

# HUMAN RIGHTS & CONSTITUTIONAL OPTIONS

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# INTRO: PROCESS CONSTRAINTS AND ASYMMETRY

## ◉ Constitutional futures

- Status quo
- Devo-plus, more etc
- Independent Scotland

## ◉ Pathway constraints

- Structures of statehood and future processes
- Asymmetry of who reaches questions of 'constitution'
- No need for asymmetry of articulation of position of rights

# PROCESS TO DATE:

- ◉ **May 2011**
  - The Scottish National Party is re-elected with a majority of seats in the Scottish Parliament
- ◉ **October 2012**
  - The UK and Scottish Governments sign the '[Edinburgh Agreement](#)', setting out the terms of a draft Order under section 30 of the Scotland Act 1998 to confer express power on the Scottish Parliament to authorise a referendum on independence.
  - **December 2012**
    - The [Scottish Parliament](#) approves the draft section 30 Order.
  - **January 2013**
    - The [House of Commons](#) and [House of Lords](#) approve the draft section 30 Order.
  - **February**
    - The Privy Council formally approves the order conferring power on the Scottish Parliament to authorise the referendum - the [Scotland Act 1998 \(Modification of Schedule 5\) Order 2013](#).
- ◉ **March 2013: Scottish Government and UK Government publish documents which begin to deal with future process**

# FUTURE PROCESS: SCOTTISH GOVT

- ◉ Scottish Government
  - Vote (no later than 30 December 2014)
  - Constitutional Platform (post December 2014)
    - UK Elections 7 May 2015
  - Elections to new Scottish Parliament (Scottish Government in place) (5 May 2016)
  - Constitutional Convention (post May 2016)
    - EU referendum (by end of 2017)?
  - New Written Constitution (some time later)

# FUTURE PROCESS: UK GOVT

- **Not set out a process**

(Unless people in Scotland choose otherwise, the UK Government will continue to be one of Scotland's two governments and cannot enter into discussions that would require it to act solely in the interests of one part of the UK. Moreover, the Scottish Government has no mandate from people in Scotland to negotiate the terms of independence unless and until they obtain one in the referendum. (Paragraph 2.43, Scotland Analysis)

- **No timetable commitment**

(While the Scottish Government has indicated that its preferred timetable would be for negotiations to conclude and a new state to be established by March 2016, it is not possible to predict now the outcome of the negotiations, nor how long they would take. (Paragraph 2.39, Scotland Analysis)

# ‘STATUS QUO’

- ◉ Current situation
- ◉ No Scottish status quo?
  - SHRC National Action Plan
  - More things which could be done
    - Eg., Refugee Council
    - Equality Duty Development
    - Scottish parliament scrutiny committee
    - Public services, procurement, welfare scrutiny
    - Scotland Act 2012
      - Forms of taxation
      - Supreme Court
- ◉ No UK status quo?
  - Human Rights Act / UK bill of Rights
  - Key turning point in terms of welfare state?
  - Tensions between ‘stepping up at devolved level’, and common UK human rights platform
  - EU membership

# STATUS QUO AND REFERENDUM

- ◉ Debate about values that may not go away
  - Social democratic values and welfare reform
  - Citizenship and belonging: “a thriving and successful European country, reflecting Scottish values of fairness and opportunity, and promoting prosperity and social cohesion” (Scotland’s Future, 2013)
  - Fundamental rights protection and centre-devolved re-negotiation

# UK GOVERNMENT

- ◉ Little appeal to either shared values or shared ‘constitutional’ identity
- ◉ ‘better together’ - two identities better than one or one and a half
- ◉ devolution gives sufficient power to control relationships within Scotland and is ‘flexible’ - but no commitment to ‘more’
- ◉ Reduced influence (Scotland is ‘good for the UK’), inefficiency (Guaranteeing the security of people in Scotland and the whole of the UK, providing significant economic opportunity, representing their interests in the world and allowing resources and risks to be shared effectively. (Paragraph 1.18))

# DEVO-MORE

- ◉ No commitment
- ◉ What? Welfare, taxation and an element of ‘external status’
- ◉ ‘National Convention’
- ◉ To what extent does that open up or extend current conversations over rights issues
  - Firmer ‘protections’ as part of ‘civilized’ approach
  - Social-democratic values - socio-economic rights?
  - Notion of Scottish values (and of UK values)

# SCOTTISH GOVERNMENT

- ◉ Levers of power and Scottish government ('economy, welfare and international relations')
- ◉ Social democratic future: quite policy dependent
  - Wealth-creation as prioritised as necessary to social rights (weaker rights provisions?)
  - Balancing act between wealth-creation and social rights (policy realm?)
  - Prioritization of fairness (structural rights basis)
- ◉ Commitment to inclusive constitution-making process

# INDEPENDENCE

- ◉ **Signing international treaties**
  - Individual complaint mechanisms
  - ECHR protocols
- ◉ **Good practice to review policy and practice as part of signing process**
- ◉ **Joining International Organizations**
- ◉ **Need for new bodies?**
  - Discrimination body
- ◉ **New written constitution**
  - National identity
  - Inclusion and belonging
  - Citizenship and nation
  - Social contract
- ◉ **with human rights provisions**
  - Consultation and process accepted as critical
  - Difficulty of reaching agreement
  - Renewed focus on courts (and may come before change)

# SCOTTISH HUMAN RIGHTS / CONSTITUTIONAL RIGHTS

- ◉ Who they will apply to?
- ◉ What scope of rights?
  - Socio-economic rights
- ◉ Modes of implementation: mainstreaming v enforcement - politicians v courts
- ◉ Relationship to ECHR?
- ◉ Limitations clauses
- ◉ Theory of rights?

# ISLAND-WIDE RIGHTS?

- Close sharing

- What underwrites sharing - values, identity or pragmatism?
- Affects the 'technology' of sharing

# INTERVENING

- ◉ Un-precedented opportunity to open up questions of rights
- ◉ Difficult to intervene in the debate
- ◉ Parallel process of embedding rights in practice of government
- ◉ Civil society approaches:
  - Raising justice claims as critical
  - Articulating areas for change now: UK and Scottish govts
  - Articulating where campaigns need to make clear their approach to issues in the future