



SUBMISSION TO THE SMITH COMMISSION

1. Who we are and our primary concerns

Ekklesia is a public policy think-tank, headquartered in Edinburgh and London, which examines the role of beliefs and values in shaping policy and politics for the furtherance of social and environmental justice. Christian in background and orientation, we work with people across and beyond the spectrum of religious and non-religious conviction. Ekklesia is supported by a charitable trust but is fully independent of both political parties and faith bodies.

2. The proper discharge of the Commission's terms of reference

The Smith Commission is charged with securing recommendations to deliver more financial, welfare and taxation powers to strengthen the Scottish Parliament within the United Kingdom – based on wide consultation with political parties, civic society, businesses and individuals across Scotland. We recognize that this is an extremely challenging and complex task. Our submission will therefore focus on two areas: the need for civic participation and the principles which we believe should rest at the heart of your deliberations. The Commission has advised against a mere 'shopping list of powers', and we concur with that. The issues involved in achieving a radically improved devolved settlement for Scotland require a more wholistic approach. We are not convinced that the top-down nature of the Commission's structure, with two representatives each from the political parties who currently sit in Holyrood, but no solid framework for civic participation, is adequate to this challenge, and we will therefore suggest an addition and amplification.

3. Adequate time and scope for popular participation

The scale and complexity of the Commission's remit relate directly to chronology. While we recognize the pressure to produce Heads of Agreement by 30 November 2014 on the path to a legislative process by January 2015, we are

concerned that this timetable does not allow realistic time for adequate consultation with the people of Scotland. Lord Smith has responded to this concern by arguing that, effectively, consultation expands to fill the time available for it, and that discipline is no bad thing in this respect. While recognizing the weight of this observation we would argue that there is a balance between efficiency, quality, reach and coherent outcome to be achieved which cannot automatically be resolved on the side of brevity.

The 18 September referendum on Scottish independence and the two years of debate that preceded it were an unprecedented 'democratic moment' in the history of this country and the islands of which it is part. What was particularly significant was the revival of 'town hall politics', the extraordinary level of local engagement, and the growth of political and constitutional literacy at a grassroots level in Scotland. The energy for change and development came not from top-down institutions but from ordinary people and communities.

To be consistent with this reality, the form of delivery of the Commission and the framing of its proposals needs to make time for genuine and extensive public discussion of the Heads of Agreement, so that it is the people of Scotland and not simply the representatives of political parties or other vested interests who are consulted and involved in the process of agreeing the instruments for devolving power within and across the nation

4. Key practical principles and yardsticks to be observed

Ekklesia is committed to social justice, equality, conflict transformation and nonviolence, the localization of power, environmental sustainability and public dialogue as procedures (not just theories) capable of bringing people together from different belief backgrounds and experiences in the creation of common purpose. We would urge attention to the following principles in determining the outcomes of the Commission.

a. **Subsidiarity:** derived from Christian (especially Catholic) social teaching, but applicable to the kind of mixed belief society that Scotland and the British isles are now becoming, the principle of subsidiarity is that central authority should have a subsidiary (that is, a supporting, rather than subordinate) function in political and constitutional organization, performing only those tasks which cannot be performed effectively at a more immediate regional or local level. In the case of the Smith Commission, therefore, we would wish for outcomes that demonstrably allow and encourage the possibility of further sharing of power from the Scottish Parliament to regions and communities.

b. **Recognition of nationhood:** we would wish that the Commission recognize Scotland to be a nation (that is, a geographical unit capable of enabling a large group of people to be united in their diversity of language, culture, environment and economic life) rather than simply a region of a larger state. We make that point not in any 'essentialist' way, since Ekklesia is and has been critical of overly determinist notions of nationhood or statehood, but because of the strong desire for self-determination expressed both by those who voted for independence in

September 2014, and by many who voted to remain part of the United Kingdom while responding positively to the promises of “substantial powers” and “what would amount to home rule” or (so-called) “devo-max” made by representatives of the largest Westminster parties during the run-up to the referendum. In other words, recognition that Scotland as a national entity provides, on practical grounds and in terms of scale, the genuine possibility of ensuring the kind of political, social, economic and ecological accountability that can make life better for people within its embrace – especially those who are currently suffering from levels of poverty and deprivation which is wholly inconsistent with the natural and manufactured resources available to those who live in Scotland, whatever their background or nationality.

c. ***A ‘family of nations’:*** Both during and after the referendum, Britain has been spoken of as a ‘family of nations’. This complements the point we made in 4. b., above. Our own view is that there are genuine practical, economic, political and legal difficulties to achieving straightforward federalism in a country marked by enormous differences of size (with England housing 85% of the population of the British isles) and financial power (with the City of London, in particular, operating as a virtual city state and therefore strongly shaping, intentionally and otherwise, the political disposition of the largest Westminster political parties). We therefore hope that the proposals emerging from the Smith Commission, while taking a generally federal shape, will remain open to other possibilities in the future, notably that of confederalism – an association of states in which each member state retains substantial independent control over internal and external affairs, with sovereignty pooled and shared by agreement. This enables the combining of a high level of autonomy and self-determination with interdependence and conviviality pointed towards a post-national way of thinking and acting in a globalized world.

d. ***The embedding of devolved power:*** As Canon Kenyon Wright (widely regarded as the father of the Constitutional Convention and the present devolution settlement in Scotland) has observed, devolution has two in-principle limitations. First, it is incomplete. The recent debate about the impact of a UK-wide decision which could potentially see the withdrawal of Scotland from the European Union against the will of the majority of its people is illustrative of this. Second, and especially important for the work of the Smith Commission, it is conditional. In other words, devolution is power on loan; power ultimately retained rather than given. It can be withdrawn, as has been seen recently in Scotland’s case in relation to the 2013 Energy Act. This is crucial. For Westminster to retain the permanent power to grant, alter, or rescind powers devolved to the Scottish Parliament would leave Scotland insecure and the United Kingdom as a whole fundamentally unreformed. A core principle for the Commission should therefore be to ensure that devolved powers granted to Scotland are underwritten by a legal framework that ensures their durability and stability.

e. ***The capacity to disavow the threat of mass destruction:*** While we recognize that it is not within the remit of the Commission to recommend substantial devolution of powers in the area of foreign affairs and defence (security) policy,

we regard it as axiomatic that the people of Scotland should not have to have weapons of mass destruction, namely the Trident nuclear submarines based at Faslane on the Clyde, imposed on their territory without, as a minimum, democratic consent of a kind not provided within the current United Kingdom settlement. This should be addressed. Ekklesia will, of its own volition, continue to argue that nuclear weapons and other weapons of mass destruction are not only immoral but illegal in international law.

f. *An equilibrium between powers granted and the capacity and resources to utilize them for public benefit:* It is extremely important that political and constitutional powers granted to the Scottish Parliament and Government under a devolution settlement are matched by the tax-raising, financial and economic powers required to enable them to deliver measurable benefits to people and communities.

g. *The right of civic engagement, consultation and assembly:* We see the institutions of governance and polity invested in the capacity of people and communities to determine their own lives, rather than the other way round. This notion has been developed as a 'claim of right', an assertion given moral and theological weight from within our Christian tradition (in association with others in a plural environment) by the Rev Dr Ian Fraser, among others, in recent Scottish history. The principle of establishing processes that are open to shaping by citizen's assemblies and popular participation is an important one for us, rooted in the notion of 'radical democracy' – moving beyond merely deliberative democracy to the capacity to embrace difference and antagonism in public life/policy in ways that enable dominant power relations to be challenged by those otherwise marginalized by lack of resources, education or status in society. We recognize that this principle is more relevant in terms of the outcomes of the deployment of specific powers (judging them morally and practically in terms of their impact on the poorest and weakest, recasting them to give such people a real stake in determining better outcomes, along lines suggested by Scotland's Poverty Truth Commission). Nevertheless, it is important to bear it in mind in formulating the settlement of powers within national institutions.

5. Specific proposals for devolved powers and their grounding

The following would be a good basis for establishing the kind of principles enumerated above:

* Power over all franchise and electoral law residing in Scotland: This would allow 16-18 year-olds to vote in the 2016 Holyrood election, allow Scotland to develop and deploy a fairer electoral system, and create conditions for a proper power of public recall

* Comprehensive economic powers: This would need to include borrowing as well as taxation. The aim would be the capacity to deliver social, environmental and financial security and measures of redistribution.

- * Full control over employment law and employment rights, including industrial relations and health and safety legislation.
- * The welfare system: This would enable Scotland to create a fabric of social security and comprehensive welfare suitable for a modern society, and appropriate to the needs of disabled and sick people and the most vulnerable.
- * Energy powers: This would involve control over industrial emissions standards, the generation of community renewables, energy efficiency and the proper assestion of public purpose over power companies.
- * Transport policy: To enable the creation of a community owned and oriented integrated and environmentally sustainable public transport system in Scotland.
- * Full powers over human rights and equalities law: This would enable Scotland to retain the Human Rights Act if it was scrapped by the United Kingdom Parliament, and also fill consonance with European and international instruments.
- * The right to refuse participation in legally and morally flawed international wars and conflicts, and to refuse the stationing of weapons of mass destruction on Scottish soil.
- * The right, as part of family of nations, to retain membership of the European Union if the majority of those voting in a referendum on the topic in Scotland so determine.

6. Constitutional consultation

In view of the complexity of these issues and the need for public and civic participation, we would favour thoughtful proposals for a proper constitutional convention for Scotland, and for the other nations of the United Kingdom.

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