

Scottish Popular Sovereignty
and
Modern Direct Democracy (DD)

Human & Political Rights in Scotland

Clearing the smoke

I'm a Scottish-Swiss dual national who left Scotland at 24 and has lived and worked in Switzerland since 1974. I've prepared the accompanying education publication based on my experiences of Swiss political life over the last 50 years.

Since coming into close contact with the current Scottish political scene during 2023-2024, I've been struck by a number of factors which I take for granted in Switzerland - notably, meaningful Decentralisation and direct Political Rights (to launch and sign Popular Initiatives or Referendums) - both of which are practically unknown in Scotland.

Yet the two countries have an identical constitutional cornerstone - Popular Sovereignty!

I've researched the basics of Human and Political Rights underlying Popular Sovereignty (Modern Direct Democracy (DD)) - to ensure that what I was saying was, in fact, relevant to Scotland.

During this process, I've encountered several "smokescreens" the cumulative effect of which is that most Scots don't realise that they have a fundamental and inalienable Human Right to direct participation in Public Affairs. Nobody's telling them about it. There are too many vested interests around and most Scots have trouble imagining a system other than UK-style Parliamentary Sovereignty. This annex is intended to clear away at least some of the smoke surrounding the issues.

1. Human and Political Rights - The Big Picture

Modern Direct Democracy (DD) has its origins in the **UN's 1948 Universal Declaration of Human Rights (UDHR)** enabled by the **1966 International Covenant on Civil and Political Rights (ICCPR)**, ratified by the UK in 1976.

UDHR states (Art. 21): *"Everyone has the right to take part in the government of his country, directly or through freely chosen representatives."*

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ICCPR, when enabling UDHR, reworded the declaration as follows (Art 25):
“Every citizen shall have the right and the opportunity.....to take part in the conduct of public affairs, directly or through freely chosen representatives.”

It also made clear that (Art 1.1): ***“All peoples have the right of self-determination. By virtue of that right they freely determine their political status.”***

The UN Human Rights Committee (UNHRC), commenting on ICCPR Art. 25 (57th Session, 12 July 1996), makes the following statement (Comment 1):

“...Article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant.”

Most importantly, in the context of any forthcoming Scottish Constitutional Convention, the Committee goes on (Comment 2):

By virtue of the rights covered by article 1.1, peoples have the right to freely determine their political status and to enjoy the right to choose the form of their constitution or government.

It's therefore clear that the organisation of a forthcoming Scottish Constitutional Convention should be under popular, not political or authoritative, control.

Since the UK ratified ICCPR in 1976, no further research to justify the existence or availability of Direct Democracy to the Scottish People is needed. For a Scottish constitution based on Popular Sovereignty, the definitive reference is therefore ICCPR as clarified by the UNHRC in its 1996 comments.

In the context of smokescreens, contrary to the ICCPR as described above, the **European Convention on Human Rights 1950 (ECHR)** *did not enable direct Political Rights* as described in Art. 21 UDHR and, therefore, this convention is based entirely on the logic of *“freely chosen representatives”*, in other words Parliamentary Sovereignty.

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UNHRC also makes clear that “*Freedom of expression, assembly and association are essential **conditions** for the effective exercise of the right to vote...*” but that such conditions are in no way a substitute for the inalienable right to direct participation in the conduct of Public Affairs through, for example, popular initiatives or referendums (UNHRC Comment 6).

On 3rd May 2024 the UN Human Rights Committee published its [8th Periodic Report](#) on UK compliance with its Human Rights commitments in the 1976 ICCPR. It wasn't good news for the UK. The Committee repeated the following comment from previous reports dating back to at least 2008: “*The Committee remains concerned that not all the rights enshrined in the Covenant are adequately incorporated into the domestic legal system.*” In a second criticism, the Committee commented: “*The Committee also reiterates that the State party (i.e. the UK) should reconsider its position regarding accession to the first Optional Protocol to the Covenant, which provides for an individual complaint mechanism.*” This means that Scots can't even complain to the UN about not being able to access their fundamental DD Political Rights agreed to by the UK in 1976. Unfortunately, it gets worse...

Human Rights smoke

...it gets worse because ScotGov has knowingly excluded ICCPR from the Human Rights action plan 2023-2030 set out in [SNAP 2](#) (Scotland's second National Human Rights Action Plan) issued on 30th March 2023. The SNAP 2 Leadership Panel - which, together with the Scottish Human Rights Commission, can be considered as Scotland's “top” Human Rights body - presumably pushed for its inclusion but the evidence on page 61 of the SNAP 2 report couldn't be clearer - ScotGov refused (so much for Scotland's ambitions to be acknowledged as a “World leader” in Human Rights...) !

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Parliamentary smoke (or People cringe?)

The following discussion on referendums may not be entirely smoke - there's an element of cringe mixed in as well. Smoke on the part of the political establishment because it's aware of its power to veto the People's Political Right to referendums but doesn't want the People to know about it. And cringe because many people, legal profession included, must be aware of the broad application of the referendum Act below but are probably afraid to break with precedent and push in favour of a referendum on a controversial topic such as the recent Gender Recognition Reform (Scotland) Bill.

Many Scots probably don't know it, but Scotland already has its own referendums legislation - the Referendums (Scotland) Act 2020. This Act provides a legal framework to hold referendums on matters within the competence of the Scottish Parliament and "*applies to any referendum held throughout Scotland in pursuance of provision made by or under an Act of the Scottish Parliament.*" This means that Holyrood has the competence to organise a referendum *on any devolved matter whenever it wants.*

Taking the example of a proposed Bill on a controversial topic, like the GRR Bill, to which a majority of the electorate are polled as being in opposition, the final stage of the Swiss DD model would consist of putting a simple referendum question to the electorate - "Do you accept or reject the law proposed by Parliament?" There are only two possible responses (which the Scottish Electoral Commission would have great difficulty in refusing): "Yes" or "No".

And that's what Popular Sovereignty is all about - let the People decide!

After the vote, the political world might well be in turmoil but the People will have reached a consensual decision. And next time, the political establishment might try harder to achieve consensus before a referendum becomes necessary (in Switzerland, MPs of all parties jump through loops to avoid having to go through a referendum process).

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There are two pre-conditions involved in the existing 2020 Referendum Act:

- A referendum must be specified as being required; in Switzerland this is achieved by adding the following wording at the end of the proposed Act concerned: “Subject to referendum”, and
- A Parliamentary majority of MSPs is currently required to approve such proposed Act (which would, of course, need to include appropriate “Subject to...” wording adapted to Scottish law).

Once these two pre-conditions are met, it is my understanding that a referendum under the Referendums (Scotland) Act 2020 would immediately be triggered. Because the topic concerned is devolved, there should be no interference from Westminster.

I believe it’s high time someone decided to test the water and push for a popular referendum on a controversial topic such as GRR (in Switzerland it would take 50,000 signatures, to be collected in 100 days, to launch a national referendum).

ScotGov smoke

It’s interesting to follow the chronology of Scottish Government thinking starting in 2019 with the Policy Memorandum prepared to accompany the above-mentioned Referendums Bill then under discussion. In the arguments in favour of the Bill one can read (Comment 16):

*For instance, between 1990 and May 2018, **Switzerland held the most (referendums) by a significant margin (261)**, while Italy held 56, Ireland 27, New Zealand 14, Denmark 7 and Poland 10, compared with 2 in the UK.*

What the memorandum doesn’t say is that, in Switzerland, the majority of referendums are launched by the People whereas in most other countries - certainly in the UK - they are parliament-driven.

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Moving on to June 2023, when ScotGov published its position paper “Creating a modern constitution for an independent Scotland”, Popular Sovereignty (PS) is clearly set out as our constitutional direction of travel (the term “PS” is mentioned 10 times throughout the paper). The word “Democracy” merits 40 mentions but the term Direct Democracy 0. Switzerland is not mentioned once in the entire paper. ScotGov confirms the Direct Democracy cover-up when it states, on page 35:

Independence would give the people in Scotland the opportunity to consider innovative ways of doing democracy, such as looking at approaches to implementing deliberative democracy alongside representative democracy.

“Deliberative” democracy is in its infancy and can in no way be considered as a substitute for Direct Democracy because decision-making powers remain with the elected government and Parliament (i.e. “representative democracy”). Insofar as recent constitutional changes are concerned, ScotGov mentions the following countries (Page 48):

Recent examples include the Netherlands in 2006, Ecuador in 2008, Iceland in 2010 to 2012 and in Chile in 2021. Ireland.....in 2013 to 2014.

...but Switzerland is notable by its absence (just to illustrate this bit of smoke, on 3rd March 2024 the Swiss electorate voted on two constitutional amendments, both about state pension payments and proposed by the People. We vote 4 times per year, often on popularly-launched initiatives to change the constitution. Another vote, which includes three initiatives on constitutional matters and one referendum against a government-proposed law, will take place on 9th June 2024).

Finally - and this is the icing on the smoky cake - on page 39 of the June 2023 ScotGov paper it's mentioned, almost as an afterthought, that: *“The Constitutional Convention may also want to consider further provisions on public participation, reflecting the right to public participation in public affairs as expressed in Article 25 of the International Covenant on Civil and Political Rights.”*

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The reader will note that there's no reference to such public participation as being an inalienable and fundamental Human Right enshrined in ICCPR (i.e. Direct Democracy), on an equal footing to the right to elect freely chosen representatives (i.e. Parliamentary Democracy). There's also no reference to the fact that SNAP 2 (Scotland's second National Human Rights Action Plan) had been published in March 2023 and ScotGov had already decided not to include ICCPR in the 2023-2030 Action Plan. If that's not a smokescreen, I don't know what is!

This last point is the clearest demonstration that the Scottish People are being hoodwinked. Direct Democracy is already there, in the existing Human and Political Rights framework, ready to be used, and a forthcoming Constitutional Convention is the moment when the People need to assert their rights.

The campaign can start today, by the People asserting their Political Right to popular initiatives and referendums.

What are we waiting for?

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