivering democratic outcomes as well as is possible.*

- *The principle of subsidiarity should be adhered to; powers should lie as close to the affected communities as is possible.*

- *However, it must also be recognised that there will also be a right to expect some national standards of quality and that the nationally elected government has a clear locus to set national priorities and policy frameworks*

- *Local units of democracy should not undermine the principle of collective social cohesion and must not become a means of promoting greater inequality between poorer and richer communities. As in long-established precedent, a mechanism for redistribution according to social need must be a central part of the system.*

DISCUSSION

Very few of the above principles can be said to apply to Scotland's current system of local government but, until recently, there has been little debate about how local government should function. Scotland's local authorities enjoy little affection and respect for a variety of reasons. This has bred cynicism about the role and purpose of local government.

At same time, the Scottish Government is emphasising and promoting community empowerment most recently through the proposals for a Community Empowerment and Renewal Bill. Over the past decade a significant number of communities have taken positive action to regenerate their neighbourhoods. A total of 2718 housing associations and community and development trusts now own an estimated 75,891 assets worth over £1.45 billion and covering 463,006 acres of land. The vast majority of these assets (73,151) are houses owned by Scotland's 84 housing associations and the vast majority of the land area comprises 17 large rural estates such as South Uist, Knoydart and Assynt.[20] These developments are in addition to the extensive network of voluntary and community organisations engaged in a wide variety of service provision across Scotland

There is now a significant political, cultural and geographical gap between the statutory structure, functions and operations of the existing 32 local authorities and the wide and varied communities at a local level who are responding to the void in genuine local democracy by self-help.

In order to restore local democracy, it must be local. In most European municipalities, it is normal to pay a substantial portion of one's income tax to the local authority. Being smaller in scale and with higher levels of participation, this means that voters not only have a greater

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[20] Development Trusts Association 'Scotland Community Ownership in Scotland. A baseline study September 2012.

stake in local affairs but know and meet those elected to spend their money in the street, the pub, the shops or the school playground. Elected representatives should be visible and that means councils need to be an appropriate scale.

The proposed reforms set out in the next section are designed to point the way to a revitalised local democracy. They are not a blueprint but highlight how the principles above might be put into effect. Above all, Scotland needs ambition in this area rather than simple fixes. A radical vision of local democracy could provide the basis for tackling a range of social and economic issues as well as revitalise democratic participation and empower communities.

6. PROPOSALS FOR A NEW DEMOCRACY

The reform of local government should not be viewed in isolation but should be part of a much wider programme of democratic renewal to revitalise the institutions and processes by which we are governed. The proposals made in this section are not in themselves sufficient to restore meaningful democracy to Scotland's communities. They must be accompanied by a fundamental shift in how power is exercised to create a bottom-up democracy where what happens locally matters so much to so many people that there is a genuine reason to take an active interest in their local council.

As the Jimmy Reid Foundation noted in a recent report,

> "All the evidence suggests that people are increasingly dissatisfied, disillusioned and disengaged from the political process. But that is not the same as lacking interest in political affairs or the consequences of political decisions. The fact that large swathes of the population have been conditioned to accept a spectator role in political matters does not mean that given the opportunity they would decline to be players."[21]

A new democracy built upon the principles outlined in the previous section can be developed. It will take time but this is part of the transformation - allowing people to take on board the potential of a more local form of democracy, providing choices in how this might be delivered and building up levels of mutual trust in the process.

Past reform of local government has been driven from the centre, has been focussed on service-delivery rather than democracy and has provided little or no meaningful role for the local. The proposals presented here overcome this by providing local democracy & choice, flexibility and real autonomy.

APPROACHES

There are three broad approaches that could be adopted to renew local democracy.

The first is to reform and strengthen community councils in order that they (or some adaptation of them) can in future provide the local democratic framework for communities. There are advantages with this approach. Community councils already exist (though they are not universal), they have an existing statutory basis which could be amended, and they are understood by communities across Scotland.

Disadvantages, however, include the low value accorded to community councils at present and perceptions that they are unrepresentative. Using community councils as the framework within which to build a new democratic settlement may be constrained by existing perceptions of their character and performance. Community councils were created as a limited concession to the loss of Scotland's 197 town councils in 1975. Despite the best efforts of many community councillors to represent and develop their communities, Community Councils have not evolved into a strong democratic form of governance.

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[21] Jimmy Reid Foundation, 2013. Government by the People. The Final Report of the Commission on Fair Access to Political Influence

The second approach is to increase the devolution of existing local authority powers to more local fora. For example, empowering Local Authority area committees with a range of specified powers, perhaps set out in law. The advantages of this approach are that it can be incremental, does not fundamentally change the existing structures and builds on recent moves to empower communities through, for example, the Community Empowerment and Renewal Bill.

Problems with this approach, however, include how to ensure a conversation about real local democracy rather than merely an attempt at better reflecting local views and opinions. Such an approach is also subject to the natural resistance of any polity to yield power (the probable reluctance of existing authorities to cede significant amounts of power to communities) and the weak bargaining position of localities in any such negotiations. Reforming the powers of local government tends to end up being a conversation predominantly between central and local government with local communities very much relegated to the status of onlookers with minimal clout.

If, as this report recommends, we want to see genuine autonomous local government at the local level and with real power, it will be better to adopt a fresh and radical approach that does not involve the re-negotiation of existing power relations to effect change but instead puts in place a new framework within which new relationships can be forged.

We know we can do local democracy. Orkney and Shetland councils serve populations of 22,100 and 22,400 respectively. Although not truly local they are far closer to the European norm of around 5000 people compared with the much larger councils that serve the rest of Scotland.

A NEW APPROACH

A radical approach is required to build genuine local democracy. This does not mean that change has to be rapid - it can and should be measured and staged but the end point must be firmly established and agreed upon - a revitalised, autonomous local system of hard-wired governance. In other words, everywhere in Scotland should have a local democratic body. Community empowerment will not happen if it is left to the voluntary model whereby communities need to first create the voluntary infrastructure to deliver for their community.

A major problem of previous reforms has been the upheaval necessary to move from one system to another. Responsibilities change and boundaries are redrawn overnight. Local identities, names and institutions are modified and erased. Stasis ensures a reluctance to embark on any further reform for a long while.

The proposals put forward here are designed to build a resilient structure which is both local and democratic but which is also flexible and responsive to changing circumstances. In comparison with previous reforms where entire entities have been swept away and boundaries redefined, this reform (which we call the lego brick model) focusses on putting in place a framework of local governance that can then be adapted to suit local circumstances without excessive rigidity.

It is clear from the variety of evidence and reports over the past 15 years that Scotland needs a system of local government that can deliver the following.

1. institutions that are local
2. institutions that can provide strategic functions at regional level
3. flexibility in how services and democracy can be delivered.
4. fiscal autonomy

LOCAL INSTITUTIONS

In order to provide local institutions, there need to be entities that are genuinely local in geography and that provide a forum that people can identify with.

A system of local councils - municipalities - should be established across Scotland at a scale of approximately 20,000 electors each. If the four largest cities each form one municipality then the remaining population of 3,884,000 will form around 180 municipalities with the larger towns (Perth, Paisley, Inverness, Stirling, Hamilton etc.) forming their own municipal government. Ensuring greater local governance in the cities will require further discussion and could include the creation of multiple city municipalities.

The functions of these municipalities will include environmental services, leisure and recreation, primary education, primary healthcare, planning and municipal enterprise.

STRATEGIC REGIONS

To revitalise local government also means providing strong strategic governance for Scotland's regions. These Regions, perhaps 6 or so plus the four largest cities, could be directly elected or could be run by appointed representatives from the municipalities. They would undertake strategic functions such as regional health, transport, secondary and further education, regional planning, public land administration and economic development.

A system of Regions should be established. The four cities will each form a region (and thus be both municipality and region). In addition, there should be around six or so further regions plus the three island authorities which, like the cities could be unitary authorities (comprising municipal and regional functions). The boundaries of these regions require careful thought. It might, for example, make sense for the Western Isles to be amalgamated with the western highland mainland to provide for integrated regional transport.

FLEXIBILITY

Local government needs to be adaptable and flexible in response to changing circumstances. This is particularly the case for the most local tier of government which requires to be able to operate efficiently across the range of its functions. Given that some functions may be better delivered at a larger scale (but below that of the Regions), the municipalities should be able to collaborate where necessary.

Municipalities will be structured according to the lego brick model. That is to say they will have the ability to form shared vehicles for the delivery of whatever functions are deemed appropriate. This may involve different collaborations for different responsibilities and might

include shared procurement, enterprises or service delivery. The basic unit of government will, however, remain unchanged to provide a stable and local democratic institution.

EFFICIENCY

The efficient delivery of local services is one important function of local government. Another is effective local democracy. There may be a conflict between the two in terms of the optimal scale of different tiers of local government. For some functions, efficiency might require larger units of government but for others it might be more appropriate to deliver them at a much more local level. The lego brick model allows communities to trade democracy and efficiency in the manner best suited to local circumstances.

FISCAL AUTONOMY

Real local government needs the fiscal powers to both enjoy a degree of autonomy and to be democratically accountable to the electorate. Currently Scottish local authorities enjoy virtually no fiscal autonomy and possess only one means of raising revenue - the council tax.

Municipalities and Regions should raise at least 50% of their own revenue. They should be provided with a range of different revenue raising powers including land and property taxes, sales taxes, visitor levies and local income taxes. Local government needs to have the incentive to govern in ways that promote economic and social development and enable them to benefit from the improvements and services they provide.

In addition, councils should be provided with a statutory assigned share of national income tax to be remitted directly to each local authority. The Scotland Act 2012 devolves control over a Scottish rate of income tax to the Scottish Parliament. A fixed (for example 50%) share of the proceeds of this should be remitted directly to local municipal and regional councils. It is important to stress that this is not a local income tax but a statutory assignation of national income tax. This will provide incentives to councils to use their powers to create attractive places to live and work.

The remaining finances should be allocated on an equalisation basis according to needs.

CONSTITUTIONAL ENTRENCHMENT

One of the weaknesses of the current system of local government is that can be reformed and even abolished by Parliament. Its powers and responsibilities therefore can be changed from one Parliament to the next. This vulnerability undermines the status and role of local government and leaves it open to undue interference for political reasons.

The system, powers and functions of local government should be entrenched in a written constitution or other form of statutory framework designed to ensure the independence and fiscal autonomy of local government.

FUNCTIONS AND POWERS

Annex I illustrates the range of competencies of different levels of local government in a number of countries.[22] Devolution has been a success story in Scotland but since 1999, little has been done to strengthen local democracy and autonomy. It is vital that in any new constitutional settlement, that political power is rooted at the local level and that any new powers and responsibilities for the Scottish Parliament do not further centralise power in Edinburgh.

Precisely how functions should be allocated between regions and municipalities needs to be explored further. Core functions, however, should be the responsibility of as local a level as appropriate. In addition, municipalities should be the default institution for delivering any new powers such as those currently being proposed in the Community Empowerment and Renewal Bill. Further powers could include land administration (e.g. landownership records), community transport, local energy generation and administration of hunting and fishing rights.

The Scottish Parliament should confirm its intention to respect and implement the legal obligations contained in the European Charter of Local Self-Government.

The UK government, in response to the House of Commons Political and Constitutional Reform Committee's report on codifying the relationship between central and local government stated that,

> *"Reforming one of the most centralised countries in the western world requires an ongoing commitment of political will and attention. The prize at stake is a fundamental change in the relationship between citizens and the State."[23]*

If the penny has dropped in Westminster it is time that Holyrood caught up.

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[22] For a full description of the competencies across European local government, see CCRE-CEMR, 2012. Local and Regional Government in Europe: Structures and Competencies.
http://www.ccre.org/img/uploads/piecesjointe/filename/local_government_structuresandcompetences_2012_en.pdf
[23] UK Government Response to the House of Commons Political and Constitutional Reform Committee Report: The prospects for codifying the relationship between central and local government. Cm8623.
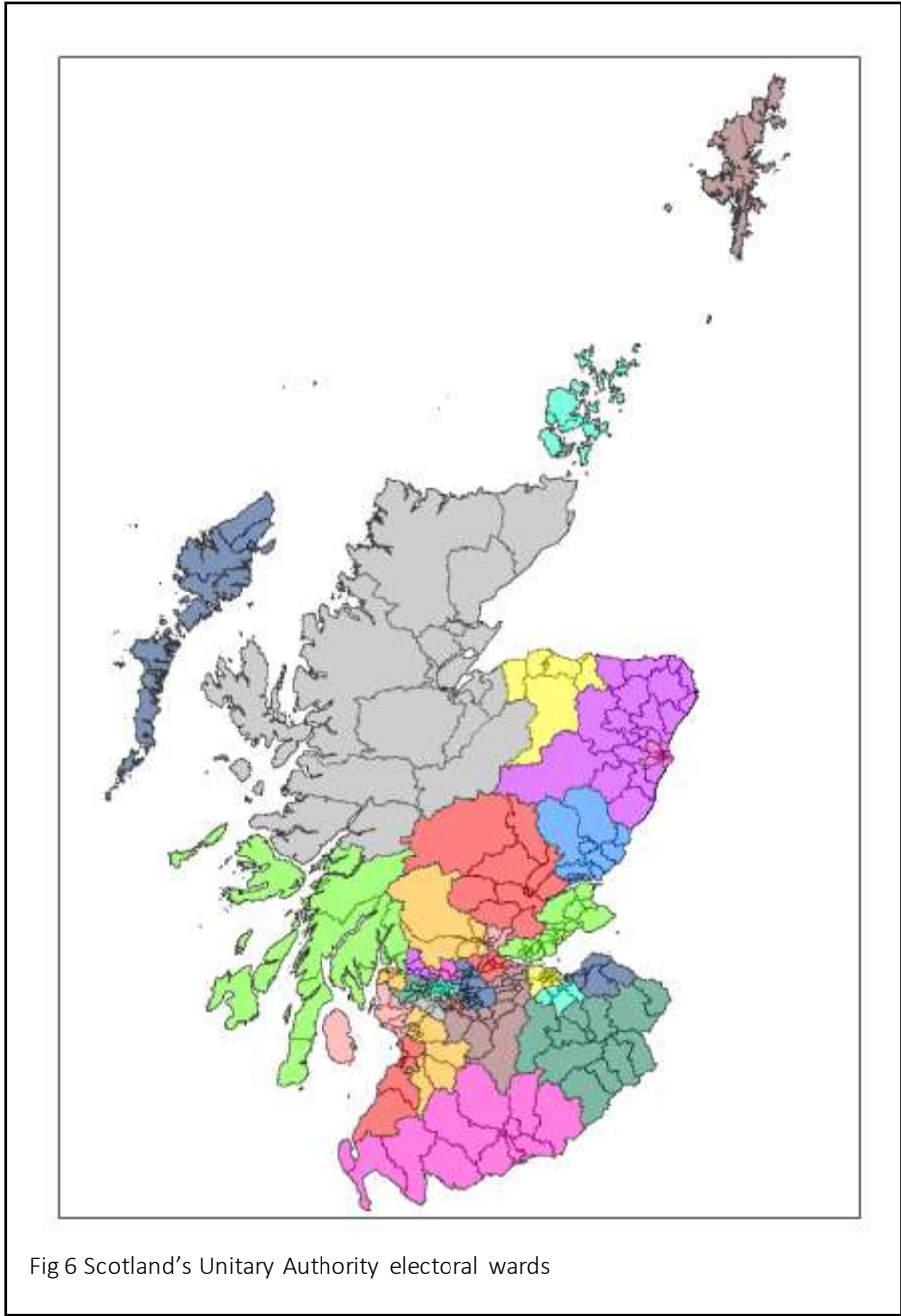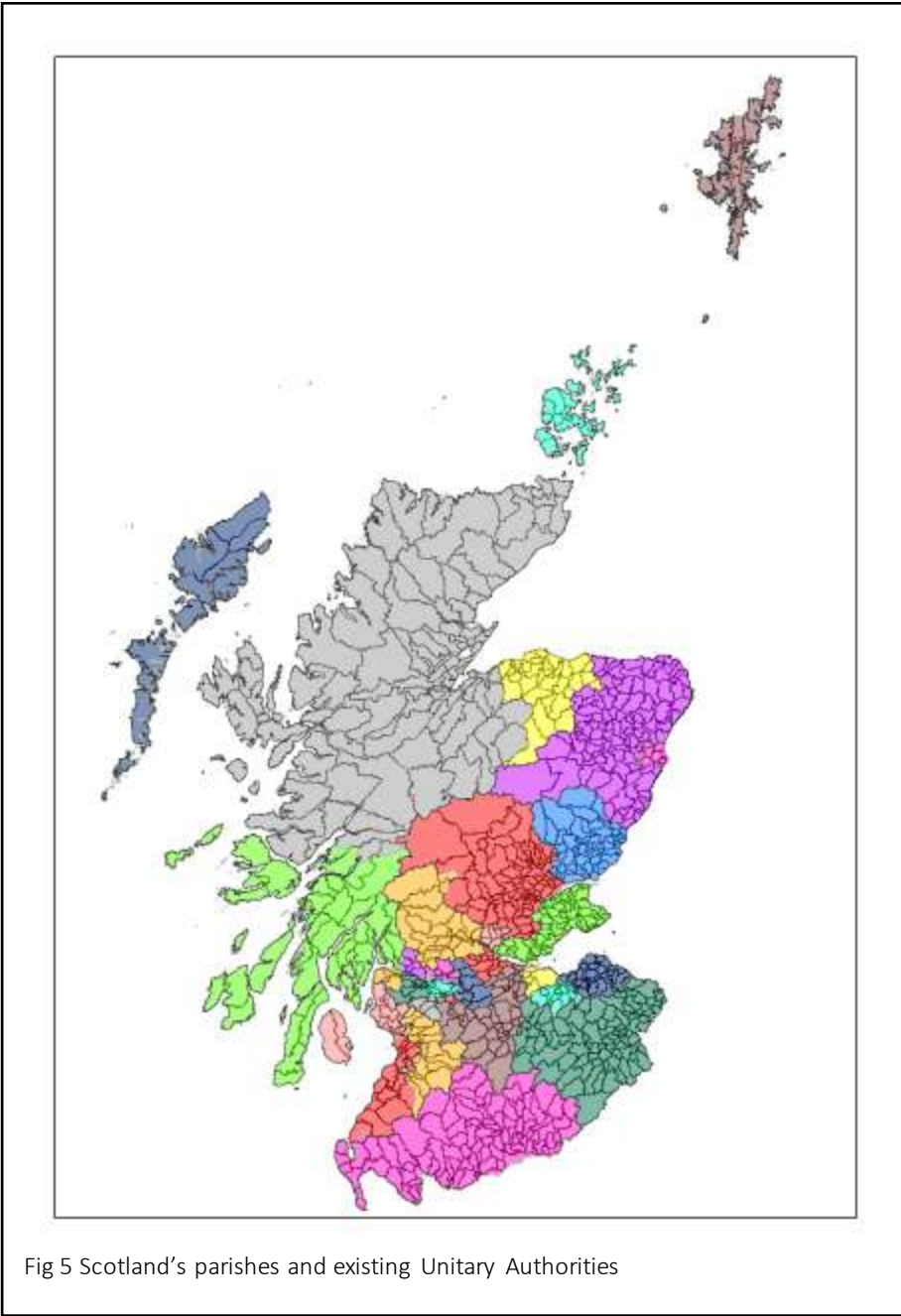
ANNEX I

Fig 5 Scotland's parishes and existing Unitary Authorities

Fig 6 Scotland's Unitary Authority electoral wards

Table 2: Breakdown of functions

	Denmark		France			Germany		Netherlands		Australia		Canada		South Africa		England	
	Regions	Municipalities	Régions	Départements	Communes	Länder	Local	Provinces	Municipalities	States	Local	Provinces	Local	Provinces	Local	Regional	Local
Property																	
Roads (local)		√√		√√	√√		√√		√√		√√	√	√√	√√	√√		√√
Public transport	√√	√	√√	√√		√	√√	√	√√	√√	√√	√√	√√	√√	√		√√
Utilities		√√			√√		√√	√	√√	√√	√	√√	√				√√
Waste		√√			√√	√	√√		√√			√√	√	√√			√√
Local planning		√√			√√		√√		√√			√√	√	√√			√√
Amenity																	
Parks & open spaces		√√			√√		√√		√√		√√	√	√√		√√		√√
Sport & leisure		√√	√√		√√		√√		√√		√√	√	√√	√√	√√		√√
Cultural facilities		√√	√√		√√	√√	√√		√√		√√	√√	√√	√√			√√
Social																	
Health: hospitals	√√					√√	√√			√√		√√		√√			
Health: other		√√				√	√			√√	√	√√	√	√√	√		√
Education: primary		√√			√√	√√	√		√√	√√		√√		√√			√√
Education: secondary			√	√		√√	√		√√	√√		√√		√√			√√
Education: FE& HE			√			√√	√			√√		√√					
Other children's services		√√		√√			√	√	√√	√√		√√	√	√			√√
Social services	√	√√		√√	√√	√√	√√		√√	√√	√	√√	√				√√
Social housing		√√			√		√√		√√	√√	√	√√	√	√	√		√
Welfare & employment		√√	√	√√	√		√		√√	√		√					
Public order																	
Police						√√	√√		√√	√√		√√	√√				√
Fire & rescue							√√			√√		√√	√√		√√		√
Emergency planning		√√				√√	√		√√	√√		√√	√√	√√	√√		√
Other																	
Strategic planning	√	√	√√			√√		√√		√√		√√		√√		√√	√
Strategic infrastructure		√√	√√			√√		√		√√	√√	√√	√	√√	√√	√√	√
Economic development	√√	√	√√		√	√√	√√	√√	√√	√√	√√	√√	√√	√√	√√	√√	√√
Environmental protection		√√		√√		√√	√√	√√	√√	√√	√√	√√	√	√√	√√		√√

Sources: Commonwealth Local Government Forum (2008); Parrado (2005); Wollmann (2008); VNG (2008); Ministry of the Interior and Health (Denmark) (2005). Note: "Strategic infrastructure" = larger roads, rail, airports.