

Scotland's new choice

Independence after Brexit

Edited by Eve Hepburn,
Michael Keating
and Nicola McEwen



CENTRE ON
CONSTITUTIONAL
CHANGE

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The authors have sought to present our analysis in an impartial way that is accessible to readers; any views expressed are their own.

Books in this series

Scotland's Decision: 16 Questions to think about for the referendum on 18 September (Birlin, 2014) – <https://www.centreonconstitutionalchange.ac.uk/publications/scotlands-decision-16-questions-think-about-referendum-18-september-0>

Britain's Decision: Facts and Impartial Analysis for the EU referendum on 23 June 2016 (The David Hume Institute, 2016) – <https://www.thehunterfoundation.co.uk/wp-content/uploads/2016/04/Britains-Decision.pdf>

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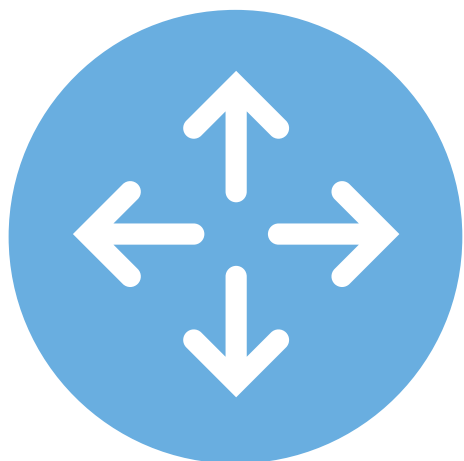
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Overview of this book

Each chapter, in brief

Introduction

In September 2020, First Minister Nicola Sturgeon announced plans for an independence referendum. Amid a rise in support for independence in opinion polls, she pledged to publish draft legislation on the timing, terms and question of a new referendum prior to the May 2021 elections. Voters in Scotland could once again be asked to reflect on the pros and cons of independence versus staying in the UK, and what this means for Scotland's economy, society, and politics. Yet, the need to manage the Covid crisis and the challenges it presents has left little space to explore independence and its possible consequences.

This collection begins to fill that space. It builds upon the success of a previous e-book produced in advance of the 2014 independence referendum. Then, as now, we do not take a stand on the question of whether or not Scotland should be an independent country. Instead, we have drawn together leading experts to examine the key issues, opportunities and challenges surrounding the prospect of independence. Much has changed since the 2014 referendum – most notably, the UK's decision to leave the European Union. By providing factual information and impartial analysis, we hope that the book can support citizens to engage in debates and make up their own minds about Scotland's future.



Chapter 1 – Constitutional pathways

In December 2019, the Scottish Government set out its case for a second independence referendum in the document *Scotland's Right to Choose*. The document did three things. First, it set out a democratic case for holding a referendum, based on the sovereign right of the people to determine their own future, in addition to a 'material change in circumstances' since the 2014 referendum – that is, Brexit. Second, it made the case for a second referendum to be held on a consensual basis, and for co-operation by the UK Government in putting its legality beyond doubt. And third, it set out draft amendments to the Scotland Act to secure the necessary transfer of competence for a referendum.

This chapter considers why the legality of a referendum – and, by extension, the process of becoming independent – matters. If a second independence referendum is to take place and be effective as a means of achieving independence, it is crucial that it be conducted on a proper legal footing. We also consider the UK Government's dismissive response to the request to hold a second independence referendum, and the options that may be open to the Scottish Government to secure a lawful referendum.

Chapter 2 – Public participation

Public participation in the 2014 referendum was ground-breaking, not just because of the 85% turnout, but also because of the high quality of public deliberation in the two years before the ballot. Myriad conversations sprung up, up and down the country, from communities to institutions, from pubs to churches, from neighbourhoods to digital spaces, and from workplaces to kitchen tables. There was much to think about and therefore plenty to talk through.

'Talk' often gets a bad rap, as popular expressions go: 'talk is cheap', 'talking shop', 'less talk more action'. But without certain forms of talk, including dialogue and deliberation, democracy cannot thrive. Talk without action may be pointless, but action without talk can be senseless. When thinking about the possibility of a second referendum, a key lesson from the first one is that public participation must be central. There must be civic spaces where people can meet across differences, seek to understand diverse perspectives, and engage in productive conversations. These spaces are different from the partisan forums created by the Yes and No campaigns. This chapter reflects on the characteristics of such civic spaces and the need to multiply them so that any future referendum conversations are not just shaped by partisan rhetoric and political

marketing. Placing Scotland in international context, the chapter also argues that democratic innovation is crucial to counter the global democratic recession.

Chapter 3 – Lessons from abroad

As demands for a second Scottish independence referendum intensify, we look abroad to learn from the experience of nations which have held second votes on independence. In this chapter, we look to Quebec, which held referendums in 1980 and 1995, and to Catalonia, which held a non-binding vote in 2014 followed by a referendum in 2017.

Quebec offers valuable insights about a second referendum that was *state-tolerated*, while Catalonia provides lessons about a second vote that was *state-opposed* – and, in fact, actively repressed after being declared unconstitutional. Together, these cases capture two contrasting experiences of constitutional referenda to the *state-sanctioned* Scottish referendum of 2014 and offer important insights for Scotland as it discusses its constitutional future.



Chapter 4 – Sovereign statehood

The Scottish Government has stated that it is committed to ‘an agreed, legal process... which will be accepted as legitimate in Scotland, the UK as a whole, and by the international community’. But, even so, a Yes vote in an independence referendum would not immediately transform Scotland into an independent country. While some areas (e.g. education, health, much of the legal system) are already within Scotland’s authority, regaining Scottish sovereignty over other areas would take time. There would need to be negotiations with the UK over this to, first, put Scotland’s independence into effect (untangling a 300+ year old union), and second, to negotiate the future relationship.

This chapter examines the potential shape of these negotiations, the division of liabilities and assets between Scotland and the rest of the UK, the possible creation of a new Scottish constitution, and the legislation required for independence to occur. It finds that, while the constitutional path to securing a legally valid referendum is as yet unclear, following a Yes vote, a constitutional path to fulfilling independence can be followed. The negotiations might not be simple, but there would be no insurmountable legal obstacles.

Chapter 5 – The economy

The economy was one of the principal battlegrounds for the 2014 independence referendum. A lot has changed since then. This chapter is written in the form of a letter to the incoming Finance Minister of a newly independent Scotland. It addresses the issue of how to stabilise the economy in both the short and the long run post-independence, partly drawing on the work of the Sustainable Growth Commission.

It argues that, even though political independence may have been achieved, economic powers are always limited by the necessary interactions between governments and markets. Raising tax revenue is likely to be important to maintain public services and, while one might hope for sufficient growth to generate desired increases in revenues, it may be necessary to widen the tax base to drive these increased revenues. The letter also touches on the issue of government borrowing, how Covid-19 has changed thinking on this issue, and how, for an independent Scotland, borrowing and choices around currency will interact. Nevertheless, it points out that many countries less developed than Scotland seem to manage stabilisation issues successfully.



Chapter 6 – Public revenues and spending

The debate over Scotland's public finances will be at the heart of any future independence referendum. What scope would an independent Scotland have to make different choices over taxes and spending, and what constraints would it face?

In 2014, the fiscal policy debate was often mired in an acrimonious argument over whether Scots would be 'better' or 'worse' off under independence. Since then, the framing of the debate has changed as a result of Brexit, the fall in oil and gas revenues, changes in the Scottish Government's policy aspirations, and the Covid-19 pandemic. This chapter revisits the 2014 debates in the light of these changes. It argues that whilst the framing of the debate has evolved, the conclusions are similar. Scotland and the UK both face major fiscal challenges over the long term, and there is no doubting that an independent Scotland would be financially viable. But an independent Scotland would face a more pronounced set of fiscal challenges and constraints in the short to medium term on account of its larger structural deficit and the challenges of transition. Whilst it is understandable to talk of aspirational policy objectives for a 'new Scotland', the practical reality of delivering fiscal sustainability cannot be ignored.



Chapter 7 – International trade

A free country can decide for itself how to manage its external trade policies and which strategic partnerships to forge. When a country achieves independence by breaking out of a larger country or community, the newly acquired freedom is accompanied by the loss of old benefits, since the breakout fragmented a previously integrated market. Positive strides in international trade are possible, but there is immediately some lost ground to make up.

The UK has left the EU single market and will be able to pursue trade deals with other countries – and with the EU itself. If Scotland leaves the UK, it will leave the UK's internal market, and will have control over its post-independence trading arrangements with other countries, including the rest of the UK. The uncertainties surrounding the future course of UK-EU relations, and the UK's international trade agenda more broadly, reverberate on the future of Scotland. This chapter maps out a series of future constitutional scenarios for the UK and Scotland and their implications for international trade matters, including the trade implications of a second referendum leading to Scotland's independence.

Chapter 8 – Currency options

There is no easy option for a currency to be used, to the benefit of households and businesses, in a post-independent Scotland. During the 2014 independence referendum, the Scottish Government proposed the continued use of sterling, in a formal currency union with the rest of the UK. That option has been ruled out by the UK Government and dropped by its Scottish counterpart.

Three possibilities remain: (1) 'shadowing sterling', in an unofficial currency union; (2) moving to adopt the euro; or (3) creating a new Scottish currency. The first of these would require some combination of high interest rates and tight fiscal policy to achieve credibility, not least in the financial markets, but would have the benefit of maintaining currency parity with our major trading partner – the UK. Adopting the euro could only be achieved in the longer term if Scotland entered the EU, and again would require tight policies. A new currency would need time to be established, to secure credibility and to avoid very high borrowing costs for Scotland in international markets and/or major currency volatility posing problems for businesses in particular. The least bad option

could be shadowing sterling for an (extended) period until sufficient credibility had been achieved to launch a new Scotland-specific currency.

Chapter 9 – Policymaking and political structures

Many commentators suggest that Scottish independence would have a major effect on Scottish politics and policymaking. These changes could be based on the argument that the Scottish political tradition has more in common with the consensus democracies, often associated with the Nordic states or Switzerland, than the UK's majoritarian and adversarial tradition. To cut the UK tie is to embrace a new political system.

However, major political reforms were not a central feature of the push for Scottish independence. The SNP was more likely to emphasise the adequacy of the Scottish Parliament and the competence of the Scottish Government, suggesting that Scottish independence would be built on existing political structures and policymaking processes. Therefore, their operation since devolution in 1999 gives us a strong indication of their operation under Scottish independence. This chapter highlights the key features of these existing arrangements and the potential for mild reforms to accommodate a new political reality. First, the Scottish Parliament is a venue for political party competition rather than more participatory or deliberative innovations. Second, the Scottish Government's 'policy style' will remain largely in the UK tradition, in order to seek sufficient consensus between policy participants and react to events rather than engage in long-term preventive policymaking.



Chapter 10 – Identities in Scotland

In this chapter we unpick various patterns of national identity in Scotland, in particular the proportions of people in Scotland who describe themselves as Scottish and/or British. We explore the importance of country of birth to a sense of Scottishness, and also the extent to which being Scottish and being British can be complementary to each other. These identities are examined in light of support for Scottish independence: while we do find that such support is highest amongst those who have strong Scottish identities, the relationships here are complex. We also find, for example, a substantial number of pro-independence Scots who feel both Scottish and British. These identities,

then, are not necessarily at different ends of the debate – they need not compete with each other. Finally, we consider the complicating factors of views on Brexit and, in particular, how this may play out in any future referendum amongst Scotland's minority ethnic voters.

Chapter 11 – Social and equality policies

Scotland was offered the choice in 2014 of voting for an independent nation that would be 'fairer': that it would reverse unpopular UK policies, for example by diverting funding away from nuclear weapons towards childcare. These promises were predicated on the idea that the Scottish electorate was substantially in favour of progressive social policies and would therefore vote for a vision of independence that was seen to be 'fairer' than remaining in the UK.

This chapter examines how the Scottish Government has used its policy-making powers since then in the areas of disability and care, key areas for equalities. How progressive has Scotland been? Is it a fairer country than the rest of the UK for disabled people and carers? Prior to the 2014 referendum the 1999 devolution settlement had given the Scottish Government power over health and social care policy, and the Smith Commission devolved a number of social security benefits to the Scottish Government. Despite now controlling a large swathe of social policy for disabled people and carers, the Scottish Government has not taken the opportunity to be radical in developing policies to improve equality. It would take independence and the full range of legislative powers to make significant progress in this area.



Chapter 12 – Immigration

The proposed approach to migration in Scotland remains divergent from the trajectory of UK policy. This has been expressed with increasing clarity and consistency by the Scottish Government in recent years. Both the Covid-19 crisis and Brexit have the potential to effect significant change on how immigration issues will play out in the run-up to a second referendum. However, the size and shape of such changes remains uncertain at this time.

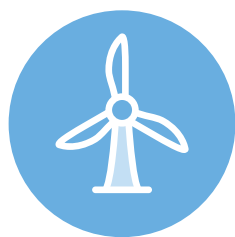
This chapter outlines the factors that would determine these changes. It notes that much will depend on the demand and supply of labour under an economic recovery

and the extent to which the UK's proposed new immigration system will adapt to accommodate that. It also outlines how Brexit changes the legal landscape regarding the border issue. Without a Schengen opt-out, it is difficult to see how Scotland can be part of two differently delineated open border areas, retaining membership of the Common Travel Area while (presumably) seeking to re-join the European Union. However, while these issues have become more complicated, there is still scope for flexible solutions.

Chapter 13 – Climate change

An independent Scotland may not single-handedly tackle climate change, but it could put Scotland in a better position as the resulting constitutional and legal clarity would facilitate more bespoke and ambitious climate change aims. As a policy area, climate change is currently shared between, and often contested with, Westminster. This often-competitive relationship between Westminster and Holyrood has spurred some ambition to outdo one another on climate change and independence would certainly give Scotland a chance to navigate more freely and without competitive distraction.

We are, however, currently in a period of fundamental change and uncertainty: as well as the impacts of Brexit, we are also dealing with the Covid-19 pandemic. Both unprecedented events no doubt will leave their mark on Scottish politics and society, including climate change. While political actors are currently calling for a 'green recovery', Scotland's climate change policy may benefit from a comparatively strong civil society and relatively favourable political landscape. It is therefore likely that we will see a more ambitious drive in that direction.



Chapter 14 – EU membership

If Scotland became independent, could it and should it then join the European Union? In the 2016 Brexit referendum, 62% of Scottish voters backed 'Remain', so it's likely that an independent Scotland would want to join the EU. Is that possible?

Well, EU rules say any independent European state can apply to join. Since the EU was founded in 1957, twenty-two states have joined the original six countries and one (the UK) has left. So, in principle, an independent Scotland could join too. Scotland already meets most of the EU's rules – though by the time of independence that could change. Concerns have been expressed about the need for Scotland to have its own

currency, to have a low fiscal deficit and to commit to joining the euro. If all these issues were dealt with, Scotland could re-join the EU probably within 4-5 years of independence. Unlike in 2014, given Brexit, this would mean the Scotland-England border would become an external border of the EU. Some argue that Scotland should join Norway in the European Economic Area (EEA) but this could create a democratic deficit with little say in EU laws, and there would still be border issues with the UK.



Chapter 15 – Human rights

This chapter examines the implications of the UK's departure from the EU's human rights framework for Scotland, and the challenges and opportunities of independence. Human rights are not necessarily tangible 'end goals' that can be ticked off once achieved. Instead, they must be actively protected in order to exist.

When we say 'we have human rights' what we really mean is, 'we are entitled to have our rights respected'. The process of respecting human rights largely depends on actions and events driven by political pressures and historical precedent. For instance, governments can support upward processes in building human rights standards within their territory and internationally, but they can also instigate downward spirals by diluting or removing human rights. This chapter explores major 'upward spirals' in human rights standards in the UK, EU and Scotland since devolution. It also tracks potential 'downward spirals' in human rights in the UK post-Brexit, with the reduction or removal of advanced EU human rights obligations.

By remaining within the Union, Scotland would continue to be bound by the UK-wide commitments on human rights that are passed by the UK Parliament. If it chose independence, Scotland could re-commit to EU human rights standards, reaffirm commitments to the European Convention of Human Rights, be a signatory to international human rights treaties and draft a written constitution that enshrines human rights.



Chapter 16 – Defence and security

During the 2014 referendum campaign, the Yes and No sides advanced opposing defence policy arguments. The Yes side approached the question from a small state perspective, envisaging Scotland as an independent European state embedded in collective security systems such as NATO and the EU. The No side took the opposing view, arguing that the UK's position as a global power provided Scotland with a defence and security guarantee that would be hard to replicate if independent. After all, Scotland was already embedded in these organisations; it was the prospect of independence that put membership at risk.

A lot has changed since 2014. The result of the 2016 referendum on UK membership of the European Union has raised a new set of questions about what would happen if Scotland became independent. Does Brexit make defence and security planning easier or more difficult for an independent Scotland? Will the UK's exit from the EU lead to isolation from European defence and security initiatives, making it harder to maintain current levels of defence spending and military capability?

Just as the Yes-supporting Scottish Government will be required to demonstrate its competency in defence matters in any second independence referendum, so will the No-supporting UK Government have to demonstrate that Scotland's defence and security is still best served in the Union after Brexit.



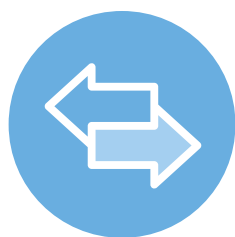
Chapter 17 – International role

Debates during the 2014 independence referendum campaign focused predominantly on the effects of Scottish independence on the economy and on public services. Yet, one of the most significant changes that independence would bring is the capacity of Scotland to develop its own foreign policy. Although the Scottish Government currently engages in external affairs, it would have greater opportunities to attempt to

influence international politics and promote its own policy preferences and values as an independent – albeit small – state with a distinctive foreign policy.

This chapter begins by considering the Scottish Government's blueprint for a post-independence foreign policy, which was contained in its 2013 White Paper, *Scotland's Future*. The discussion then considers some of the factors that determine the success or failure of small state foreign policies, drawing on examples from other cases. A vote for Scottish independence is likely to be followed by several years of work to establish a new state, involving the creation of new diplomatic institutions and joining international organisations, treaties, and agreements.

It would then take many more years to have the international impact equivalent to the Nordic states or New Zealand. But, with a willingness to prioritise – alongside some patience and a lot of hard work – an independent Scotland could develop a successful and distinctive role in international affairs.



Chapter 18 – Interdependence

In the 2014 independence referendum, the Scottish electorate was asked: *Should Scotland be an independent country?* But what does it mean to be an independent country in an interdependent world? And can it mean the same thing now as it did in 2014, given all that has changed in between?

Ahead of the 2014 vote, the SNP Government's White Paper, *Scotland's Future*, offered a vision of independence where Scotland would take its place alongside the UK as a European Union member state. At the same time, independence was to lead to a new 'partnership of equals' with the rest of the UK, with open borders, shared markets and, in some areas, shared institutions. Many commentators called this 'independence-lite'. But the UK has now left the European Union, and the current UK Government appears determined to chart its own course. That means that, if an independent Scotland were to re-join the EU, the border between England and Scotland would also be a customs and regulatory border between the rest of the UK and the European Union. This would require new structures and processes of border management and could have a negative impact on trade and mobility across the Anglo-Scottish border, just as it re-opens opportunities within the European Union.



Chapter 19 – View from England

The Scottish Referendum of 2014 was one of the few constitutional events in the last half century – other than Brexit – to leave a deep impression upon the English mind. Winding forward to a future IndyRef 2, and the prospect of a majority of Scots voting for independence, the feelings of the English will be one of the factors that shapes and constrains negotiations on the future relationship between the two countries.

Polling conducted at the time of the first referendum indicated that a fairly trenchant approach would be favoured by most people in rUK – the English included. Many people in England have been on an unheralded journey, during the course of the past two decades, towards a new sense of nationhood – still British, but with a new, more decidedly Anglo accent. Brexit provided an occasion for the political expression of this vein of national sentiment, but it also revealed a deep internal division within the English psyche. As Brexit wanes from the political horizon, there is a good chance that it is on questions of domestic governance and the UK's own constitutional order that the conflicting politics of English identity will play out. And any assessment of the territorial and political implications of IndyRef2 will need to factor in the changing feelings towards Scotland and the union that are apparent south of the border.



Chapter 20 – Small states

Former SNP leader Alex Salmond used to talk about the 'arc of prosperity', the string of small, independent and prosperous states from Finland to Ireland. After the financial crisis of 2008, his opponents dubbed it the 'arc of insolvency'. Both characterisations are simplistic. The argument for small states is that, in a globalised world, they can do better than large ones. They have the flexibility, dynamism and social cohesion to prosper in world markets while sustaining generous public services.

In practice, there are two types of small state. Some have grown by cutting taxes and public spending, deregulating their economies and tolerating growing inequalities. Others maintain high levels of public spending, which they see as social investment and a means of reducing inequality. They have correspondingly high levels of taxation. It is not possible to combine both models or to pick and choose items from different countries. Scotland could do well as a small independent state, but being small and independent are not enough. It would have to make difficult decisions about spending and taxes and long-term planning. External change – becoming independent – would have to be matched by internal reforms so that Scotland could match the successful Nordic states.



Introduction

Scottish independence after Brexit

Eve Hepburn, Michael Keating and Nicola McEwen

This book provides a guide to anyone seeking to navigate the issues involved in holding a second referendum on independence. The first referendum in September 2014 resulted in 55% voting against independence. Seven years on, the Scottish Government is drafting plans to invite voters to decide on Scotland's future once again.

Many of the questions remain the same as in 2014. For instance, what would be the currency of an independent Scotland? Would an independent Scotland be in the EU? What would it mean for our economy, our society, our public services, or our security?

Yet much has changed since 2014. Most notably, the UK's decision to leave the European Union (EU) profoundly affects the context in which independence would take place, and the relationships an independent Scotland could have with its neighbours. The Covid-19 crisis, and the enormous health, economic and social challenges it has created for governments across the globe, also shapes the background against which any decision on Scotland's future would take place.

The aim of this book is to provide some clarity on the issues, the opportunities and the challenges surrounding the prospect of independence for Scotland in the light of these changes. It builds upon an earlier initiative ahead of the 2014 referendum developed by the Future of the UK and Scotland programme in partnership with the Hunter Foundation and the David Hume Institute: Scotland's Decision: 16 Questions

to think about for the referendum on 18 September (Jeffery and Perman, 2014). Then, we provided impartial, authoritative analysis on key issues to help voters steer their way through the competing claims of the campaigns. In this volume, we have asked scholars to revisit these and other issues in the changed context in which the independence debate is taking place.

Scotland's first independence referendum

First, a recap. On 18 September 2014, people in Scotland participated in a referendum that asked them to vote Yes or No to the question 'Should Scotland be an independent country?' With a record turnout of 84.6%, a majority (55.3%) voted No while 44.7% voted Yes.

How did the 2014 referendum come about? After the SNP won a majority in the 2011 Scottish Parliament elections, it asked the UK Government to empower the Scottish Parliament to hold a referendum. After lengthy negotiations, the two governments reached an accord in 2012, known as the Edinburgh Agreement. This included a commitment to (temporarily) transfer powers to the Scottish Parliament to pass legislation for a referendum on Scotland's constitutional future (UK Government, 2012). The Agreement set out some of the terms of the referendum, including that: there be one question only; the franchise would be similar to that used for Scottish Parliament and local elections; and it would be guided by the rules on campaign spending, the conduct of the referendum and oversight by the Electoral Commission that are set out in the Political Parties, Elections and Referendums Act 2000 (PPERA). But, otherwise, the final say on key issues, including the wording of the question and extending the right to vote to 16 and 17 year olds, was given with the Scottish Parliament.

Crucially, the Edinburgh Agreement committed both governments to respect the outcome of the referendum, whatever the result. This meant that, in contrast to other independence debates, for example in Quebec or Catalonia, few people challenged the right of Scots to decide their constitutional future. Instead, the focus was on the merits of independence against maintaining the Union with the rest of the United Kingdom.

The question posed in the 2014 referendum was disarmingly simple: Should Scotland be an independent country? Yes or No? Beneath the clarity of the question, however, lay considerable uncertainty about what it meant to be independent and what the consequences of Scottish independence would be.

Campaign groups debated the virtues of being a small independent country versus part of a larger one. There were sharp disagreements over the Scottish Government's proposal to share the Pound Sterling. Protagonists lobbed claim and counterclaim about the value of North Sea Oil and the economic prospects of an independent Scotland, and what independence would mean for public finances, personal wealth and wellbeing. Both the Yes and No sides claimed ownership of the welfare state and promised that it would be more secure in their hands. Both sides were committed to remaining in the

European Union, but the No side suggested that an independent Scotland would find it difficult, if not impossible, to join the EU. Issues of security and defence policy were raised, including whether Scotland could join NATO while removing nuclear weapons from the Clyde (Keating and McEwen, 2017).

These often-heated debates provoked intense public interest, and a hunger for information from impartial sources. In *Scotland's Decision: 16 Questions*, academic experts evaluated the claims made by the Yes and No camps and provided their own assessment of what was at stake. That ebook represented a valuable contribution to wider debates and citizen engagement evident across the country as a record number of voters prepared to cast their vote.

One of the legacies of the 2014 referendum was a public that had educated itself on the issues involved in determining Scotland's future. Of course, then as now, many voters already had a strong conviction that independence represented the right path for Scotland, while many held the opposite view. Others came to a view after hearing the issues debated in the 2014 referendum, and they may have held fast to that position today. Yet there are many who remain uncertain about Scotland's future, and uncertain about how the choice they might face in a future referendum is affected by the changes that have taken place since 2014.

Brexit

Perhaps the biggest change of all is that the UK, including Scotland, is no longer a member of the European Union. The UK withdrew from the EU on 31 January 2020 and in December 2020, at the end of an 11-month transition period, the UK and EU finalised negotiations on a Trade and Cooperation Agreement (TCA).

The UK-EU trade deal amounts to a 'hard Brexit'. It ensures tariff- and quota-free trade in goods, but does not represent a comprehensive free trade agreement, nor does it include the wider provisions of the single market. It does little to facilitate trade in services or create a wider partnership framework around justice and home affairs cooperation, security and defence. The UK has also opted to leave some EU programmes, including Erasmus, the student exchange and mobility scheme.

The UK Government has agreed not to relax environmental and labour laws. This is not legally enforceable but could trigger retaliatory action, after arbitration. Nor does the trade deal require the UK to keep in line with any EU enhanced rights and standards in the future. Instead, it allows either side to take 'rebalancing' action if they consider that divergent rules affecting employment, social and environmental standards or sustainable development have a detrimental impact on trade and investment. This might discourage UK governments from drifting too far from EU rules. Nevertheless, the 'thin' deal means that trade between the UK and the EU is now more complicated, will take longer, involve more bureaucracy and more costs. Some of the disruptions that we have seen since January may ease once traders and hauliers get accustomed to the new rules. And the

rules themselves may change if there are further negotiations in the future. But the UK-EU deal points to a much weaker economic and political relationship between the UK and the EU in the years to come.

These changes alter the context of in which the Scottish independence debate is taking place. The new challenges it presents for the prospects of independence movement will be explored in the chapters that follow.

The Brexit process has also affected the politics of independence and union. The 2016 Brexit referendum saw 52% of people across the UK vote for the UK to Leave the European Union, while 48% voted Remain. That narrow majority for Leave provided the mandate for the UK Government, first, to negotiate the terms of exit from the EU then seek agreement on the future UK-EU relationship. In Scotland, the picture was very different: 62% of Scottish voters supported remaining in the EU, while 38% voted Leave. This led First Minister, Nicola Sturgeon, to claim that Scotland was being taken out of the EU 'against our will', arguing that this represented 'a significant and a material change of the circumstances in which Scotland voted against independence in 2014' (Sturgeon, 2016).

In the months that followed the Brexit referendum, the Scottish Government stressed the importance of remaining in the EU single market. If that prospect were ruled out by the UK Government for the UK as a whole, it looked for ways in which Scotland could retain single market membership or a special status within the EU even as the pro-Leave parts of the UK severed ties. These proposals were rejected by the UK Government for Scotland, although the influence of the Irish Government and the shared desire to avoid a hard border on the island of Ireland resulted in Northern Ireland remaining within the EU single market for goods, albeit at a cost of hardening the sea border between it and the rest of the UK.

The Brexit process has also brought new challenges to the way the UK is governed, creating uncertainties about the future of devolution. Until now, EU laws and regulations have limited the opportunities for the UK and devolved governments to follow different paths, for example, in rules around food safety, environmental standards or animal health. In that sense, the EU single market rules have helped shape the internal market within the UK.

In the context of Brexit, the UK Government has been seeking ways to ensure that removing EU regulations does not create new barriers to trade among the four territories of the UK. It has worked together with the devolved governments to develop UK 'common frameworks' to replace EU legal frameworks. The UK Parliament also passed new legislation to support the UK's internal market. The UK Internal Market Act (2020) does not prevent the devolved legislatures from passing their own laws in pursuit of social, health or environmental goals by, for example, requiring manufacturers and service providers to meet certain standards. But the Act means that these rules would no longer apply to traders that were based in, and subject to different regulations, in another part of the UK. As a result, it weakens the authority of the devolved institutions. In contrast to the 'common frameworks' programme, the Internal Market Act was passed

without the consent of the devolved parliaments, and despite their vehement protests, contributing to a deteriorating relationship between the UK and devolved governments.

Covid-19

The Covid-19 pandemic has also altered the economic and political landscape. The public health and economic crises it has generated might have been expected to reduce support for independence. In the early months of the pandemic, the Union of England, Scotland, Wales and Northern Ireland appeared to be working more efficiently and collaboratively than it had done for many years.

Although responsibility for public health is devolved, other parts of the response are reserved. Ministers from the devolved governments worked closely with their UK counterparts in the early months of the pandemic to forge common policies in pursuit of a 'four-nation strategy', including in scientific collaboration, approaches to lockdown, and procurement of personal protective equipment. The UK Government has been able to mobilise massive resources through borrowing, a power not available to the devolved administrations. The largest expenditures – including the Job Retention (furlough) scheme to underpin wages, temporary increases in Universal Credit and working tax credits, and initiatives such as 'Eat out to help out' – relied on the powers, responsibilities and resources of the UK Government. In a reprise of the arguments from 2014, unionist politicians argued that only the broad shoulders of the United Kingdom could bear this burden. There was also an effort to mobilise sentiments of national unity and a wartime spirit.

However, cracks have also appeared. As emergency Whitehall committees were disbanded in favour of a smaller decision-making circle, the devolved governments were left out of the loop and increasingly pursued their own Covid strategies, adopting a more cautious approach to easing the lockdown. The Scottish First Minister (supported by a circle of ministerial colleagues and clinicians) assumed ownership of the response policy in Scotland. The Scottish Government's Covid-19 strategy, and the First Minister's handling of the crisis, has largely won the support of people living in Scotland, while the UK Government and Prime Minister have been found wanting. These perceptions held irrespective of whether those polled had voted Yes or No in 2014, or Remain or Leave in 2016 (Curtice, 2020).

Although it is not possible to prove a causal link, views regarding the respective governments' handling of the Covid-19 crisis may help to explain the increase in public support for independence in Scotland over the course of 2020. There had already been a rise in support for independence over the course of 2019 as the UK negotiated its exit from the EU, with polls suggesting, on average, that 49% would vote Yes were an independence referendum held then. This increase in support for Yes was driven primarily by those who had voted No to independence in 2014 but Remain in the 2016 EU referendum (Curtice, 2019). But from June 2020 until the end of the year, 16 opinion polls carried out by six different polling firms, all suggested majority support for

independence, ranging from 51% to 59%. This represents the most sustained majority support for independence ever seen in Scotland.

Yet, like Brexit, Covid-19 has created new challenges to the case for independence, especially with respect to the economy. The massive increases in Covid-related spending have been financed by increased UK borrowing and increased UK debt. Economic recovery is expected to be slow, with declining tax revenues (amid increased unemployment) at least in the short term, and some measures to pare down the mounting debt. These economic challenges are expected to have a detrimental impact on devolution finances (Scottish Fiscal Commission, 2020), but bring added risks to the economic case for independence as well.

Politics

When the 2014 independence referendum was held, the SNP had a parliamentary majority in Holyrood, but 41 of the 59 MPs that represented Scotland in the UK Parliament were from the Labour Party. In the previous General Election in 2010, Labour had secured 42% of the vote in Scotland. While the Conservatives were in the ascendency south of the border, leading the UK coalition government with the Liberal Democrats, in Scotland they had just one MP. The independence referendum was to have a dramatic impact on the political landscape in Scotland.

Three trends have been evident. First is the increased dominance of the SNP in every election since 2014 and in every electoral arena. In the most recent contest – the General Election in December 2019 – the SNP secured a 45% vote share and won 48 of the 59 Scottish seats. Despite thirteen years in power, the SNP's support appears to have increased in voting intentions for the Scottish Parliament. This puts the party in a strong position to secure a comfortable victory in the forthcoming 2021 elections, although the proportional representation system makes it difficult for any single party to secure an overall majority. That the SNP achieved this feat in 2011 does not guarantee a similar outcome in 2021.

The second trend has been the sudden and prolonged collapse of the Labour Party. Just eight months after the 2014 independence referendum, the 2015 General Election saw the Labour Party reduced to just one MP while 40 of his colleagues lost their seats to the SNP. The party has struggled to recover its electoral fortunes since then. Since Nicola Sturgeon became SNP leader in the aftermath of the 2014 independence referendum, Scottish Labour has had four leaders and four acting leaders, all of whom have struggled to make an impact.

Part of the explanation for Labour's travails has been a partial recovery for the Scottish Conservatives, especially in the 2016-17 period under the leadership of Ruth Davidson. The Conservatives both nurtured and benefited from the prevalence of the constitutional issue. Far from settling the independence question, the 2014 referendum resulted in issues of independence and union becoming the defining feature of Scottish

politics. However, the UK Conservatives' difficulties with both Brexit and Covid have rebounded on the party's support in Scotland more recently.

The polarisation of Scottish politics between the pro-independence, pro-Remain SNP and the pro-Union and now pro-Brexit Conservatives (the Scottish Conservatives were overwhelmingly pro-Remain in the 2016 referendum) has contributed to deep strains in the relationship between the Scottish and UK governments, although the two governments were hardly the best of friends in 2014.

The period leading to the first independence referendum was marked by mutual distrust, but there was cooperation as well. The Edinburgh Agreement reflected the UK Government's acceptance that the SNP had secured an electoral mandate to pursue an independence referendum, and that the Scottish Parliament and Government should be given the responsibility to oversee the process.

No such recognition has been given in response to the SNP Government's plans to hold a new independence referendum. Repeated requests to secure the transfer of power to hold a referendum on a similar basis to the one in 2014 have been refused by the Prime Minister, on the basis that the referendum held in 2014 was supposed to be a 'once in a generation' opportunity. In contrast to 2014, the legitimacy of an independence referendum is now hotly contested, and looks likely to be a dominant issue in the forthcoming Scottish Parliament elections.

This book

This volume seeks to step back from these heated political debates and take a dispassionate view of the key issues surrounding independence against the backdrop of changes in the UK's relationship with the EU, the Covid-19 crisis, and the dramatic shifts in the political and economic landscape.

As with the previous *Scotland's Decision: 16 Questions* publication, we do not take a view for or against independence. Instead, we seek to provide accurate information and impartial analysis about the implications of independence, and the challenges and opportunities it may generate. That analysis is drawn from academic research and independent evaluation of the claims made by advocates and opponents of independence. For us too, the future is uncertain and much will depend on the decisions and developments in the months and years to come.

This book is divided into five main themes. It involves contributions from 25 leading academic experts on Scottish independence, who come from a variety of disciplines including law, economics, politics, sociology, geography and social policy.

Part 1: the Process

The first section explores the process of independence:

- Given the UK Government's refusal to allow Scotland to hold a second independence referendum, is there still a route to indyref2? Chris McCorkindale and Aileen McHarg lay out the constitutional pathways for securing a lawful referendum on independence.
- Beyond marking 'x' on a ballot paper, what role should citizens be given in deciding the constitutional future of Scotland? Oliver Escobar reflects on the importance of democratic innovation and civic spaces, outlining several lessons for effective public participation in any future indyref2 process.
- Looking outside the UK, what can we learn from other countries about the nature and process of independence referendums? Coree Brown Swan and Dani Cetrà examine lessons from Catalonia and Quebec.
- If Scots did vote for independence, what would the road to sovereign statehood look like? Sionaidh Douglas-Scott considers the shape of Scotland-UK negotiations following a positive result, including the division of assets and liabilities, and a new Scottish constitution.

Part 2: the Economy

The second section deals with the economics of independence:

- What impact would independence have on Scotland's economy? David Bell looks into the future and examines the economic implications of independence from the perspective of a post-independence finance minister.
- What effects would independence have on Scotland's public revenues and spending? Graeme Roy and David Eiser discuss the opportunities and challenges of moving to a sustainable fiscal position after independence.
- How would independence affect international trade? Filippo Fontanelli examines different post-Brexit scenarios for an independent Scotland's trading relationships with the rest of the UK, EU and rest of the world.
- What are the currency options for an independent Scotland? Jeremy Peat lays out the pros and cons of the three most likely options – keeping the Pound, creating a new Scottish currency, and adopting the Euro.

Part 3: Politics and Society

The third section looks at the implications of independence for Scotland's politics and society:

- How might independence alter Scotland's political structures and policy-making? Here, Paul Cairney explores the potential for reforms to the Scottish Parliament and Scotland's policy 'style' after independence.
- What is the relationship between independence and identity in Scotland? Michael Rosie and Nasar Meer examine how national identity and support for independence intersect, and explore the extent to which Scottish identity is inclusive.
- Would independence lead to different social and equality policies? Kirstein Rummery explores whether an independent Scotland is likely to adopt more radical policies to tackle poverty and inequality, concluding that sustained commitment is as important as policy levers.
- Would an independent Scotland pursue a different approach to immigration? Sarah Kyambi examines the immigration issue through the lens of post-Brexit and post-Covid UK, and the challenges of Scotland pursuing a more liberal approach to immigration as the UK Government's approach becomes more restrictive.
- Would independence change Scotland's approach to climate change? Antje Brown explores the extent to which independence could enable Scotland to adopt a more bespoke and ambitious set of climate change targets.

Part 4: International

The fourth section explores the international aspects of independence:

- With the European question at the forefront of people's minds, is re-joining the EU a good idea? Kirsty Hughes explores the opportunities and challenges around an independent Scotland joining the EU after the UK has exited.
- How would independence affect Scotland's human rights' obligations? Kirsteen Shields considers how independence could lead to changes in Scotland's approach to human rights, including a renewed commitment to the EU Charter of Fundamental Rights.
- What would an independent Scotland's defence and security priorities be? Colin Fleming examines how events since 2014 – including the UK's withdrawal from EU security and defence initiatives and the Trump Presidency's new approach to NATO – have altered the context in which an independent Scotland might pursue its defence and security objectives.
- More broadly, what kind of international role and influence would an independent Scotland have? Daniel Kenealy examines the type of foreign policy approaches open to small states and reflects on what a Scottish foreign policy approach might look like.

- Does Brexit shape what it means for Scotland to be independent? Nicola McEwen examines how Brexit challenges the ‘independence-lite’ prospectus of 2014 and considers, in particular, what post-Brexit independence would mean for the border between Scotland and the rest of the UK.

Part 5: Views from Elsewhere

The fifth and final section considers views from outwith Scotland:

- How would the rest of the UK – in particular, England – view an independent Scotland? Mike Kenny examines how the 2014 independence referendum was a watershed moment in English politics, catalysing intense discussions about English national identity and sovereignty, which then played out during the Brexit referendum.
- Finally, what can we learn from international experience about the future of small, independent states in a big world? Michael Keating shines a light on the opportunities and challenges that small states face in adapting to the complexities of a global era, while outlining how Scotland compares. We have done our best in this book to provide readers with an objective, evidence-based analysis of the implications of Scottish independence in a post-Brexit world. Each of the contributors has sought to present their analysis in a clear, accessible and impartial manner. However, like our predecessor book on the first independence referendum (Jeffery and Perman, 2014), this does not mean that our authors ‘simply sit on the fence’. Instead, they have used their research training to set out the main opportunities and obstacles for independence, examine what has changed since 2014, and examine the claims of each side.

Finally, this book was delayed by, and forged during, the global Covid-19 crisis, during a time of great uncertainty for all of our authors, and hardship and loss for some. As editors, we are indebted to all of our contributors for their commitment to the project, academic integrity and patience in getting this book to the finish line.

We have sought to dedicate our time to this project in that hope that it will help citizens navigate these complex issues and make up their own minds on Scotland's future. We dedicate the book to those whose memories we wish to honour, and to those who gently hold Scotland's future in their hands.

References

Curtice, J (2020), ‘A Coronavirus swing in favour of Independence?’, *What Scotland Thinks* blog, 5 July. <https://whatscotlandthinks.org/2020/07/a-coronavirus-swing-in-favour-of-independence/>

Economist (2020 'How Coronavirus strengthened Scottish independence' (8 August). <https://www.economist.com/britain/2020/08/08/how-coronavirus-strengthened-scottish-independence>

Ipsos Mori (2020) '53% of Scots think there should be a second independence referendum within the next five years' (May). <https://www.ipsos.com/ipsos-mori/en-uk/53-scots-think-there-should-be-second-independence-referendum-within-next-five-years>

Jeffery, C. and R. Perman (eds) (2014) *Scotland's Decision: 16 Questions to think about for the referendum on 18 September*. <https://www.centreonconstitutionalchange.ac.uk/publications/scotlands-decision-16-questions-think-about-referendum-18-september>

Scottish Government (2013) *Scotland's Future. Your Guide to an Independent Scotland*. <https://www.gov.scot/publications/scotlands-future/>

Sturgeon, N, First Minister (2016) 'EU Referendum Result', *Statement delivered at official residence the morning after the referendum*, 24 June. <https://news.gov.scot/speeches-and-briefings/first-minister-eu-referendum-result>

What Scotland Thinks (2020) *How would you vote in a Scottish independence referendum if held now? (asked after the EU referendum)*. <https://whatscotlandthinks.org/>



Part 1: the Process



Constitutional pathways to a second independence referendum

Chris McCorkindale and Aileen McHarg

Introduction

On 19 December 2019 – a week after the UK General Election at which the Scottish National Party (SNP) won an overwhelming majority of Scottish seats – the Scottish Government published its long-awaited case for a second independence referendum: *Scotland's Right to Choose: Putting Scotland's Future in Scotland's Hands* (Scottish Government, 2019).

The document did three main things, aimed at four distinct audiences. First, the bulk of the discussion was devoted to setting out the democratic case for holding a second referendum by the end of 2020. That plan was put on hold as a consequence of the Covid-19 pandemic (Russell, 2020) and has now been revived and revised with the intention to publish a draft referendum bill in March 2021 and to enact that bill if a pro-independence majority is returned to the Scottish Parliament following the May 2021 election (Russell, 2021).

The democratic case for a second referendum was based on three claims:

- that the people of Scotland, as members of a multi-national union based on consent, have the sovereign right to determine their own constitutional future;
- that there has been a material change in circumstances since the 2014 referendum; and
- that the Scottish Government has a mandate to hold a referendum.

The material change in circumstances was said to be the fact of Scotland being taken out of the European Union (EU) despite the desire of the majority of Scottish voters to remain, combined with what the heavily centralised approach to Brexit has revealed about Scotland's place within the UK. The Scottish Government's mandate derives from its victories at the 2016 Scottish election, and the 2017 and 2019 UK elections, combined with a majority vote in the Scottish Parliament on 28 March 2017. The main audience for this part of the document was Unionist supporters in Scotland and beyond who might nevertheless be open to persuasion about the case for independence. It sought to persuade them that it would be undemocratic for the UK to continue to refuse to facilitate a second referendum, thereby drawing attention to the SNP's central constitutional argument for independence: the continuing democratic deficit in the governance of Scotland.

The second aim of *Scotland's Right to Choose* was to make the case for a second referendum to be held on a consensual basis, and for co-operation by the UK Government in putting its legality beyond doubt. The document referred to the precedent of the October 2012 Edinburgh Agreement, in which the UK and Scottish governments agreed on the conditions for a legal, fair and decisive referendum. The Edinburgh Agreement led to a temporary amendment of the Scotland Act 1998 via an Order under section 30 of that Act to enable Holyrood to enact authorising legislation. The main audience here was two-fold. First, the Scottish Government's own supporters, some of whom are impatient with what they see as its excessively cautious approach to securing independence (for more on which, see below). Second, the EU institutions, for whom the legality (as well as the consensual nature) of the process might condition any future relationship with an independent Scotland (see the chapter by Hughes in this volume).

Finally, in Annex B, the document set out draft amendments to the Scotland Act – to be made either by another section 30 Order or by primary legislation – to secure the necessary transfer of competence. These terms went significantly beyond what was agreed in 2012. First, they included an explicit statutory recognition of Scotland's right to self-determination. Second, they would have *permanently* amended the Scotland Act to make it clear that Holyrood has competence to authorise an independence referendum. Third, they made provision for *implementing* a vote for independence by placing a duty on the UK and Scottish governments to co-operate through the transition to independence (see the chapter by Douglas-Scott in this volume), and by extending the powers of the Scottish Parliament, Scottish Ministers and other public authorities to prepare for independence. Clearly aimed at the UK Government, these proposed

amendments may more accurately be seen as the starting point for negotiation rather than a realistic expectation of what might be agreed. Indeed, it is possible that unionist parties in Scotland will want to place more conditions on a second referendum than on the first – for instance, control over the referendum question, or requiring a special majority to trigger a vote.

In the event that the UK Government refuses to make a section 30 Order the Scottish Government has subsequently indicated its intention – if a pro-independence majority is secured in the May election – to legislate unilaterally for a referendum (Russell, 2011). Any such bill would almost certainly be subject to a pre-legislative legal challenge in the Supreme Court by the UK Law Officers.

In this chapter, we consider, first, why the legality of a referendum – and, by extension, the process of becoming independent – matters; second, we consider the UK Government's dismissive response to the request to hold a second independence referendum and the options that may be open to the Scottish Government to secure a lawful referendum.

Why does legality matter?

A state may become independent either with the consent (or at least acquiescence) of the parent state, in accordance with its domestic constitutional requirements, or via a unilateral declaration of independence (UDI). Although the International Court of Justice (ICJ) recognised in its 2010 *Kosovo Reference* that UDI is not contrary to international law (ICJ, 2010: 403), it is a less certain and less satisfactory route to independence (for the unilateral Catalan vote and the Spanish response, see the chapter by Brown-Swan and Cetrà in this volume). This is because achieving *effective* independence is a matter of securing recognition by other sovereign states, including the parent state, and this, as the ICJ pointed out, is essentially a political rather than a legal matter. In effect, international recognition is much more likely to be forthcoming if the independence process is perceived to have been legitimate. As *Scotland's Right to Choose* clearly acknowledges:

“When they make a decision about their future, the people of Scotland must do so in the knowledge that their decision will be heard and respected and given effect to: not just by the government in Scotland, but also by the UK Government, by the European Union and by the international community. For a referendum to have this legitimacy, it must have the confidence of all of those that it would effect [sic]. This means not just the UK Government acknowledging and respecting the Scottish Government's mandate, but the Scottish Government and UK Government seeking to agree the proper lawful basis for the referendum to take place” (Scottish Government, 2019: 20).

As a matter of UK constitutional law, Scotland can only become independent with the agreement of the UK Parliament. That agreement may be explicit and direct, via specific

legislation granting independence; indirect, via a general transfer of competence to secure independence to Holyrood; or implicit, if the authority to seek independence can already be found within the terms of the Scotland Act 1998 (for more analysis of what the post-referendum constitutional road to statehood might look like, see the chapter by Douglas-Scott in this volume).

As a matter of law, a referendum is not a required part of the process of becoming independent. However, it is at least arguable that, in a conventional sense, it is a constitutional requirement, given the precedent of the 2014 independence referendum, the provisions for a border poll on Irish reunification in the Northern Ireland Act 1998, and the statutory referendum 'lock' against unilateral abolition of the Scottish Government and Scottish Parliament by the UK Parliament in the Scotland Act 2016. The House of Lords Constitution Committee in its 2010 report on *Referendums in the United Kingdom* also took the view that it was at least appropriate for a referendum to be held on questions of secession by any of the nations of the UK from the Union (House of Lords, 2010).

If a second independence referendum is to take place and be effective as a means of achieving independence it is therefore crucial that it be conducted on a proper legal footing. The rules it sets out for the organisation of a poll and regulating the conduct of the referendum campaign must be *legally valid* and hence binding on those to whom they apply.

In 2014, those rules were set out in the Edinburgh Agreement and in the enabling legislation that followed. The Order to transfer competence to the Scottish Parliament to legislate for a referendum (or to clarify its competence to do so, depending on one's interpretation) was made by the UK Government on the basis that there would be a single-question referendum (therefore excluding a 'third', so-called 'devo-max', option) held before the end of 2014. It was left to the devolved institutions, with the approval of the Electoral Commission, to set the referendum question and to define the referendum franchise.

However, it should not be assumed that a second referendum would be contested on the same terms that prevailed in 2014. Whilst both the Scottish and UK governments agree that a fair and intelligible question must be presented in order for voters to have confidence in, and to accept, the result, there is disagreement about what that might mean. On the one hand, the Scottish Government, having argued that there is no need for the Electoral Commission to review the 'simple, intelligible and well-recognised' question put to the people in 2014, has now referred the question to the Commission in the face of parliamentary pressure to do so and calls by some in opposition to adopt the language of leave/remain that was used in the 2016 Brexit referendum (Duffy, 2020), albeit that the reference was put (and remains) on hold as a result of the Covid-19 pandemic (Scottish Government, 2020). A debate has also been raised about the appropriate franchise for any future referendum, with the suggestion (made mostly by pro-union figures) that the right to vote be extended to Scottish nationals now living elsewhere in the UK or even further afield. Whilst there are principled debates to be had about these issues on their own terms there is also a need to proceed with caution. Any

such change must be accompanied with compelling reasons if it is not to be seen as an attempt to gerrymander – and thus to undermine the validity of – the result.¹

Legal validity is a separate issue from the *legal effect* of the referendum result. The 2014 referendum was advisory only; it did not legally bind the UK or the Scottish Government to give effect to a vote for independence. Nevertheless, it was legally valid because it was conducted on the basis of legislation enacted by Holyrood after its competence to enact such legislation had been confirmed by the section 30 Order. Attempting to proceed with a referendum without such a legislative underpinning – whether on the basis of a section 30 Order or judicial confirmation that Holyrood *already* has the power to authorise a referendum – would be a non-starter, given that it would be likely to depend upon the co-operation of Scotland's 32 local authorities in organising the vote (none of which is under majority SNP control), and would almost certainly be boycotted by unionists.

A Referendums (Scotland) Bill completed its passage through the Scottish Parliament on the same day as *Scotland's Right to Choose* was published. This provides a *general* legal framework for referendums within devolved competence (similar to the Political Parties, Elections and Referendums Act 2000, which governs referendums authorised by Westminster). However, in order to be applied to any particular referendum, further specific authorising legislation is required. The Referendums (Scotland) Act 2020 says nothing about the legislative competence of any future bill intended to establish an independence referendum.

A case has been brought by a private citizen and pro-independence campaigner, Martin Keatings, seeking a ruling from the Court of Session, in advance of the 2021 Scottish Parliament election, that an independence referendum bill would be within the legislative competence of the parliament. However, at first instance the court has held that the question is 'hypothetical, academic and premature' and will remain so until a bill in its final form has been passed by the parliament (*Keatings v Advocate General for Scotland* [2021] CSOH 16). This decision is likely to be appealed. However, as things stand, the competence of legislation authorising a second independence referendum remains to be tested in the preparation, introduction and passage of a bill.

Securing a lawful referendum

1. Looking the other way: the UK Government response

There have been, broadly speaking, three responses to the Scottish Government's approach. The first, by the UK Government, has been to 'look the other way' and dismiss calls for a second referendum.

1. See the debate instigated by this provocative tweet by the UK Minister for the Cabinet Office, Michael Gove - <https://twitter.com/michaelgove/status/1296183221630177280>

In a letter to the First Minister which ignored the substantive arguments made in *Scotland's Right to Choose*, Prime Minister Boris Johnson asserted that a 'personal promise' had been made in 2014 that the referendum would be a 'once in a generation' vote and that his government would 'continue to uphold the democratic decision of the Scottish people and the promise that [was] made to them' (Johnson, 2020). Notwithstanding recent polls that appear to indicate majority support for independence (ScotCen 2020, Shedden, 2020), it is on this 'promise' – rather than on any substantive ground – that the UK Government continues to hang its hat.

When, in July 2020, the Prime Minister was asked about rising support for independence, a spokesman said only that 'in 2014...the Scottish people had voted to keep our United Kingdom together,' that 'both sides had committed to respecting that decision' and that the Scottish Government had 'promised it would be a once in a generation vote' (McIlkenny, 2020). One can see the attractive simplicity of this strategy: turning the Scottish Government's own words back on themselves, exploiting the First Minister's strong preference for a referendum held in agreement with the UK Government, whilst resting on the impressive exercise in democracy that took place in 2014.

However, it is a strategy which invites a number of difficult questions. The first is whether campaigning language designed to galvanise turnout and support can properly be described as a 'promise' to which the relevant actors can, or must, be held. Certainly, as a matter of *law*, any such promise during the course of a campaign is unlikely to be enforceable.² Second, if the UK Government is serious about holding the Scottish Government to that 'promise', what constitutes a generation? The Northern Ireland Act 1998 stipulates a minimum seven-year period between border polls where previously the Northern Ireland Act 1973 had stipulated a minimum period of ten years. If we take our cue from the Northern Ireland settlement we are entering the period (passing the sixth anniversary of the first independence referendum) when the question might (depending on prevailing political conditions) legitimately be revisited. If a 'generation' is to be taken as a much longer period than is allowed for in Northern Ireland – the Prime Minister has suggested that *forty* years, the length of time between the 1975 EC membership referendum and the 2016 EU membership referendum, might constitute the appropriate passage of time (Andrews, 2021) – then how are we to define this and on what basis? Third, can a response that is grounded in a prior democratic exercise hold against materially-changed circumstances and against a changing democratic will?

In this context, reference is often made from within the independence movement to the right of the Scottish people to self-determination. But it is at least implicit in the Scottish Government's request for statutory recognition of this principle that it does not currently form part of UK or Scottish constitutional *law* – even if it has plenty of endorsement in constitutional *practice*. This contrasts with Northern Ireland, where the 'principle of consent' is explicitly recognised in the Good Friday Agreement, and given statutory expression in the Northern Ireland Act 1998.

2. As suggested, for example, by the Alliance for Unity - <https://twitter.com/Alliance4Unity/status/1296745270521339910>

International law *does* recognise a right of national minorities to self-determination which may, in some circumstances, include a right to secede from the parent state. However, the Supreme Court of Canada concluded in its *Quebec Secession Reference* that this does not apply in the case of national minorities such as Quebec (and by extension of the court's reasoning, also Scotland) which already enjoy a high degree of internal autonomy and political representation, even where there is a continued failure to reach agreement on amendments to the constitution in order to accommodate greater autonomy or the possibility of secession (for more on the Quebec case, see the chapter by Brown-Swan and Cetrà). Similarly, in the *Kosovo Advisory Opinion*, the ICJ refused to be drawn on whether the right of self-determination 'confers upon part of the population of an existing State a right to separate from that state' outside of the context of 'non-self-governing territories and peoples subject to alien subjugation, domination and exploitation' (ICJ, 2010).

In a domestic context, the Scottish Government's mandate to hold a referendum – though politically important – also seems legally irrelevant. The doctrine of the mandate plays, at best, a marginal role in UK constitutional law and practice. In any case, what constitutes a mandate is highly ambiguous. For instance, how clear does a manifesto promise have to be? Is a majority of seats or of votes required (and can these be aggregated from more than one party)? And which elections are relevant – to the UK Parliament, which holds the legal competence to dissolve the Union, or the Scottish Parliament, from which the Scottish Government's authority derives?

If the UK Government's approach is correct – i.e., that Westminster's consent is necessary for a lawful referendum to be held – it means that democratic channels to change can be closed off indefinitely. We might, then, reasonably expect to find the case for independence being expressed in other institutional and extra-institutional settings: in bodies akin to the Scottish Constitutional Convention, in public demonstrations (Brooks, 2020), or in the sorts of acts of civil disobedience that undermined the Poll Tax and from which the impetus for devolution itself re-emerged in the late 1980s and 1990s. More immediately, the response by the SNP to the refusal by the UK Government even to countenance making a section 30 Order has been to publish an 11-point action plan to legislate for a referendum *with or without* Westminster's express consent if a pro-independence majority is returned to the Scottish Parliament in May.

The prospect of unilateral legislation plays the ball back into the UK Government's court. The onus, then, would be on the UK Government to decide whether or not to challenge the legality of any referendum legislation in the Supreme Court. This option is not without risk to the UK Government. On the one hand, it might lose the case and thereby open a legitimate pathway to the Scottish Parliament to legislate for a referendum on its own terms. On the other hand, if the UK Government were to win any such challenge it might provide grist to the mill for those who argue that UK institutions are impediments to the democratic will of the Scottish people. It is possible, therefore, that a post-election pro-independence majority, willing to test the limits of the Scottish Parliament's powers in the Supreme Court, might focus minds on agreeing to a section 30 Order and the conduct of a referendum on mutually negotiated terms.

2. Plan(s) B: The pro-independence movement response

The preparedness of the SNP to introduce a referendum bill even in the absence of a section 30 Order speaks to two further audiences. First, it responds to critics within the SNP – notably Joanna Cherry QC MP and Kenny MacAskill MP – and within the wider independence movement who have argued that the Scottish Government ought to be more bullish about testing the limits of the Scottish Parliament's legislative competence (MacAskill, 2020; Nutt, 2020). Second, with its promise to publish a draft referendum bill in March, the action plan is a call to arms to the Scottish electorate; that the return of a pro-independence majority in May's Holyrood elections will be met with action in the pursuit of independence.

Whilst it has been argued that a unilateral referendum would be undermined by a unionist boycott, it is difficult to see what the justification for such a boycott would be if the legality of a referendum held on these terms was upheld by the Supreme Court. Nevertheless, this too is an approach laden with risks. First, there is a significant risk that the courts would hold that a referendum is *outwith* the legislative competence of the parliament, narrowing the range of options available and tilting the balance of power towards the UK Government. Indeed, MacAskill himself has suggested that one of the reasons why the Scottish Government has not adopted this approach is because the Lord Advocate (who must sign off on any government bill introduced into the Scottish Parliament) does not believe that a referendum bill would be within competence (MacAskill, 2020). Second, there is nothing in law to prevent the UK Government from making a reference to the Supreme Court and using the delay to amend schedule 5 of the Scotland Act 1998 so as to unambiguously place an independence referendum outwith legislative competence. Third, an affirmative judgment by the Court might ramp up political pressure from within the independence movement to legislate for a referendum before the Scottish Government is confident that the conditions and timing are right to win one. Finally, whilst this approach might circumvent the need for the UK Government to consent to a referendum, it again does nothing in domestic law to compel the UK Government to enter into post-referendum negotiations, or to do so in good faith.

For some SNP members – such as Angus MacNeil MP and Cllr Chris McEleny – even this more bullish approach to a second referendum does not go far enough. They have argued that the SNP manifesto for the 2021 Scottish Parliament election should state, as an option of last resort, that 'the election of a pro-independence majority of seats shall be a mandate from the people of Scotland to commence independence negotiations with the UK government' (Philip, 2020). Again, though, there are risks attached to this position.

First, pro-independence majorities have twice been elected to the Scottish Parliament (in 2011 and in 2016) and three times have won a plurality of Scottish seats at Westminster (in 2015, in 2017 and in 2019) but never with more than 50% of the vote. Winning most seats in elections held in Scotland might not be enough (by itself) to persuade the UK Government, and those more generally opposed to independence, that a clear and unambiguous mandate has been conferred.

Second, even if a pro-independence majority of seats is underpinned by a pro-independence majority of votes cast, this approach gives insufficient consideration to the question of losers' consent, without which any declaration of independence is highly *unlikely* to be 'accepted as legitimate in Scotland, the UK as a whole, and by the international community' (Scottish Government, 2019: 1). As Pete Wishart MP has said, 'we can take it as a given that all the unionist parties would refuse to agree to an election framed on this basis', making for a somewhat brave presumption that 'the Scottish people would somehow go along with their democracy being appropriated like this' (Wishart, 2020).

Third, it is not clear why a UK government that has refused to consent to a referendum on independence would nevertheless agree to enter directly and in good faith into independence negotiations. Given the importance of any such negotiations to the achievement of a smooth transition to independence (see Douglas-Scott in this volume), and to obtaining recognition from the international community (see Hughes, and Kenealy in this volume), this variant of Plan B seems only to delay rather than to address the problem of a stubborn resistance by the UK Government and the power dynamics that lie underneath.

Conclusion

Unpalatable as it may be to some nationalists that the exercise of Scottish self-determination depends on Westminster's co-operation, it is hard to avoid the conclusion that this is necessary. What, then, if anything, might be done to secure that co-operation?

Strategically, it is likely that the Scottish Government has always anticipated that the UK Government will reject its call for a referendum in the near future. Instead, there seems to be an attempt to frame any such rejection – and the democratic case more broadly – as the central issue of the 2021 Holyrood election. Whilst, as a matter of law, the UK Government might continue to withstand the pressure of a renewed pro-independence majority in the Scottish Parliament, there have been signs even in unexpected places – notably from within the UK Government itself as well as from within Scottish Labour – that the legitimacy conferred by such a result would be difficult to resist (McNab, 2019a,b).

Tactically, the SNP might rely on its Westminster membership to maintain political momentum towards – and to finesse the legal form of – a referendum. It could do so with the introduction of a Private Members' Bill in the form set out in Annex B. Such a bill would almost certainly fail to be passed. However, and as advocates for an EU referendum discovered prior to the UK Government's introduction of the EU Referendum Bill in 2015, these bills can usefully be deployed both to give life to – and to stress test – proposed legislation; to signal action to an impatient audience; as well as to emphasise the sites of political obstruction when the bill falls. That cohort might also use the advantages of being the third largest party at Westminster – including increased

opportunities to make use of opposition time or to ask questions of the Prime Minister at PMQs – to provoke a response from the UK Government.

At Holyrood, the Scottish Government – working with the assistance of Greens and other parties opposed to Brexit – might see the legislative consent mechanism as one way to re-state the argument as one about democratic deficit within the UK, as it has done when the Scottish Parliament refused legislative consent in relation to European Union (Withdrawal) Act 2018, the European Union (Withdrawal Agreement) Act 2020, the European Union (Future Relationship) Act 2020, and the United Kingdom Internal Market Act 2020.

What seems certain is that the era of constructive ambiguity about the power to hold an independence referendum in Scotland is coming to an end. With opinion polls now consistently showing support for independence at above 50%, as well as suggesting that the SNP is likely to win another overall majority at the next Holyrood elections, it seems unlikely that either the blithely dismissive approach by the UK Government or the incongruence between the source of democratic legitimacy and the source of legal power can sustainably hold.

References

Andrews, K. (2021) 'Wait 40 years for another Scottish independence vote, says Boris Johnson', *The Times*, 4th January. <https://www.thetimes.co.uk/article/wait-40-years-for-another-scottish-independence-vote-says-boris-johnson-kwb7njq99>

Brooks, L. (2020) 'Thousands of independence supporters march in Glasgow' *The Guardian*, 11th January. <https://www.theguardian.com/politics/2020/jan/11/thousands-scottish-independence-supporters-march-glasgow>

Duffy, J. (2019) 'Electoral Commission to retest indyref ballot question' *The National*, 9th February. <https://www.thenational.scot/news/18221767.electoral-commission-retest-indyref-ballot-question/>

Forward as One (2020) *The People's Action on section 30 challenge* <https://www.forwardasone.scot/>

Gordon, T. (2020) 'Split emerges in new Scottish independence party over second referendum' *The Herald*, 22nd July. <https://www.heraldscotland.com/news/18600346.split-emerges-new-scottish-independence-party-second-referendum/>

House of Lords (2010) House of Lords Constitution Committee, *Referendums in the United Kingdom* (HL 2009-10 99) para 94. <https://publications.parliament.uk/pa/ld200910/ldselect/ldconst/99/9902.htm>

ICJ (2010) *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion*, ICR Reports.

Johnson, B. (2020) Letter from PM Boris Johnson to Scottish First Minister Nicola Sturgeon: 14 January. <https://www.gov.uk/government/publications/letter-from-pm-boris-johnson-to-scottish-first-minister-nicola-sturgeon-14-january-2020>

MacAskill, K. (2020) 'Scottish independence: SNP needs a plan B if Boris Johnson refuses permission for indyref2' *The Scotsman*, 2nd July. <https://www.scotsman.com/news/opinion/columnists/scottish-independence-snp-needs-plan-b-if-boris-johnson-refuses-permission-indyref2-kenny-macaskill-2900851>

McIlkenny, S. (2020) 'Boris Johnson doubles down on no to second independence referendum ahead of Scotland visit' *The Herald*, 20th July. <https://www.heraldscotland.com/news/18595433.boris-johnson-doubles-no-second-independence-referendum-ahead-scotland-visit>

McNab, S. (2019a) 'Scottish Secretary Alister Jack backs Indyref2 'mandate' if SNP wins 2021 Holyrood majority' *The Scotsman*, 19th November. <https://www.scotsman.com/news/scottish-news/scottish-secretary-alister-jack-backs-indyref2-mandate-if-snp-wins-2021-holyrood-majority-1402016>

McNab, S. (2019b) 'Senior Scots Labour figures come out in favour of independence referendum' *The Scotsman*, 15th December. at <https://www.scotsman.com/news/scottish-news/senior-scots-labour-figures-come-out-favour-independence-referendum-1399704>

Nutt, K. (2020) 'Joanna Cherry urges Nicola Sturgeon to plan legally binding indyref2 without S30 order', *The National*, 1st July. <https://www.thenational.scot/news/18554409.joanna-cherry-urges-nicola-sturgeon-plan-legally-binding-indyref2/>

Percival, R. (2020). 'Sturgeon under pressure: Alliance for Independence to launch as Scots independence party', *Daily Express*, 21st July. <https://www.express.co.uk/news/politics/1312512/sturgeon-news-alliance-for-independence-scotland-indyref2-scottish-independence-update>

Philip, A. (2020) 'Independence 'plan B' should be put in SNP election manifesto, party figures claim' *Daily Record*, 2nd June. <https://www.dailyrecord.co.uk/news/politics/independence-plan-b-should-put-22127651>

Russell, M. (2020) Letter from Cabinet Secretary for Constitution, Europe and External Affairs, Michael Russell MSP, to the Chancellor of the Duchy of Lancaster, Rt Hon Michael Gove MP, 18th March 2020. <https://www.gov.scot/publications/coronavirus-covid-19---independence-referendum-cabinet-secretary-for-constitution-letter/>

Russell, M. (2021). 'This is the SNP's routemap to a Scottish independence referendum in full', *The National*, 23rd January. <https://www.thenational.scot/news/19033561.snps-road-scottish-independence-referendum-plan-full/>

ScotCen (2020) *What Scotland Thinks. Scotland Poll Results. How would you vote in a Scottish referendum if held now? (asked after the EU referendum)* <https://>

whatscotlandthinks.org/questions/how-would-you-vote-in-the-in-a-scottish-independence-referendum-if-held-now-ask/

Scottish Government (2019) *Scotland's Right to Choose: Putting Scotland's Future in Scotland's Hands* <https://www.gov.scot/publications/scotlands-right-choose-putting-scotlands-future-scotlands-hands/>

Scottish Government (2020) 'FOI response on question assessment O' <https://www.gov.scot/binaries/content/documents/govscot/publications/foi-eir-release/2021/01/foi-202000105330/documents/foi-202000105330---information-released/foi-202000105330---information-released/govscot%3Adocument/FoI-202000105330%2B-%2BInformation%2Breleased.pdf>

Shedden S. (2020), 'John Curtice: Yes side favourites to win Scottish independence referendum for first time ever' *The Scotsman*, 18th July. <https://www.scotsman.com/news/politics/john-curtice-yes-side-favourites-win-scottish-independence-referendum-first-time-ever-2917520>

Wishart, P. (2020) 'Plan B. Panacea or Another Dead End?' petewishart: Musings and Mutterings from Perthshire, 21st June. <https://petewishart.wordpress.com/2020/06/21/plan-b-panacea-or-another-dead-end/>



Voice of the people: public participation and independence

Oliver Escobar

Introduction

Public participation in the 2014 referendum on Scottish independence was ground-breaking, not just because of the 85% turnout, but also because of the high quality of public deliberation in the two years before the ballot. Myriad conversations sprung up and down the country, from communities to institutions, from pubs to churches, from neighbourhoods to digital spaces, and from workplaces to kitchen tables. There was much to think about and therefore plenty to talk through.

‘Talk’ often gets a bad rap, as popular expressions go: ‘talk is cheap’, ‘talking shop’, ‘less talk more action’. But without certain forms of talk, including dialogue and deliberation, democracy cannot thrive. Talk without action may be pointless, but action without talk can be senseless.

When thinking about the possibility of a second referendum on independence in Scotland, perhaps the main transferable lesson from the first referendum is that both

public participation and deliberation must be central. There must be a multiplicity of civic spaces where people can meet across differences, seek to understand a range of perspectives and engage in productive conversations.

These spaces are different from the partisan forums created by the Yes and No campaigns. This chapter reflects on the importance of such civic spaces and makes a call to protect and multiply them so that any future referendum conversations are not just shaped by partisan rhetoric and political marketing.

Democratic innovations

Much of political life consists of claims and counterclaims about who or what represents the 'voice of the people'. This is one of the great challenges of turning democratic ideals into practice: there is no such thing as 'the voice of the people'.

This isn't just because there are many, sometimes irreconcilable, voices; but also because democracy is an evolving experiment. A snapshot in time only captures a temporary agreement in an ongoing conversation. To articulate such agreements, democracy has a growing repertoire of processes for public participation beyond party politics, electoral campaigning, street protest and traditional consultations. This is what we now refer to as 'democratic innovations' (Elstub and Escobar, 2019), which are processes or institutions designed to reimagine and deepen the role of citizens through new forms of participation, deliberation and influence. These innovations include participatory budgeting, digital crowdsourcing and citizens' assemblies, as explored below.

Scotland has been for some time experimenting with democratic innovations, with public participation becoming central in current debates about good governance and democracy (What Works Scotland, 2019: 6-13). For example, in the last ten years there have been at least 300 participatory budgeting processes across Scotland, where citizens can directly decide how authorities and communities spend public money at the local level (Escobar et al, 2018).

Another high-profile example is that of 'mini-publics', a democratic innovation where citizens are selected by civic lottery (somewhat similar to jury duty) and then given the time and resources needed to engage in careful public deliberation (Escobar and Elstub, 2017). Notable examples of mini-publics are: the citizens' juries that the Scottish Parliament piloted in 2019 to help parliamentary committees to inform work on land management reform (Scottish Parliament, 2019); the more recent Citizens' Assembly on Scotland's future ¹, or the latest development: Scotland's Climate Assembly, following similar processes in France and at the UK level ². This is therefore a story that is not just confined to Scotland. There is a global tide of democratic innovation, partly as a response to the growing democratic recession (Escobar and Elstub, 2019).

1. See: <https://www.citizensassembly.scot/>

2. See: <https://www.climateassembly.scot>

The democratic recession is characterised by a sustained loss of democratic systems around the world, particularly in the last decade (Diamond, 2015; Wike and Fetterolf, 2018). The Democracy Index shows that 48% of the world's population live in some kind of democracy, but only 5% live in a 'full democracy' – with the USA, for example, now categorised as a 'flawed democracy' (The Economist, 2016; 2019).

The Global Attitudes Survey shows increased indifference, frustration and authoritarian attitudes around the world, particularly amongst the youngest populations (Foa and Mounk, 2016). There is also a growing gap between the 'politically rich' and the 'politically poor' on a global scale, which refers to power inequalities in terms of who gets to exercise influence in democratic governance (Dalton, 2017). The UK is now at the highest-ever recorded level for public dissatisfaction with democracy (Foa et al, 2020).

This global democratic recession is arguably one of the most fundamental changes in context since the Scottish independence referendum in 2014, notwithstanding other critical developments such as Brexit and Covid-19. In this context, Scotland may embark on another referendum to decide its constitutional future. The point I want to emphasise in this chapter is that 'how' the decision is reached – the process – matters as much as the result. This is the critical question when we think about 'the voice of the people': how is that voice constructed?

There are different types of public participation. For example, much attention is paid to participation in partisan contexts, such as electoral campaigns, political activism and ongoing party politics. But this overlooks where much of political life now unfolds: numerous active networks through communities of place, interest, practice and identity; countless new spaces in the digital public sphere; and emerging democratic innovations that provide new interfaces between citizens and institutions (Elstub and Escobar, 2019).

Politics is more than party politics, and democracy is more than electoral democracy. For example, Ireland has in recent years legalised equal marriage and abortion largely thanks to civic campaigns and non-partisan citizens' assemblies, which prepared the ground for referendums (Farrell et al, 2018). In Brazil, local community decisions, via participatory budgeting, have increased healthcare spending and community capacity to tackle local issues, resulting in the decrease of infant mortality rates (Touchton and Wampler, 2014).

Referendums are amongst the bluntest of instruments in the direct democracy toolbox because they usually address complex issues through a limited range of choices. Nevertheless, referendums can lead to different types of public participation depending on their context and how they are designed (Jaske and Setala, 2019). For example, referendums dominated by partisan campaigning are different from those that also enable broader participation and deliberation beyond traditional political spaces. The two-year period given in preparation for the 2014 independence referendum allowed time for that kind of broader and deeper participation. This is in contrast to processes with a shorter timeframe for preparation, such as the referendum on leaving the European Union, which has an impact on the quality of public dialogue and deliberation (Renwick et al, 2018).

Active citizens

In a minimalist form of 'electoral democracy', citizens are typically invited to be voters, spectators, protesters and (between elections) consultees in policy and public services. In a fuller version of democratic practice, usually termed 'participatory democracy' (see Escobar, 2017), citizens are also invited to be deep thinkers, problem-solvers, co-producers and decision-makers. Citizens thus contribute to a richer sense of democratic life.

Learning from democratic innovations in Scotland and around the globe supports the notion that, when given the right time and resources, citizens can grapple with complex issues and reach well-informed decisions for the public good (Elstub and Escobar, 2019). This much we know from processes and institutions such as mini-publics, participatory budgeting and digital crowdsourcing ³.

The current wave of democratic innovation in Scotland owes much to how the 2014 independence referendum took place. In the two years running up to the vote, there were numerous innovative civic spaces for non-partisan public participation. Despite the obvious divisions, there seemed to be some level of consensus in both the Yes and No campaigns around the idea that democracy needed to work better, and be reimagined and rekindled, regardless of the outcome of the referendum.

The Scottish public sphere both expanded and deepened as a result of this commitment. There were, for example, initiatives like *So Say Scotland*, which organised an independent Citizens' Assembly in 2013, inspired by the Icelandic constitutional process a few years before ⁴. The initiative also created a card game about the referendum (*Wee Play Scotland*), which supported groups, friends and families across the country to facilitate and engage in dialogue without polarisation ⁵.

New grassroots spaces were complemented by established organisations. For instance, the Electoral Reform Society Scotland was at the forefront of a range of processes and events, including the Democracy Max inquiry ⁶. This was a civic-led process, starting with a People's Gathering and continuing with various roundtables and public events. Other established networks played a role in creating new spaces for dialogue and deliberation, including the Scottish Communities Alliance, the Scottish Urban Regeneration Forum, the Scottish Community Development Centre, the Church of Scotland and the Scottish Council for Voluntary Organisations.

New networks also sprang up during the 2014 independence referendum, for example Collaborative Scotland, which developed the mediation-inspired *Commitment to*

3. You can see some examples at: <https://participedia.net>

4. See: <https://www.nesta.org.uk/feature/new-radicals-2014/so-say-scotland/>

5. See: <https://issuu.com/sosayscotland>

6. See: <https://www.electoral-reform.org.uk/campaigns/democratic-innovations/scottish-devolution/>

Respectful Dialogue: a set of guidelines for public conversations supported by key figures and organisations⁷.

All sorts of civic institutions and public bodies, including Scottish universities, hosted a variety of events and developed resources to inform public participation (not least our predecessor book, *Scotland's Decision*; see Jeffery & Perman 2014).

There was a proliferation of grassroots community spaces and processes, and more substantive political talk in pubs, churches, town halls, community centres, and family tables. Many of these fora were non-partisan, seeking to create a safe space for deliberation beyond the Yes and No camps, thereby reducing the potential for polarisation and including a wider range of views, such as people who were undecided or reticent to enter partisan spaces.

Nevertheless, both the Yes and No campaigns played a crucial part in engaging citizens too, and indeed they involved far more people in their events and activities than any of these non-partisan initiatives. The opportunity for improvement, were there to be a second referendum, is therefore to expand the range on non-partisan spaces so that citizens have a wider range of options to participate.

Lessons for the future: meaningful and effective participation

Participatory democracy is not only about creating new processes, but also developing new mindsets, skills and ways of interacting in society more broadly.

The following reflections are meant to provide food for thought for public institutions and civil society organisations seeking to create new public spaces, or to improve existing ones. There are five dimensions of public participation which are particularly important; not just for referendums, but democratic life more broadly.

Communication beyond debate

First, it is crucial to expand the palette of communication forms deployed in public conversations. Confrontational *debate* plays a central role in democracy, but it can often be a limiting way of discussing public issues (Tannen, 1998). Other options are available. For instance, *dialogue*, which is an exploratory form of communication that seeks to build understanding and relationships; or deliberation, which engages difference and conflict in an informed, considered and respectful manner. A vibrant public sphere requires a variety of forms of communication, but adversarial debate has become so prevalent that the alternatives are often crowded out. Dialogue and *deliberation* require careful design, for example in terms of the choice of participatory formats, rules for

7. See: <https://collaborativescotland.org/commitment/>

group interaction, support for participants and skilful facilitation (for practical guidance see: Escobar, 2011; and Faulkner and Bynner, 2020).

Facilitation

Second, the quality of communication expected in dialogue and deliberation takes a great deal of facilitation work. Facilitation is the practice of enabling group conversations that are inclusive, meaningful and productive (Escobar, 2011). The role of a facilitator is to help the group meet its aims, encourage the fullest possible inclusion within the group, manage time-sharing, serve the needs of each individual and the group, and welcome difference and disagreement while avoiding the use of confrontation (Escobar, 2011: 46–54). The facilitator's toolbox includes conversation guidelines or 'engagement rules', and techniques for questioning, summarising, framing and reframing (Escobar, 2019). A participatory democracy requires impartial facilitators (e.g. community workers, professional mediators) who are focussed on the process of creating spaces where citizens can have difficult conversations that otherwise wouldn't happen amidst the noise of mediatised debates.

Avoiding confrontation

Third, conflict and confrontation must be understood and carefully distinguished from contestation. Difference and contestation are essential to democracy. Their suppression has been the source of much misery around the world. Without respect for differences there cannot be authentic democracy. However, this does not mean that confrontation is the best way to deal with conflict. Confrontation can accentuate polarisation and entrenchment, which only helps to nurture a vicious circle leading to further confrontation (Escobar, 2011: 12–15). Moreover, it prevents the deep, shared exploration of conflict, as confrontation often simplifies issues and stereotypes others. As a result, confrontational communication can become the very thing that prevents us from constructively engaging across differences. It is precisely here that practices of dialogue and deliberation have a lot to offer.

Exposure to other opinions

Fourth, participatory democracy thrives when citizens have opportunities to interact with other citizens who think very differently from them. A danger of current political life, exacerbated by some digital platforms, is that many citizens only get to talk about public issues with like-minded people (Sunstein, 2009). Without exposure to the experiences, views, testimonies and values of others there is a risk of fostering polarisation and simplification by dividing communities. There's a need to create more public forums where citizens from all walks of life can safely encounter a diversity of perspectives and possibilities. It is easy to dismiss or despise a faceless 'other'. When people meet under the right conditions, they can explore issues and perspectives in a more nuanced manner and at a more human level (Escobar, 2011). This is essential to the development of a well-

informed public. It is also the difference between a democracy built on unreflective public opinion and a democracy built on collective public reasoning.

Facilitative leadership

Finally, new processes and practices require a new kind of ‘facilitative leadership’. If traditional leadership is about having (or pretending to have) all the answers and pointing the direction, facilitative leadership is about enabling citizens to work out the answers and agree the directions (Henderson et al, 2018: 92-93). The facilitative leader is someone who knows how to bring people together to engage in dialogue and deliberation. The ultimate goal of this kind of leader is not notoriety, but to willingly vanish into the self-governing community that she has helped to facilitate.

Conclusion

At the time of writing this chapter, the Citizens’ Assembly of Scotland is heading towards its conclusion. This is a body of around 110 citizens selected through a civic lottery to reflect the diversity of demographics and perspectives in the Scottish population⁸. Participants are supported with a stipend in order to reduce barriers to participation, particularly amongst those who are most disadvantaged in society.

Early research shows promising results in terms of inclusion and quality of dialogue and deliberation⁹. Their task is to address a range of questions, including ‘what kind of country are we seeking to build?’ and ‘how best can we overcome the challenges Scotland and the world face in the 21st century, including those arising from Brexit?’ After four weekends of deliberation (over six months) the Assembly had to be moved online due to the Covid-19 pandemic. It will report to the Scottish Parliament in early 2021. Many of the issues undergoing public deliberation at the Assembly are of relevance to the constitutional future of Scotland. If there is to be a second independence referendum, there is a clear opportunity to build on the groundwork already done by democratic innovations like this.

When thinking about a second independence referendum, another clear lesson from the Covid pandemic is the importance of public digital infrastructure. Online capacity and spaces are having to mature quickly by necessity. A second independence referendum presents the opportunity to leverage this potential and enable a richer digital public sphere in Scotland. Pioneers such as *vTaiwan*, a digital deliberation and crowdsourcing platform now embedded within the government of Taiwan, show the potential to involve millions of citizens online while ensuring quality of interaction and

8. See: <https://www.citizensassembly.scot/who-is-involved/assembly-members>

9. See: <https://www.citizensassembly.scot/research>

communication¹⁰. Investing in the upgrading of democracy makes sense regardless of whether there is another referendum. That is the point of democratic innovation: to help plug the gaps in legitimacy and capacity that currently drain our electoral democracies and, eventually, widen and deepen democratic life.

There is disagreement on whether there should be a second independence referendum in Scotland. But hopefully there is agreement that, if or when it takes place, the process should enable meaningful public participation, including spaces for dialogue and deliberation. Referendums can do this if they are well designed, for instance by: allocating enough time for preparation, resourcing non-partisan spaces, recruiting impartial facilitators, making room in the media for communication beyond debate, supporting public and non-profit organisations to host participatory processes, and providing incentives for both campaigns to engage in non-partisan spaces. There is a lot at stake given the global democratic recession and the state of public satisfaction with democracy in the UK. An engaged and informed public is the best inoculation against the forces that currently keep democracy under siege.

References

Dalton, R. J. (2017) *The Participation Gap: Social status and political inequality*, Oxford, Oxford University Press. <https://global.oup.com/academic/product/the-participation-gap-9780198733607?cc=gb&lang=en&>

Diamond, L. (2015) 'Facing up to the democratic recession', *Journal of Democracy*, 26, 141-155. <https://www.journalofdemocracy.org/articles/facing-up-to-the-democratic-recession/>

Elstub, S. & Escobar, O. (eds) (2019) *The Handbook of Democratic Innovation and Governance*, Cheltenham, UK; Northampton, MA, USA: Edward Elgar. <https://www.e-elgar.com/shop/gbp/handbook-of-democratic-innovation-and-governance-9781786433855.html>

Escobar, O. (2011) *Public dialogue and deliberation: A communication perspective for public engagement practitioners*. Edinburgh: UK Beacons for Public Engagement. <https://oliversdialogue.wordpress.com/2013/08/01/public-dialogue-and-deliberation-a-communication-perspective-for-public-engagement-practitioners/>

Escobar, O. (2017) Pluralism and democratic participation: What kind of citizen are citizens invited to be? *Contemporary Pragmatism*, 14, 416-438. https://brill.com/view/journals/copr/14/4/article-p416_416.xml?language=en

10. To understand how vTaiwan works for crowdsourcing legislation, see: <https://congress.crowd.law/case-vtaiwan.html>; and how digital democracy helped to address the pandemic, see: <https://theconversation.com/hacking-the-pandemic-how-taiwans-digital-democracy-holds-covid-19-at-bay-145023>

Escobar, O. (2019) 'Facilitators: The micropolitics of public participation and deliberation', in Elstub, S. & Escobar, O. (eds.) *The Handbook of Democratic Innovation and Governance*. Cheltenham, UK; Northampton, MA, USA: Edward Elgar. <https://www.e-elgar.com/shop/gbp/handbook-of-democratic-innovation-and-governance-9781786433855.html>

Escobar, O. & Elstub, S. (2017) *Forms of mini-publics: An introduction to deliberative innovations in democratic practice*. Research and Development Note 4, newDemocracy Foundation, Open Access. https://newdemocracy.com.au/wp-content/uploads/2017/05/docs_researchnotes_2017_May_nDF_RN_20170508_FormsOfMiniPublics.pdf

Escobar, O. & Elstub, S. (2019) 'The field of democratic innovation', in Elstub, S. & Escobar, O. (eds.) *The Handbook of Democratic Innovation and Governance*. Cheltenham, UK; Northampton, MA, USA: Edward Elgar. <https://www.e-elgar.com/shop/gbp/handbook-of-democratic-innovation-and-governance-9781786433855.html>

Escobar, O., Garven, F., Harkins, C., Glazik, K., Cameron, S. & Stoddart, A. (2018) 'Participatory budgeting in Scotland: The interplay of public service reform, community empowerment and social justice', in Dias, N. (ed.) *Hope for democracy: 30 years of participatory budgeting worldwide*. Vila Ruiva, Cuba; Faro, Portugal: Epopeia Records & Oficina. <http://whatworksscotland.ac.uk/publications/hope-for-democracy-participatory-budgeting-in-scotland/>

Farrell, D. M., Suiter, J. & Harris, C. (2018) 'Systematizing' constitutional deliberation: the 2016–18 citizens' assembly in Ireland,' *Irish Political Studies*, 1-11. <https://www.tandfonline.com/doi/abs/10.1080/07907184.2018.1534832>

Faulkner, W. & Bynner, C. (2020) *How to design and plan public engagement processes*. Glasgow: What Works Scotland. <https://policyscotland.gla.ac.uk/public-engagement-processes-handbook/>

Foa, R. S., Klassen, A., Slade, M., Rand, A. & Williams, R. (2020) *Global satisfaction with democracy*, Cambridge: Bennett Institute for Public Policy, University of Cambridge. <https://www.bennettinstitute.cam.ac.uk/publications/global-satisfaction-democracy-report-2020/>

Foa, R. S. & Mounk, Y. (2016) 'The danger of deconsolidation,' *Journal of Democracy*, 27, 5-17. <https://www.journalofdemocracy.org/articles/the-danger-of-deconsolidation-the-democratic-disconnect/>

Henderson, J., Revell, P. & Escobar, O. (2018) *Transforming communities? Exploring the roles of community anchor organisations in engaging with, leading and challenging public service reform*. Edinburgh: What Works Scotland. <http://whatworksscotland.ac.uk/publications/exploring-the-roles-of-community-anchor-organisations-in-public-service-reform/>

Jaske, M. & Setälä, M. (2019) 'Referendums and citizens' initiatives', in Elstub, S. & Escobar, O. (eds.) *The Handbook of Democratic Innovation and Governance*.

Cheltenham, UK; Northampton, MA, USA: Edward Elgar. <https://www.e-elgar.com/shop/gbp/handbook-of-democratic-innovation-and-governance-9781786433855.html>

Jeffery, C. and R. Perman (2014) Scotland's Decision: 16 Questions to think about for the referendum on 18 September. <https://www.nls.uk/e-monographs/2014/ScotlandsDecision.pdf>

Renwick, A., Palese, M. & Sargeant, J. (2018) Discussing Brexit—Could We Do Better? *Political Quarterly*, 89, 545-552. <https://onlinelibrary.wiley.com/doi/abs/10.1111/1467-923X.12595>

Scottish Parliament (2019) 'Citizen's Jury on Land Management', Committee Engagement. [insert hyperlink: <https://www.parliament.scot/parliamentarybusiness/110917.aspx>

Sunstein, C. R. (2009) *Going to extremes: How like minds unite and divide*, Oxford, Oxford University Press. <https://global.oup.com/academic/product/going-to-extremes-9780195378016?cc=gb&lang=en&>

Tannen, D. (1998) *The argument culture. Changing the way we argue and debate*, London, Virago Press. <https://www.amacad.org/publication/argument-culture>

The Economist (2016) *Democracy Index 2016. Revenge of the 'deplorables'*, London: The Economist Intelligence Unit. https://www.transparency.org.nz/docs/2017/Democracy_Index_2016.pdf

The Economist (2019) *Democracy Index 2019*. London: The Economist Intelligence Unit. <https://www.eiu.com/topic/democracy-index>

Touchton, M. & Wampler, B. (2014) 'Improving social well-being through new democratic institutions', *Comparative Political Studies*, 47, 1442-1469. <https://journals.sagepub.com/doi/abs/10.1177/0010414013512601>

What Works Scotland (2019) *Key messages about public service reform in Scotland*. Glasgow. <http://whatworksscotland.ac.uk/key-messages-about-psr-in-scotland/>

Wike, R. & Fetterolf, J. (2018) 'Liberal democracy's crisis of confidence', *Journal of Democracy*, 29, 136-150. <https://www.journalofdemocracy.org/articles/liberal-democracys-crisis-of-confidence/>



Referendum redux: Catalonia, Quebec and lessons for Scotland

Coree Brown Swan and Daniel Cetrà

Introduction

As demands for a second Scottish independence referendum intensify, we look abroad to learn from the experience of nations which have held second votes on independence. We look to Quebec, which held referendums in 1980 and 1995, and to Catalonia, which held a non-binding vote in 2014 followed by a referendum in 2017. Quebec offers valuable insights about a second referendum that was *state-tolerated*, while Catalonia provides lessons about a second vote that was *state-opposed* – and, in fact, actively repressed after being declared unconstitutional. Together, these cases capture two contrasting experiences of constitutional referenda to the *state-sanctioned* Scottish referendum of 2014 and offer important insights for Scotland as it discusses its constitutional future.

We focus here on the ways in which the referendums came about, the response of the state to demands for self-determination, the campaign dynamics and issues, and the results and aftermath. We then draw three key lessons for Scotland ahead of any future

campaign. An overview of these three referendums – in Catalonia, Quebec and Scotland – is provided in the table below.

Table 1: Independence Referendums in Catalonia, Quebec and Scotland

	Catalonia 2017	Quebec 1995	Scotland 2014
Type of Referendum	Unilateral	Tolerated	Negotiated
Key Actor	Catalan Government with support of civil society	Quebec Government	Scottish Government
State Involvement	Referendum ruled unconstitutional, with unionist parties boycotting it and legal and police efforts to prevent it	Referendum took place with the consent of the federal government	Powers transferred to the Scottish Parliament allowing a referendum to take place
Independence Proposal	“Independence”, a republic within the European Union	“Sovereignty”, independence with continued economic and political ties	“Independence” with continued relationships with the UK and the EU
Key Campaign Themes	No official campaign. Unionists oppose the legitimacy of the vote.	The economy, relationship with Canada	The economy, EU membership, the relationship with rUK
Turnout	43%	94%	86.4%
Result	90.2% Yes 7.8% No	49.42% Yes 50.58% No	44.5% Yes 55.5% No
Ramifications	Imprisonment of key leaders, with others in exile. Larger independence movement in disarray	Additional constitutional reforms and Clarity Act setting out terms of future referendums. Declining relevance of PQ and declining support for independence	Additional transfer of competences, increase in support for SNP, ongoing calls for second independence referendum post-Brexit

The road to a second referendum

In Quebec and Catalonia, like in Scotland, the issue of self-determination remained a live one after their first votes on independence.

Following the 1980 referendum, the Canadian federation attempted reform, with the Meech Lake Accord and the subsequent Charlottetown Accord. These reforms sought to satisfy the demands of Quebec and the other Canadian provinces, leading to further decentralisation and recognising Quebec as a distinct society, which was a long-standing demand of Quebec nationalists (Gall 2006a; Gall 2006b). However, these both failed, and in the 1993 federal election, the Bloc Québécois, the federal party supporting Quebec sovereignty, became the second largest party in the House of Commons, and in 1994, the Parti Québécois replaced the liberals in office at the provincial level, winning 44% of the popular vote. They ran in Quebec on a pledge to hold a referendum on sovereignty. The leadership of the Bloc Québécois and the Parti Québécois would play the largest role in the subsequent campaign.

In Catalonia, it was also a failed constitutional reform of the statute of autonomy (2006-2010) that prompted the rise of the independence agenda (Liñeira and Cetrà, 2015). After being passed by the Spanish and Catalan parliaments and ratified by the Catalan people in a mandatory referendum, the Constitutional Court ruling in 2010 declared fourteen articles of the new statute unconstitutional, subjected several others to reinterpretation, and explicitly described the statement in the preamble that 'Catalonia is a nation' as being without legal standing. Mass gatherings took place from 2010 onward, protesting that Catalonia was able to decide its own constitutional future.

In 2014, a delegation of the Catalan Parliament formally asked the Spanish Parliament to transfer the powers to hold a legal referendum to Catalonia, a demand that echoed the mechanism used by the UK Government to transfer the competence to the Scottish Parliament. An overwhelming majority of MPs rejected the request. In 2014, the centre-right Catalan nationalist coalition of *Convergència i Unió* (CiU) led the organisation of a non-binding referendum to gain leverage and put pressure on the Partido Popular-led Spanish Government.

Voters were asked two questions: whether Catalonia should be a state, and if yes, whether it should be an independent state. The vote, which came to be known as a 'participation process', was more an act of protest by the pro-independence side than one of self-determination. This is shown in the results, which are not representative of public opinion: 80.7% voted Yes to both questions, 10% voted Yes to the first question and No to the second, and 4.5% voted No. The Catalan Government estimated the turnout to be 36% (Cetrà and Harvey, 2019).

Partly as a result of the Spanish Government's refusal to follow the 2014 'Scottish model', there was a progressive shift in the focus of the Catalan pro-independence camp, from the initial demand of 'the right to decide' to achieving independence itself. Another driving factor was the competition between Catalan pro-independence parties. Unlike in Scotland, where the SNP dominates the case and timing for independence, in Catalonia

the independence agenda is led by two parties of similar size, the centre-left Esquerra Republicana de Catalunya (ERC) and a centre-right option currently labeled Junts per Catalunya (JuntxsCat), whose dynamics of electoral competition accelerated the unilateral agenda.

In 2015, the two main pro-independence parties campaigned in the Catalan elections under a single umbrella (Junts pel Sí), pledging to achieve independence in 18 months if a majority was secured. This 'plebiscitary election' set the far-left pro-independence Candidatures d'Unitat Popular (CUP) as kingmaker as Junts Pel Sí fell short of a majority (Martí and Cetrà, 2016).

Another consequence of the shift from demanding a referendum to seeking independence was the emergence of tensions between the parties supporting independence outright (as described above), and the parties supporting the principle of a referendum but not necessarily independence – which included the Catalan Greens (IC-V), the Catalan branch of Podemos, and other small parties. The need for large political majorities *within* Catalonia, together with the major challenges of achieving unilateral independence, contributed to the Catalan Government's decision to shift its focus back to the referendum.

State position

The impetus for these referendums emerged from the nations themselves, but the Canadian and Spanish states responded differently. In Canada, the second referendum was tolerated by the state, with those against the measure taking part in official campaigns. The Yes and No campaigns were each given a budget, and the campaign was overseen by a provincial board.

In Spain, the referendum was considered to be a direct challenge to the indivisibility of the state, enshrined in the constitution. The referendum law passed by the Catalan Parliament was suspended by the Spanish Constitutional Court and Spain's attorney general ordered security forces to halt preparations for the referendum. These actions included the arrest of high-ranking officials and the search of newspaper offices, printing companies and mail services to seize referendum material (Cetrà et al, 2018). The Spanish Government framed the referendum as a case of disobedience and committed publicly to stopping the vote, in contrast with the 2014 'participation process' in Catalonia, which was challenged legally but ultimately allowed to take place.

These two state responses to second independence referendums, of *toleration* in Canada and *opposition* in Spain, contrast with the Scottish referendum experience of 2014, which may be described as a state-sanctioned, negotiated referendum through the 2012 Edinburgh Agreement.

The campaign: dynamics and key issues

As a result of the different types of referendums and state positions, the dynamics of the independence campaigns in Catalonia and Quebec were very different. In Quebec, the vote took place with the implicit consent of the federal government and those opposed to independence were active participants in the 'No' campaign. In contrast, Spanish political actors actively tried to stop the Catalan vote from taking place rather than campaigning against independence.

In preparation for the 1995 referendum, the Parti Québécois sought to articulate the ways in which the federation was failing to serve Quebec's interests and reassure voters of the economic stability of Quebec. The Quebec Government also stressed that Quebec was open and pluralistic, rejecting charges of a closed, ethnic nationalism (Caron, 2013). The linguistic and cultural dimension was more salient in Quebec than in Catalonia and especially than in Scotland, with the French language and issues of immigration playing a greater role in the debate.

Pro-independence campaigners from the Bloc Québécois and the Parti Québécois stressed both the benefits that sovereignty would bring and the ways in which the relationship with Canada would continue. Bill 1 set out a framework for the maintenance of citizenship in both Canada and Quebec, the use of the Canadian dollar, proposals for membership of the UN, NATO and WTO, and continued participation in all international treaties, in addition to far-reaching economic and political cooperation with the Canadian federation (National Assembly Bill 1).

Common to both Quebec and Catalonia were arguments, based on assumptions, that once the vote was held, state actors would act in good faith. For the Quebecois, they argued that the Canadian federation would see it was in its own interest to negotiate an agreeable settlement and maintain close ties with a sovereign Quebec. For Catalan nationalists, they argued that the Spanish state would be forced to open up dialogue, enabling the two parties to move forward.

In parallel with the 2014 Scottish referendum debate, No campaigners in Quebec argued that this vision of sovereignty was not viable and was subject to the consent of the rest of Canada, while Yes campaigners argued that reason and self-interest would prevail, with both governments working collaboratively to develop a partnership on a more equal basis.

In response to the Yes campaign's proposals, the No campaign argued that the focus should be on social and economic policy, not divisive constitutional issues. The referendum encouraged instability, and they suggested that a sovereign Quebec would be weaker economically and the prospects for economic and political partnership were uncertain. Opponents of the proposals described them as a 'unilateral declaration of association' and noted that all future economic agreements would be challenging and would require the consent of the federal and provincial governments (Young, 1999). No campaigners stressed that monetary policy and any economic partnership would be decided by Canada, and argued that NAFTA members might veto Quebec's membership,

leaving Quebec economically isolated. More positively, federalist voices, which struggled at the outset to develop a coherent message in the campaign, argued that the constitutional reforms which would bolster Quebec's position within the federation remained on the table after a No vote.

The conditions of the campaign were very different in Catalonia, given the fact that the Spanish Government had not given its consent for a referendum to take place and the Constitutional Court had declared it unconstitutional. As a result, there was no formalised campaign or debates between the opposing sides. An Electoral Commission was created by the Catalan Government but soon dissolved because the Spanish Constitutional Court imposed daily fines of 12,000 euros for each of its members.

However, pro-independence parties (the Junts Pel Sí coalition and the far-left CUP), together with active civil society organisations such as the Assemblea Nacional Catalana (ANC) and Òmnium Cultural, organised events across Catalonia defending independence and encouraging participation.

Given that the Catalan independence movement is ideologically diverse, spanning from the centre-right to the far-left, the case for independence is also inevitably diverse. The dominant claim is democratic, framing Catalonia as a nation entitled to self-determination and independence as a remedial solution against Spain's disrespect for Catalans' 'right to decide'. The case for independence of Junts Pel Sí was made up of political arguments (i.e. avoiding the recentralisation taking place in Spain) and economic arguments (e.g. stopping the excessive fiscal deficit and disposing of greater resources to address social needs in Catalonia). Also present, but less common, were explicitly nationalist claims around collective freedom and pride. The CUP presented independence differently, as a deep transformative process to achieve social justice. Language and culture, previously dominant issues in Catalan nationalism, were side-lined in the campaigns, with Junts Pel Sí reassuring Spanish-speakers that an independent Catalonia would continue to be officially bilingual in Catalan and Spanish.

The rest of the parties denounced the unconstitutionality of the vote and the radicalisation of the pro-independence parliamentary majority and asked their voters not to participate. They were the hardline Ciutadans and Partido Popular, which draw support on the issue of state unity; the Catalan Socialists, which stand for federalism but have lost most of their traditional Catalanist voters; and the leftist coalition 'Catalunya Sí Que Es Pot', which included the Catalan Greens (ICV), who opposed the unilateral agenda but supported the holding of a state-sanctioned referendum.

The referendum question and results

In Quebec, voters were presented with proposals for an independent Quebec, set out in Bill 1. On 30 October 1995, voters were asked:

Do you agree that Quebec should become sovereign after having made a formal offer to Canada for a new economic and political partnership within the scope of the bill respecting the future of Quebec and of the agreement signed on June 12, 1995?

This question encompassed both the act of being sovereign and the future relationship between a sovereign Quebec and the rest of Canada. Ultimately, the Parti Québécois' proposals were narrowly defeated, with 49.32% voting Yes, on a turnout of 94%. The referendum was sanctioned by the federal government, which encouraged a higher level of turnout and an acceptance of the legitimacy of the vote by both sides.

In contrast, the Catalan vote was heavily contested, and this is reflected in both turnout and the results. In September 2017, the Catalan parliament passed a referendum law with only the support of pro-independence forces which was suspended by the Constitutional Court, and Spain's attorney general ordered security forces to prevent any preparations for the vote. The Catalan Government decided to go ahead and organise the referendum unilaterally after several failed attempts to secure a negotiated referendum. They framed the vote as qualitatively different to the 2014 'participation process', a referendum whose results would be binding. Thus, while it was technically a second vote on independence, in some ways it was a first national referendum. However, the turnout was similar to the 2014 symbolic vote (36 per cent), although it is worth noting that this time young people of 16 and 17 and immigrants with residence cards could not vote.

On 1st October 2017, the Catalan Government held the referendum and voters were asked: *Do you want Catalonia to be an independent country in the form of a Republic?*

The Catalan Government estimated the final turnout to be 43% (2.3 million). Among those who voted, 90.2% voted Yes and 7.8% voted No. The referendum did not result in a clear mandate for independence. Once again, the result did not reflect public opinion and most Catalan unionists boycotted the vote because it was not agreed with Madrid (Cetrà et al, 2018). Perhaps paradoxically, one of the lessons of the Catalan experience is that independence supporters needed unionists to get out and vote to give the referendum legitimacy.

What makes the 2017 Catalan referendum a critical event was less the result than the state-sanctioned police violence. The Spanish Government sought to stop the vote through police intervention, with the Spanish police smashing their way into some polling locations and beating voters with batons. As a result, 400 polling stations (of a total of 2,315) were shut down and 1,066 people were treated by the health services, according to the Catalan Government.

For many, the vote became a symbol of collective resistance against state repression. Efforts to fully stop the vote were ultimately unsuccessful, thanks to the crucial involvement of the Catalan Government, led by the pro-independence coalition Junts pel Sí, and smaller pro-independence organisations. The level of popular organisation was also noteworthy, including citizens smuggling ballot boxes and occupying schools designated as polling stations throughout the weekend, preventing them from being

sealed off by the police (Cetrà et al, 2018). On the day of the vote, voters formed human shields at polling stations from 5am until 8pm.

Aftermath and ongoing debates

In both Quebec and Catalonia, the issue of self-determination remains, although with markedly different salience in each.

Ultimately, Quebec's premier and PQ's leader Jacques Parizeau resigned following a controversial concession speech, attributing the Yes campaign's loss to 'money and ethnic votes' (Lane Bruner, 1997). His successor pledged to get on with the business of governing, and in particular economic reforms, until certain 'winning conditions', both economic and political, were satisfied.

In response to decades of constitutional debate, the Canadian federal government sought to definitively resolve the issue, with an additional round of constitutional reforms and a request to the Supreme Court for judgement on whether a province could unilaterally secede. The court ruled that Quebec could not secede unilaterally but said that both sides would be obliged to negotiate if there was a clear majority on a clear question (Supreme Court, 1998). In response, the federal *Clarity Act* set out terms for any future referendum, requiring such a vote to reference independence and only independence and return a clear majority (Canadian Government, 1999). The Quebec Government responded with Bill 99, which emphasised the right to self-determination, setting out that any future referendum decisions should be made by the residents of Quebec.

While the PQ remained strong in the 1998 provincial elections, it entered a period of decline and was left with just ten seats in the last election in 2018. The Coalition Avenir Québec, a centre-right autonomist party, has supplanted it as the voice of Quebec nationalism and entered government for the first time in 2018, demanding further powers for Quebec falling short of independence, and denying that it would use a referendum to pursue autonomy or independence. In contrast to 1995, when Quebec came within a percentage point of voting for sovereignty, public support for independence appears to have faded. IPSOS polling conducted ahead of the 2018 provincial elections showed support for independence at a historic low of 25%, versus 55% who would reject the proposition (CBC, 2018).

In contrast, the issue of Catalan independence remains salient and has contributed to conflict at both the Catalan and Spanish levels. The weeks following the referendum were characterised by continued political tensions. There was also a rare and strongly worded television address by King Felipe VI of Spain, who seemed to side with the Partido Popular and Ciudadanos by suggesting that imposing direct rule was necessary. The Catalan Parliament declared independence on 27 October 2017 after Catalan President Carles Puigdemont was unable to agree a deal with the Spanish Government. His proposals had included a snap election in Catalonia in exchange for the non-imposition

of direct rule, the withdrawal of Spanish police forces sent to stop the referendum, and an end to all legal proceedings underway against independence leaders. An added factor prompting Puigdemont's decision to go ahead with a Unilateral Declaration of Independence (UDI) was the aforementioned competition with Esquerra Republicana de Catalunya for the hegemony of Catalan nationalism. Not declaring independence would have rendered him vulnerable to accusations of betraying the popular mandate of the referendum.

Since the 2017 referendum, the Catalan independence movement has become divided between 'pragmatists', led by the Esquerra, who defend the strategy of engaging in political dialogue with Madrid while building internal support for independence, and 'maximalists', led by strands within Carles Puigdemont's Junts per Catalunya and the far-left Candidatures d'Unitat Popular, who defend the legitimacy of the referendum result and argue for continued disobedience. Neither side is consistent in its discourse and practice. Indeed, the Catalan Government is currently led by Quim Torra from the 'maximalist' Junts per Catalunya – in coalition with Esquerra – and yet it has not put forward any renewed radical agenda.

Some members of the Catalan Government fled into exile in Belgium, Switzerland and Scotland while others were jailed. After two years in jail, in October 2019, the Spanish Supreme Court found nine of the 12 independence leaders guilty of sedition while four were also found guilty of misuse of public funds. They were sentenced to between 9 and 13 years in prison. The verdict sparked mass demonstrations and civil unrest in Catalonia during that month, including violent clashes with the police and an attempt to occupy Barcelona airport.

Three lessons for Scotland

Clearly, each case has its own specificities and internal dynamics. Yet, Scotland may learn from similar self-determination experiences by sub-state nations elsewhere. In our view, three key lessons can be drawn from the Quebecois and Catalan experience, dealing with the nature and legality of referendums, the unity of referendum campaigns, and the nature of self-government itself.

1. State-sanctioned, state-tolerated, and state-opposed referendums

In both Scotland and Quebec, the state, albeit reluctantly, acceded to demands to hold a referendum. In Scotland, this referendum was state-sanctioned, with the necessary powers transferred from Westminster to Holyrood, while in Quebec, the referendum received the federal government's tacit approval, with federal actors participating in the campaign. In contrast, Catalonia may offer a cautionary tale about unilateral referendums. They may be subject to boycott by sub-state unionists themselves, which allows the legitimacy of the vote to be contested. All in all, the 2017 Catalan experience

points at the difficulties of exercising self-determination without the acquiescence of the central government. The failure to secure this agreement may foster divides within nationalist movements, *between* but also *within* parties, on the appropriate way forward, and potentially hinder success in meeting the movements' broader goal of achieving a negotiation with the state.

There may be lessons here for the UK Government as well. Following the narrow defeat of the 1995 referendum in Quebec, the Canadian Government undertook federal reforms, engaging in more effective territorial management and seeking to strengthen attachment to Canada. In contrast, the Spanish Government's intransigence in the face of Catalan demands has made a path to genuine reconciliation more difficult to envisage, particularly as many of the leaders of the movement remain imprisoned.

2. Internal divisions

Referendum campaigns and their aftermath also exacerbate internal debates and divides within the broader nationalist movements. We can see signs of a greater level of internal debate within the SNP, in the face of the rejection of a Section 30 order by both Theresa May and Boris Johnson. Some within the movement have called for the Scottish Government to be proactive, while SNP leader Nicola Sturgeon has adopted a more patient approach. Although a greater degree of diversity may be present in the SNP and the broader Yes movement in 2020, it is minimal in comparison with the different voices contained within the Catalan movement, which is led by two ideologically diverse parties of similar size.

For the SNP in particular, the fate of the PQ appears to be a cautionary tale. Having lost two referendums, the party became increasingly irrelevant, overtaken by 'softer' autonomist voices within the political sphere, including CAQ which pledges to strengthen Quebec within the Canadian state. Support for independence has declined markedly in the years since the referendum, suggesting that independence is not inevitable. This may be reassuring to the SNP's competitors, in particular Labour and the Liberal Democrats, who have struggled to find a place in the polarised debate over the constitution. Should the independence issue be more decisively settled, this may allow for the restoration of 'normal' politics and allow for their political revival.

3. Interdependency, risk, and the international arena

For those campaigning in favour of independence, an example may be drawn from the PQ's attempt to suggest that sovereignty would be accompanied by a strong political and economic partnership with the rest of Canada, similar to the proposals put forth by the SNP in 2014. Opponents were able to cast doubt on the feasibility of these proposals, suggesting that individual Canadian provinces would veto such arrangements, and suggesting that Quebec might be excluded from North American trading arrangements, which heightened the sense of risk.

While Catalan actors were quieter on the subject of post-independence relations with the rest of Spain, it looked to the European Union as a supporting structure, both in its independence bid and for future membership. However, support from the EU was not forthcoming, with Brussels reluctant to interfere in the internal affairs of its member states, drawing parallels with Scotland in 2014. Evidence from Catalonia also shows a decline in support for the EU among independence supporters as a result of the EU's silence in the face of police brutality and imprisonment of key political and civil society leaders. The Catalan crisis may also have had an impact on support for the EU within Scotland, with strong independence supporters becoming more vocally critical of the EU (Greene et al, 2018). In addition, much has shifted in the UK's relationship with the EU since 2014. When voters went to the polls in 2014, they were told by Unionists that a No vote would secure Scotland's place within the EU, only to be withdrawn two years later. Brexit may make the case for Scottish independence more compelling but also more complex.

The economy also plays a central role in debates over independence. Any future debate will likely be closely linked with the economic consequences of Brexit. For any No campaign, the economy appears to be a central issue. Casting doubt on the economic prospects of independence was a strategy that paid off for Canadian federalists, but it also entails the risk of alienating voters, by being seen as 'talking down' the national community. No campaigners will have to consider what the Union offers to Scotland, and this might be an increasingly tricky argument to make if Brexit has harmful economic ramifications (see Bell's chapter in this volume).

Our current times add to this uncertainty. At the time of writing, the UK and indeed the world is in the midst of the Covid-19 pandemic. Nicola Sturgeon has pledged to set aside the issue of a second referendum until the 2021 election in order to ensure the government's focus is on managing the crisis. However, the economic effects of Brexit and the pandemic are likely to be profound, and the independence prospectus of 2021 may look very different from that presented just seven years earlier.

References

Caron, J.F. (2013) The Exclusive Nature of Quebec's Contemporary Nationalism: The Pitfalls of Civic Nationalism. *International Journal of Canadian Studies*, 47, pp. 221-238. <https://www.utpjournals.press/doi/abs/10.3138/ijcs.47.221>

Cetrà, D. (2017) 'Comparing Catalonia and Scotland's Bid for Independence', Centre on Constitutional Change. <https://www.centreonconstitutionalchange.ac.uk/opinions/comparing-scotland-and-catalonias-bid-independence>

Cetrà, D. (2019) 'Catalonia Two Years after the 2017 Independence Referendum', Centre on Constitutional Change. <https://www.centreonconstitutionalchange.ac.uk/news-and-opinion/catalonia-two-years-after-2017-independence-referendum>

Liñeira, R. and Cetrà, D. (2015) The Independence Case in Comparative Perspective. *The Political Quarterly*, 86:2, pp. 257-64. <https://onlinelibrary.wiley.com/doi/abs/10.1111/1467-923X.12157>

Martí, D. and Cetrà, D. (2016) The 2015 Catalan Election: a de facto Referendum on Independence? *Regional and Federal Studies*, 26:1, pp. 107-19. <https://www.tandfonline.com/doi/abs/10.1080/13597566.2016.1145116>

Cetrà, D., Casanas-Adam, E., Tàrrega, M. (2018) The 2017 Catalan Independence Referendum: A Symposium. *Scottish Affairs*, 27:1, pp. 126-143. <https://www.eupublishing.com/doi/pdfplus/10.3366/scot.2018.0231>

Cetrà, D. and Harvey, M. (2019) Explaining Accommodation and Resistance to Demands for Independence Referendums in Spain and the UK. *Nations and Nationalism*, 25:2, 607-629. <https://onlinelibrary.wiley.com/doi/abs/10.1111/nana.12417>

Gall, G. (2006a) 'Meech Lake Accord', *The Canadian Encyclopedia*. <https://www.thecanadianencyclopedia.ca/en/article/meech-lake-accord>

Gall, G. (2006b) 'Charlottetown Accord', *The Canadian Encyclopedia*. <https://www.thecanadianencyclopedia.ca/en/article/the-charlottetown-accord>

Greene, Z., Spoon, J.J. and Williams, C.J., 2018. Reading between the lines: party cues and SNP support for Scottish independence and Brexit. *Journal of Elections, Public Opinion and Parties*, 28(3), pp.307-329. <https://www.tandfonline.com/doi/abs/10.1080/17457289.2017.1394311>

Henderson, A. (2014) 'Lessons from Quebec', Centre on Constitutional Change. <https://www.centreonconstitutionalchange.ac.uk/opinions/state-debate-lessons-quebec>

National Assembly (1995) The Sovereignty Bill. <https://www.sfu.ca/~aheard/bill1.html>

Clarke, H.D. and Kornberg, A. (1996) Choosing Canada? The 1995 Quebec Sovereignty Referendum. *Political Science & Politics*, 29:4, p.676.

Lane Bruner, M. (1997) From Ethnic Nationalism to Strategic Multiculturalism: Shifting Strategies of Remembrance in the Quebecois Secessionist Movement. *Javnost-The Public*, 4:3, pp. 41-57.

Lecours, A. (2014) 'What the independence referendums in Québec suggest about Scotland', LSE European Politics and Policy. <https://blogs.lse.ac.uk/europpblog/2014/07/26/what-the-independence-referendums-in-quebec-suggest-about-scotland/>

Supreme Court (1998) Reference re. the Secession of Quebec, Canadian Supreme Court. <https://www.cambridge.org/core/journals/ps-political-science-and-politics/article/choosing-canada-the-1995-quebec-sovereignty-referendum/97D75B6BB20A4D608BF30F0EF46A513D>

Canadian Government (1999) 'Bill C20 The Clarity Act'. <https://thecanadianencyclopedia.ca/en/article/the-clarity-act-bill-c-20>

National Assembly (1999), 'Bill 99 An Act respecting the exercise of the fundamental rights and prerogatives of the Quebec people and the Quebec State'. <http://www.assnat.qc.ca/en/travaux-parlementaires/projets-loi/projet-loi-99-36-1.html>

CBC (2018). 'Majority of Quebecers believe question of independence is settled: poll', CBC News, 3 October 2018. <https://www.cbc.ca/news/canada/montreal/quebec-angus-reid-canada-independence-1.3788110>



If Scots vote for independence, what would the constitutional road to sovereign statehood look like?

Sionaidh Douglas-Scott

Introduction

The Scottish Government has stated that it is committed to ‘an agreed, legal process... which will be accepted as legitimate in Scotland, the UK as a whole, and by the international community’ (Scottish Government, 2019). But, even so, a Yes vote in an independence referendum would not immediately transform Scotland into an independent country. While some areas (e.g. much of the legal system, education, and health) are already within Scotland’s authority, regaining Scottish sovereignty over other areas (and untangling a 300+ year old union) would take time. There would need to be negotiations with the UK over this.

However, it should be stressed that, if under a lawful process, Scotland elects independence, then there are no subsequent explicit *legal* barriers to Scottish independence. This is unlike the situation of Catalonia in Spain, where Article 2 of the

constitution refers to the 'indissoluble unity of the Spanish Nation, the common and indivisible homeland of all Spaniards' (see Spanish Government, 1978; and the chapter by Cetra and Swan in this volume on independence referendums in Catalonia and Quebec). There may, however, be some political hurdles to clear. Moreover, the 1707 Act of Union (between Scotland and England) should be repealed, and perhaps it should be born in mind that the orthodox doctrine of UK parliamentary sovereignty holds it is always possible for Westminster to pass legislation (up to the point of independence) overriding any previous legal outcome, including a Scottish independence referendum.

A yes vote in an independence referendum would require (political) negotiations and laws, first, to put Scotland's independence into effect, and to negotiate the future relationship. Any uncertainty as to consequences of independence could be mitigated if there had been some agreement, in advance of a vote, on the timing and conduct of negotiations by the Scottish and UK governments. Under the Edinburgh Agreement, which prepared the ground for the 2014 independence referendum, both sides committed to respect the outcome of the referendum and work together to implement the decision. In the 2013 White Paper, *Scotland's Future*, the Scottish Government set a timetable of 18 months from a Yes vote to independence, and also declared that 'a constitutional platform' would be set up to provide a basis on which an independent Scotland would operate (Scottish Government, 2013).

In 2020, there is currently no equivalent of the Edinburgh agreement, but the Scottish Government has published *Scotland's Right to Choose* (Scottish Government, 2019). This document specifically states that,

'The experience of the EU referendum has demonstrated some of the risks involved in inviting a vote on a significant constitutional proposition without setting out in advance the consequences of a vote for change ... The Scottish Government has therefore prepared the legal provisions that, in its view, would best give effect to both the principle that it is for the Scottish Parliament to determine whether and when any vote on Scottish independence is held, and give effect to the principle that should the people of Scotland vote in a referendum for independence, Scotland would have the right to prepare itself for independence.'

Annex B of *Scotland's Right to Choose* contains the draft amendments to the Scotland Act 1998 which the Scottish Government considers necessary for implementing a vote for independence (Scottish Government, 2019). These amendments would place a statutory duty on both the Scottish and UK governments to cooperate in this process. The amendments, although drafted by the Scottish Government, would be subject to UK (Westminster) legislation. However, at present, there is no guarantee they would be acceptable to the UK government, and, formally, it would be for the UK government and Westminster parliament to determine the scope of any such legislation. Nonetheless, should the UK Government concur in the holding of a lawful independence referendum in Scotland, one might assume they would also commit to respecting the result.

This chapter examines the potential shape of these negotiations, the division of liabilities and assets between Scotland and rUK, the possible creation of a new Scottish constitution, and the legislation required for independence to occur.

1. Negotiations

Following any referendum vote in favour of independence, the main questions would then concern the identity, subject matter and conduct of negotiating parties.

Who would negotiate?

The Annex B draft amendments refer to a ‘Duty of both governments to cooperate,’ and one assumes both governments would lead negotiations, although, in *Scotland’s Future*, the Scottish Government indicated that others would be invited to join, to ensure inclusiveness. The nature of UK representation prompts questions: would Scottish MPs (if ministers) be part of the team, and what would happen if there were a general election in the negotiating period. There may be a case for other devolved administrations being involved in negotiations, given their likely impact on Wales and Northern Ireland. However, similar to the position regarding Brexit negotiations, there is no guarantee that they would. Both sides would also need sectoral negotiating teams – i.e. for economy, defence, welfare.

The UK Government already possesses the legal power to negotiate, but the Scottish Government’s powers are limited in devolution under the Scotland Acts. The ‘union’ is a reserved matter, so at present it might be queried whether the Scottish government had the legal power to negotiate. Of course, a Yes vote in an independence referendum might be considered a firm mandate. But it would make sense for some Westminster ‘paving legislation’ to provide the lawful authority for the Scottish Government, either of the sort already drafted by the Scottish Government in Annex B to *Scotland’s Right to Choose*, or some other agreed form that would put this beyond doubt. This would avoid any legal challenges. Another possibility is to follow the example of the Anglo-Irish negotiations in 1921, whose outcome took the form of ‘Articles of Agreement for a Treaty between Great Britain and Ireland’ which the Irish Government registered as an international treaty with the League of Nations in 1924.

What is to be negotiated?

Matters to be negotiated would be complex. The UK has been a highly integrated state for over 300 years, and disengaging Scotland would not be simple. It would be helpful if, at the outset, the two parties agreed a timetable, mapping out a clear and orderly transition, setting out which issues must be settled by the date of Scotland’s independence, and which could be dealt with later. It would also be easier if both parties agreed what assets and institutions (and their funding) might continue to be shared. In 2014, the Scottish Government determined that around 90 shared bodies might continue

(then including NHS Blood and Transport, and the National Lottery). But some sharing arrangements – for example, for a central bank – might be complicated, requiring a binding international agreement (see Peat's chapter on currency options in this volume).

The main issues would fall into several groups. A key area is the economy, with questions arising such as: what currency would an independent Scotland use, how would UK national debt be divided, how would ownership of North Sea oil and gas reserves be determined, as well as the structuring of taxation and financial regulation (see the chapters by Bell, Roy & Eiser, and Peat in this volume). Another big issue is defence and foreign policy, including Scotland's memberships of international organisations such as NATO, the UN, and possibly in future (or even in parallel) the EU (see the chapters by Fleming, Kenealy and Hughes in this volume). There is also the question of the nuclear submarine bases in Scotland.

New Scottish passports would have to be issued and rules of Scottish citizenship established (see the chapter by Kyambi in this volume). Beyond this, there are countless other crucial issues – agriculture and fisheries, security and intelligence, broadcasting, pensions, education, the environment, immigration, health, policing and law and order, where not already within Scottish authority. If Scotland chose to retain the monarchy, this should not provide legal complications, given many other countries also have the Queen as Head of State, although there should be agreed rules of succession (one of the issues that led to the 1706/7 Acts of Union).

Negotiations over these matters might be further complicated by the question of whether an independent Scotland wished to rejoin the EU, although one might assume regaining EU membership would take Scotland time (see the chapter by Hughes in this volume). In that case, independence negotiations with the UK would take place in an environment in which neither party were EU members. In that case, Scotland would not be presenting an EU border to England, and the question of customs tariffs, quotas and common standards for goods would not arise, although if Scotland aspired to rejoin the EU, the border issue would still be salient. One assumes Scotland would remain a member of the Common Travel Area (currently composed of the UK, Ireland, the Channel Islands, and Isle of Man) which notably provides for free movement of persons within the area (see the chapter by Kyambi).

Should the negotiating teams be held directly accountable to Parliament?

The accountability to Parliament of the UK negotiating team became a major issue in the Brexit process. However, negotiations with Ireland in 1922, and other independence negotiations conducted by UK governments since (such as for Nigeria 1960, Jamaica 1962 and Mauritius 1968), have applied the principle of parliamentary accountability. In the absence of accountability to the public via a second referendum on any agreement reached, it is highly desirable that negotiations be as transparent as possible, and that teams to be responsible to their respective Parliaments (this might then raise the position

of Scottish MPs in Westminster). As Brexit has shown, such accountability can only be adequately secured by legislation, or by the requirement of express parliamentary consent to any negotiated agreement.

How long would it take?

With so much to be discussed, negotiations might look set to take quite some time, longer perhaps than the 18 months foreseen by the Scottish Government in 2014. The EU Withdrawal Agreement negotiations took over three years to achieve a 'deal' in January 2020 that covered only some issues, namely the UK's financial obligations, the rights of EU citizens, the situation of Northern Ireland, and transitional arrangements. Furthermore, a 'thin' EU-UK trade deal was achieved in December 2020, which is expected to be expanded through supplemental agreements in the years to come, for instance with regard to services. However, the Scottish Government, in *Scotland's Future*, cited German reunification in 1990, and independence for the Czech and Slovak Republics in 1993, to argue 'that after a democratically agreed and accepted expression of political will, countries can make significant constitutional changes happen in months rather than years.' (However, 30 treaties and around 2000 legal agreements were needed to effect the separation of Czechoslovakia, with some issues still in negotiation 10 years later).

The Brexit process prompts another uncomfortable question. How friendly, or smooth, would negotiations between the UK and Scotland actually be? Negotiating would take place after a hard-fought independence campaign during which the UK Government (presumably) and quite a few political parties and organisations in Scotland, campaigned for the union to continue. The EU Brexit deal was often described as a 'divorce'. Would negotiations between the UK and Scotland be marred by the bitterness, anger and rejection characteristic of many divorces, and lead to London taking a hard line, or would a culture of cooperation and recognition of a shared need for stability predominate? A hard line might mean a refusal to share any services or institutions, creating policy and service gaps in Scotland, but also potentially damaging the UK. An unfavourable deal would be in neither party's interests, but ultimately, if negotiations broke down, Scotland could issue a unilateral declaration of independence (a possibility which falls outside the scope of this contribution on the constitutional path to independence) and would rely on international law for support as to legal validity.

The Scottish Government has stated that a unilateral declaration of independence is not their preferred option, and it is not certain that the international community would in any case recognise such a unilateral declaration. (However, the International Court of Justice held that Kosovo's unilateral declaration of independence did not violate international law.)

2. 'Continuing' and 'successor' states and why this matters

This is the question of whether Scotland, in the event of independence, would be considered a 'successor' state, and rUK the 'continuator' state. Much follows from this. If rUK were recognised as continuator state, it would retain the UK's existing treaty obligations and memberships of international organisations such as NATO and UN (including the permanent seat on its Security Council). It would also retain all UK public institutions, (including the Bank of England, the BBC and the Westminster Parliament). During the first Scottish independence campaign, many commentators (including international law experts James Crawford and Alan Boyle, who provided a paper for the UK Government) argued that Scotland would indeed be a new 'successor' state (Crawford and Boyle, 2012). On the other hand, one might argue that the United Kingdom of Great Britain first came into being by the Acts of Union of 1707, and that, on Scotland's secession, the UK should continue no longer, that there should be no 'continuator' state.

When Czechoslovakia split, the Czech and Slovak republics were formed, rather than one retaining the identity of the old Czechoslovakia. In the run up to the first independence referendum, the Scottish Government was not completely clear on this matter but the bulk of opinion favours viewing rUK as 'continuator' (House of Lords, 2014). This is a highly important distinction because it will affect how assets and liabilities are divided, a matter to which I now turn.

3. Assets and liabilities

What principles for division?

Assets and liabilities should be divided equitably between successor and continuator states. This is the position under customary international law (and under the 1983 Vienna Convention on Succession to State Property, Archives and Debts, which has not been ratified by the UK). International law supplies some further principles, but they do not cover all assets and liabilities. Where legal principles do not apply, then there must be political negotiation. If, as many think, rUK would be the continuator state, then UK institutions would remain with the UK. Under the Vienna Convention above, it is suggested that fixed or immoveable assets (i.e. government buildings) are, post-secession, automatically property of the state where they are located, but movables (i.e. computers, military equipment) must be equitably divided through negotiations. Immoveable assets situated outside the UK would belong to rUK if it was the 'continuator' state (although, previously the Scottish Government suggested it would wish to negotiate the shared use of some UK diplomatic premises).

However, where there exist no clear legal principles, then establishing what might be an 'equitable' distribution of assets or liabilities can be quite tricky. Previously, Professor Iain McLean suggested that three options existed for equitable distribution: 'historic

share, gross domestic product (GDP) and population (cited in House of Lords, 2014). The problem with the 'historic share' option is to identify an appropriate starting year – i.e. 1707 (the date of the original union) or some much more recent date? Further, it might be argued that division of assets in the North Sea should be settled geographically not by other means, by extending the Scotland/England land border out into the sea, which would result in Scotland taking the vast majority of these resources.

There is also the issue of how and when debt should be paid. Scotland might pay its full share of debt at independence (the 'clean break' option), a sum of money (estimated around £102bn in 2014) that might prove challenging to raise, unless Scotland were to use a 'debt for oil' swap. Alternatively, Scotland might make payments as and when they fell due.

4. The Constitution and legislation

Legal implementation of any deal

Assuming agreement is reached, this will need legal implementation. This would require an international agreement between rUK and Scotland that would enter into force after Scotland's independence, to ensure future fulfilment of obligations between what had by then become two independent states. Legislation implementing the agreement would also be necessary in both Parliaments. This may follow the pattern of Irish independence, whereby the Anglo-Irish treaty of 1922 was debated and approved in both Westminster and the Dáil and given effect in legislation.

Legislation in both Parliaments

Professor Alan Boyle suggested the process 'is perhaps best understood as the separation or secession of Scotland, by agreement, from the rest of the UK' (Boyle, 2014). The tasks for Scotland and the UK can be separated out, although there is some overlap in what needs to be done. An independent Scotland would require a repeal of the Acts of Union of 1706/07, and the ending of the Westminster Parliament's authority to legislate for Scotland, neither of which would require extensive legislation.

As an example, the 1800 Act of Union of Great Britain and Ireland (UK) was not repealed on Irish independence, but only amended to take account of Irish partition, and the 1800 Act of Union (Ireland) was only repealed in Ireland by the Irish 1962 Statute Law Revision Act.

Scotland would need the authority to legislate the necessary measures. If not already done (and this might happen at any stage after an independence vote), it would need:

- (a) the transfer of powers to terminate its status as part of the union and;
- (b) to enact any enabling legislation for a withdrawal deal, as well as;

- (c) any continuity legislation (see below).
- (d) It would also, most likely after independence, legislate a new Constitution for Scotland (this was certainly the intention back in 2014).

While the Scottish Government, in the run up to the 2014 referendum, seemed to suggest that transfer of competence to Scotland would not take place until after independence, the more recent *Scotland's Right to Choose* provides draft provisions in Annex B that, in the event of a vote for Scotland to become independent, the UK Parliament would transfer competence to the Scottish Parliament and Government to prepare for independence, which: 'would enable the bulk of the preparations required for Scotland to become independent to take place in Scotland.' Without such a transfer of powers, Scotland could be in what has been described by Professor Tierney as a situation of 'constitutional limbo' in relation to its status within the UK. *Scotland's Right to Choose* does however, state that 'The removal of Westminster's ability to legislate for Scotland, ... would not occur until the point of independence itself, and would require Westminster legislation' (Tierney, 2014).

The UK (Westminster) would need to:

- (a) adopt legislation to enact the results of negotiations;
- (b) adopt legislation to end the UK Parliament's jurisdiction over Scotland and to transfer power to the Scottish Parliament, if it had not already done so, and;
- (c) formally recognise Scotland's independent status.

Professor Boyle argues that this should definitely *not* be seen as a situation in which the UK granted independence to Scotland, as Scotland was clearly never a colony.

A relevant consideration is how long the Westminster legislation would take to be adopted. Lengthy adoption would delay Scottish independence and create legal uncertainty. However, political events may render all this uncertain. The EU Withdrawal Agreement Act 2019 was passed very quickly indeed, but with the aid of a large government majority. The EU Withdrawal Act 2018 took much longer in different circumstances (a minority government). The Scotland Act 1998 took 11 months to pass, even with a large government majority.

New Constitution

It seems likely an independent Scotland would establish its own, written Constitution, thus making a clean break with the unwritten British constitution. But how would it get there?

In 2013, *Scotland's Future* declared an independent Scotland would have a new written Constitution. It also stated that Westminster parliamentary supremacy would be replaced by the 'sovereignty of the people of Scotland.' The Scottish Government established a 'constitutional platform' for independence, placing a binding obligation on

the Scottish Parliament to establish a Constitutional Convention to draft a permanent constitution as soon as possible after independence.

The intention was to adopt an interim Constitution on independence day (for which a Bill had already been drafted) which would remain in force until a permanent written Constitution was agreed, thus providing the apparatus for Scotland to function as an independent state in the meantime. It is unclear whether the Scottish Government intends to readopt that interim Constitution as the 'constitutional platform' for independence in the future. Some of it would have to be amended, given the UK is no longer in the EU. However, many of its terms would still be necessary to set up the constitutional and institutional apparatus of an independent Scottish state, replacing the (by then presumably) defunct Westminster Scotland Acts. An interim Constitution would define the powers of the Scottish Parliament and Government, as well as Scotland's court structure. Scottish citizenship, a Scottish civil service and Treasury would need to be established. An interim Constitution would also regulate the conduct of international affairs and foreign policy, the membership of international organisations, and ratification and incorporation of international agreements.

If, as was foreseen in 2014, a Constitutional Convention is established to draft a permanent Constitution, it might decide to make some important changes in governance. For example, it could decide that Scotland should become a republic and not retain the Queen as head of state. It might also decide that the Scottish Parliament should become bicameral and have a second Chamber, or that Scotland should have a constitutional court. It might provide for an extensive, enforceable Bill of Rights. One thing is clear – the constitutional issue is at the fore of the Scottish Government's thinking, and takes a prominent place in the 2019 *Scotland's Right to Choose*.

Continuity legislation

The interim constitution might also provide for all law, including laws in areas currently reserved to the UK, to continue after independence unless specifically amended. Continuity of existing legislation would be very necessary, otherwise Scotland would have huge gaps in its laws on independence, which it would be impossible to fill in the time between the vote and independence day. Alternatively, it might be thought necessary to enact separate legislation to do this. This has been the case with the Westminster EU Withdrawal Act 2018, which provides for continuity within the UK legal system after Brexit (by transferring nearly all EU law into national law - renaming it 'retained EU law' - where it remains legally valid until repealed or amended, often by government ministers). (The EU (Future Relationship) Act 2020 also contains similar powers for legislation and repeal of primary legislation by UK government ministers.) Scotland should think carefully about who might be empowered to amend retained legislation especially if an aim of independence is to give rise to a state observing popular sovereignty.

Conclusion

While the constitutional path to securing a legally valid referendum is as yet unclear (see the chapter by McCorkindale & McHarg on this issue), following a Yes vote, a constitutional path to fulfilling independence can be followed. The negotiations might not be simple, but there would be no insurmountable legal obstacles.

References

Boyle, A. (2014) *Written evidence to the House of Lords Select Committee on the Constitution: Scottish Independence – Constitutional Implications for the rest of the UK*. UK Parliament. <https://www.parliament.uk/documents/lords-committees/constitution/Scottish%20independence/Scottish-Independence-evidence-volume-24-April.pdf>

Crawford, J. and A. Boyle (2012) *Annex A Opinion: Referendum on the Independence of Scotland – International Law Aspects*. UK Government. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/79408/Annex_A.pdf

House of Lords (2014) *Scottish independence – constitutional implications of the referendum*. Eighth Report of the House of Lords Select Committee on the Constitution. UK Parliament, 14 May. <https://publications.parliament.uk/pa/ld201314/ldselect/ldconst/188/18805.htm>

Scottish Government (2013) *Scotland's Future. Your guide to an independent Scotland*. <https://www.gov.scot/publications/scotlands-future/>

Scottish Government (2019) *Scotland's Right to Choose: Putting Scotland's future in Scotland's hands*. <https://www.gov.scot/publications/scotlands-right-choose-putting-scotlands-future-scotlands-hands/>

Spanish Government (1978) *The Spanish Constitution*. <https://www.boe.es/legislacion/documentos/ConstitucionINGLES.pdf>

Tierney, S. (2014) *Evidence submitted to the House of Lords Select Committee on the Constitution Inquiry: Scottish Independence: Constitutional Implications for the rest of the UK*. Briefing Paper, 12 March 2014. <https://www.centreonconstitutionalchange.ac.uk/sites/default/files/migrated/papers/ESRC%20Briefing%20Evidence%20to%20House%20of%20Lords%20Constitution%20Committee%2012%20March%202014.pdf>



Part 2: the Economy



Scotland's economy post-independence: a letter to the new finance minister

David Bell

Introduction

Let me congratulate you on becoming the first Finance Minister of a newly independent Scotland. The Scottish Prime Minister has made an excellent choice! Given your new responsibilities, I hope you don't mind me offering some words of advice. Ignore them as you see fit.

Your job is to ensure the economic stability of the newly independent Scotland. Deep reductions in living standards are not what the indyref voters expect. Looking out of the window, you notice that the world has not stopped. People largely continue as before, going to work, socialising and interacting with the outside world. Some people predicted an economic meltdown on the day after independence: this has evidently not happened.

While this is comforting, you must now engage with the task ahead. Your first priority is to maintain economic stability. You may think that this means not making dramatic policy changes immediately after independence, since it is important to maintain confidence. The last thing you want is for resources – labour and capital – to drain away

to other jurisdictions. Nevertheless, as this letter lays out, you will have to confront new challenges, some of which may force policy changes.

The basics

So here is a picture of the economy that you inherited. The Scottish economy produced around £177 billion worth of goods and services in 2019, prior to the pandemic. Around £11 billion of this total came from oil and gas: a sector whose long-term future is in serious doubt both because of depleting reserves and climate change policy. So perhaps the £177 billion total flatters somewhat to deceive.

Per capita income was £32,400 including oil and gas and £30,800 if the offshore economy is ignored (Scottish Government, 2020). The Organisation for Economic Cooperation and Development (OECD) is the 'rich countries' club which monitors their performance across a range of economic and social indicators. Measured against these OECD countries, Scotland scores moderately well. As John McLaren puts it:

'Although lying mid-table, Scotland can still be viewed as a relatively prosperous OECD nation. This ranking is likely to apply regardless of whether Scotland is part of the UK or independent' (McLaren, 2019).

In terms of labour market participation, the UK is in the top quartile of OECD countries. In the first quarter of 2020, 75.6% of the UK's working-age population was in employment. The latest data from the Office for National Statistics (ONS) shows that the Scottish rate is trailing the UK rate by around 2% (ONS, 2020). Nevertheless, Scotland's employment rate would still be in the top third of OECD countries, leaving France (66%), Canada (64.7%), Spain (63.2%) and the USA (62.5%) trailing some distance behind. Scotland scores well in labour market participation.

Scotland also has a relatively low unemployment rate – the share of labour market participants currently looking for a job. Data from Eurostat for 2019 suggests that the unemployment rate in Scotland for those aged 16 to 74 ranked 25th lowest out of 89 'NUTS 1' regions in the EU (Eurostat's code for different sizes of regions, with NUTS 1 constituting 'major socio-economic regions'). And on youth unemployment (16th) and long-term unemployment (24th), Scotland also scores well compared with other NUTS 1 regions (Eurostat 2019).

However, Scotland does not do well in the OECD income inequality ranking. Although it has a high employment rate, many workers are relatively poorly paid. In consequence, there is a larger spread between the incomes of the well paid and those of the poorly paid than in many other countries. The UK has the 9th highest income inequality rate among the 37 OECD countries. Inequality in Scotland is slightly less than the UK as a whole, largely because Scotland has fewer very 'high earners'. Nevertheless, inequality is higher than in most OECD countries, giving the lie to that oft-repeated phrase of us all being 'Jock Tamson's Bairns'.

Because incomes are unequally distributed, so too are tax receipts. From Scotland's total population of 4.5 million, around 2.7 million are in work. Of these, about 2.5 million pay income tax: the incomes of the missing 200,000 are less than the income tax personal allowance. Yet only 297,000 of Scotland's taxpayers are higher rate taxpayers (with taxable income above £43,431 and less than £150,000) and a mere 14,000 are additional rate taxpayers (with taxable income above £150,000). Yet the additional rate group provide 16.6% of income tax revenue, while the higher rate group pays a further 39%. Scotland's main source of tax revenue is dependent on a relatively small section of the population. Revenue from other major taxes like VAT and national insurance is much less concentrated, but you will have to bear in mind how changing tax rates and allowances may affect revenues, not necessarily in a good way.

Some would argue that focusing on incomes and GDP per head misses the point. Politicians should focus on maximising well-being rather than GDP. Indeed, as First Minister of the devolved Scottish Government, Nicola Sturgeon argued that Scotland should 'redefine' what it means to be a successful nation. Instead of aiming to maximise the output of goods and services, it should instead look to maximise 'quality-of-life' (BBC, 2020).

Those clever people at the OECD have amassed a cornucopia of data relating to quality-of-life across its component regions. Scotland scores well on 'community' (first in the UK, top 9% in OECD), 'environment' (fourth in the UK, top 22% in OECD), 'access to services' (third in the UK, top 10% in OECD) and 'life satisfaction' (first in the UK, top 37% in OECD). On the other hand, it scores badly on health (worst in the UK and in the bottom 37% in OECD) and safety (9th out of 12 in the UK and in the top 48% in OECD).

A mixture of good and bad

So, as the new Finance Minister of an independent Scotland, you would be taking control of an economy with a mixture of good and bad attributes across a range of indicators. This is true whether you adopt the conventional approach using indicators of output and the labour market, or if you focus instead on measures of well-being. Scotland's performance has been by no means stellar, but neither is it seriously problematic.

The statistics on income and the labour market quoted previously were collected before the Covid-19 pandemic. You have now had a longer period to assess its negative effects on the Scottish economy. But as I write this letter, the path of economic recovery is unclear. We do not know whether the Scottish economy will grow more quickly during the remainder of this decade than it did between 2010 and 2020. It is also unclear how Scotland's economic circumstances may affect the political economy of independence.

In taking the tiller after the independence bell has sounded, you will also be aware that the evidence suggests that people care more about losing something than they do about making an equivalent gain (Lineira et al, 2017; Tversky, 1991). So, unless voters value the realisation of independence more than they do the losses they experience if

things go wrong, your political survival will partly depend on making sure things at least don't get worse.

Having experienced drastic lifestyle change due to the pandemic, such as lockdown, remote working and home schooling, individuals may be willing to accept further substantial changes in their life with equanimity. On the other hand, the possibility of negative changes in circumstances may trigger the 'loss' response with the consequent draining away of support for your party and for independence.

The road ahead

What then faces you on the road ahead? Compared with being Finance Minister in the devolved Scottish Parliament, you have a much wider range of economic 'levers' at your disposal. However, finance ministers understand that there are limitations on their powers in a capitalist system ¹. This is because most of their powers relate to markets, and there are always two sides to a market.

When government intervention leads to increases in prices, buyers and sellers will tend to stand back. Thus, taxes which increase the price of labour will see employers looking for solutions that involve fewer workers, and workers looking for jobs where taxes are lower. Offering inward investors inducements to come to Scotland may not work if other countries are more generous with their inducements. The effects of these policies may only be at the margin, but the margin can matter a great deal if it makes the difference between people's living standards improving or declining.

Another key difference from being the Finance Minister under devolution is that you previously relied on the UK government to maintain macroeconomic stability. Now you're on your own. You must pay attention to balancing the national accounts – something you have not previously needed to think about.

Borrowing

A key component of the national accounts is the fiscal balance – loosely the difference between government spending and taxes raised. Why? Because it is inexorably linked to the issue of state debt. And all of the evidence produced by the Scottish Government suggests that spending on public services exceeds the taxes raised in Scotland, by some distance (Scottish Government, 2019; see also the chapter by Roy and Eiser in this volume). If the new Scottish Government wants to maintain current spending levels, it could increase taxes. However, ramping up tax rates may not generate hoped-for increases in revenue for the reasons discussed above. The alternative is borrowing. How

1. There are also limitations in authoritarian regimes, but these tend only to be evident when the revolution comes, as for example recently in Belarus. Such regimes are also inefficient at allocating resources to where they are most needed.

much will be needed is difficult to say: it will depend on the course of the economy post-Covid. The Institute for Fiscal Studies expects that the UK will borrow around £307 billion in 2020-21 (Emmerson et al, 2020). This is nearly 16% of GDP. The pre-pandemic forecast was 2%.

UK debt, turbocharged by the need to support the economy during the Covid pandemic, is likely to top 100% of GDP in 2020 (Emmerson et al, 2020). It was last at this level in 1950 in the aftermath of the Second World War and the establishment of the welfare state.

Yet although these are frightening numbers by recent standards, governments are finding it easy to borrow. Debt servicing costs – the interest that must be paid on borrowing – is low for most, but not all, countries. Debt service costs for the UK as a share of its tax revenues are at a 320-year low (IFS, 2020). Thus, although the pandemic has caused a huge spike in debt, the costs of servicing this debt are low. These costs may rise if interest rates rise, but at present this seems unlikely at least in the short- to medium-term.

A useful guide to government borrowing costs is the interest rate on 10-year government bonds. Investors, many of them representing pension funds, assess countries' ability to repay their debts at the interest rate they offer. They look at the tax regime in the country, its prospects for growth (and therefore increased tax revenue to repay its debts), how much debt it already has, how onerous are its debt servicing charges and how politically stable it is. Governments generally pay less for debt than companies, because sovereign governments have the power to tax their citizens.

If lenders are unwilling to buy bonds, governments selling the debt have to implicitly increase the interest rate that they offer. Figure 1 shows 10-year interest rates for OECD countries during the second quarter of 2020. Relatively few countries are now paying more than 2.5% for 10-year bonds. And some are *charging* lenders to deposit money in exchange for bonds, meaning negative interest rates.

Some countries such as Germany, Switzerland, Denmark, Finland and Austria are *making* money by borrowing – standing the usual rules of debt on their head. Lenders flock to these countries because of their reliability for repaying debt: a small reduction in the value of loans over 10 years offsets the risk of lending to less stable countries or to the private sector. It also implies an expectation that price inflation will be low in these countries, so that the value of their loans will not be further eroded by price increases.

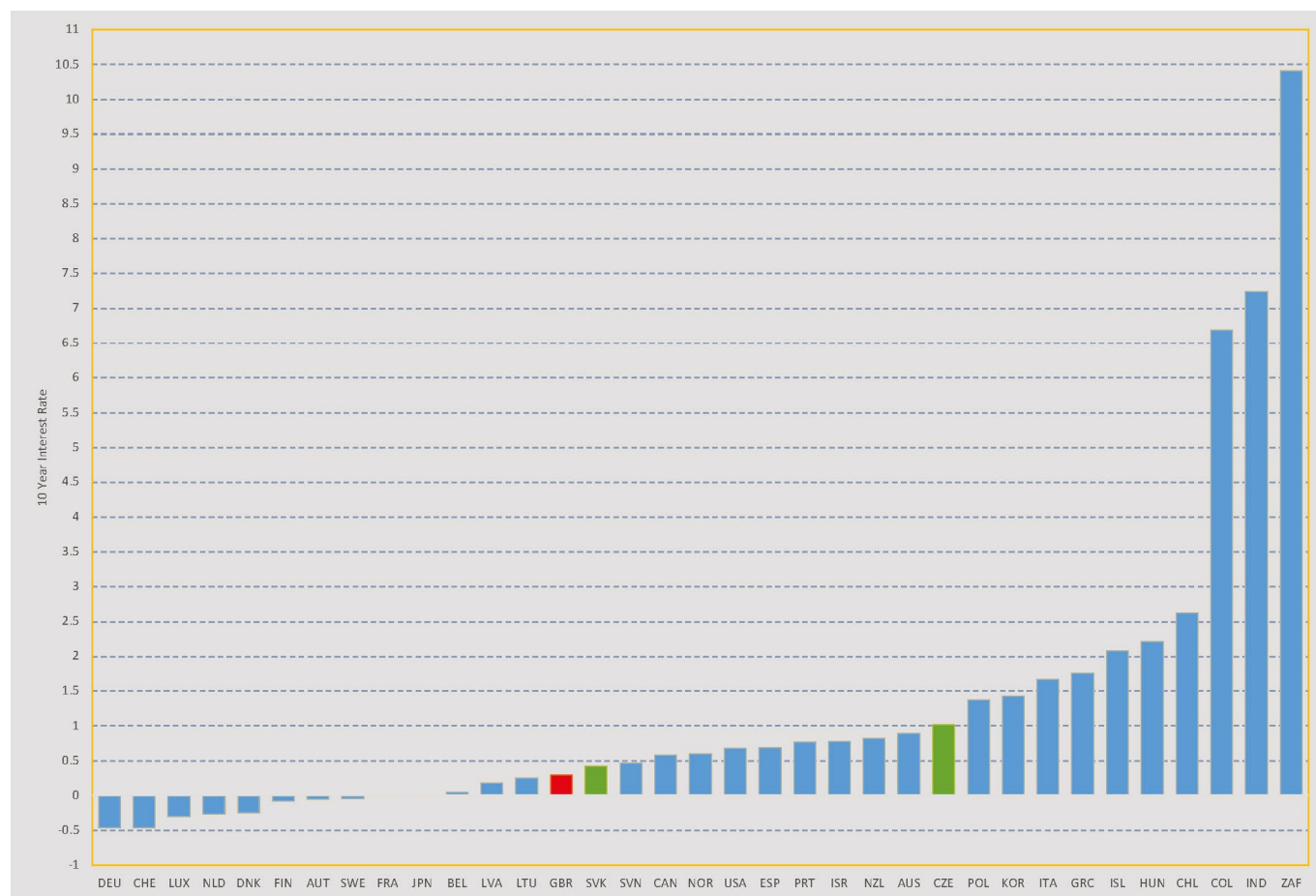


Figure 5.1: Long-term Interest Rates in OECD Countries 2020 Q2

Source: <https://data.oecd.org/interest/long-term-interest-rates.htm>

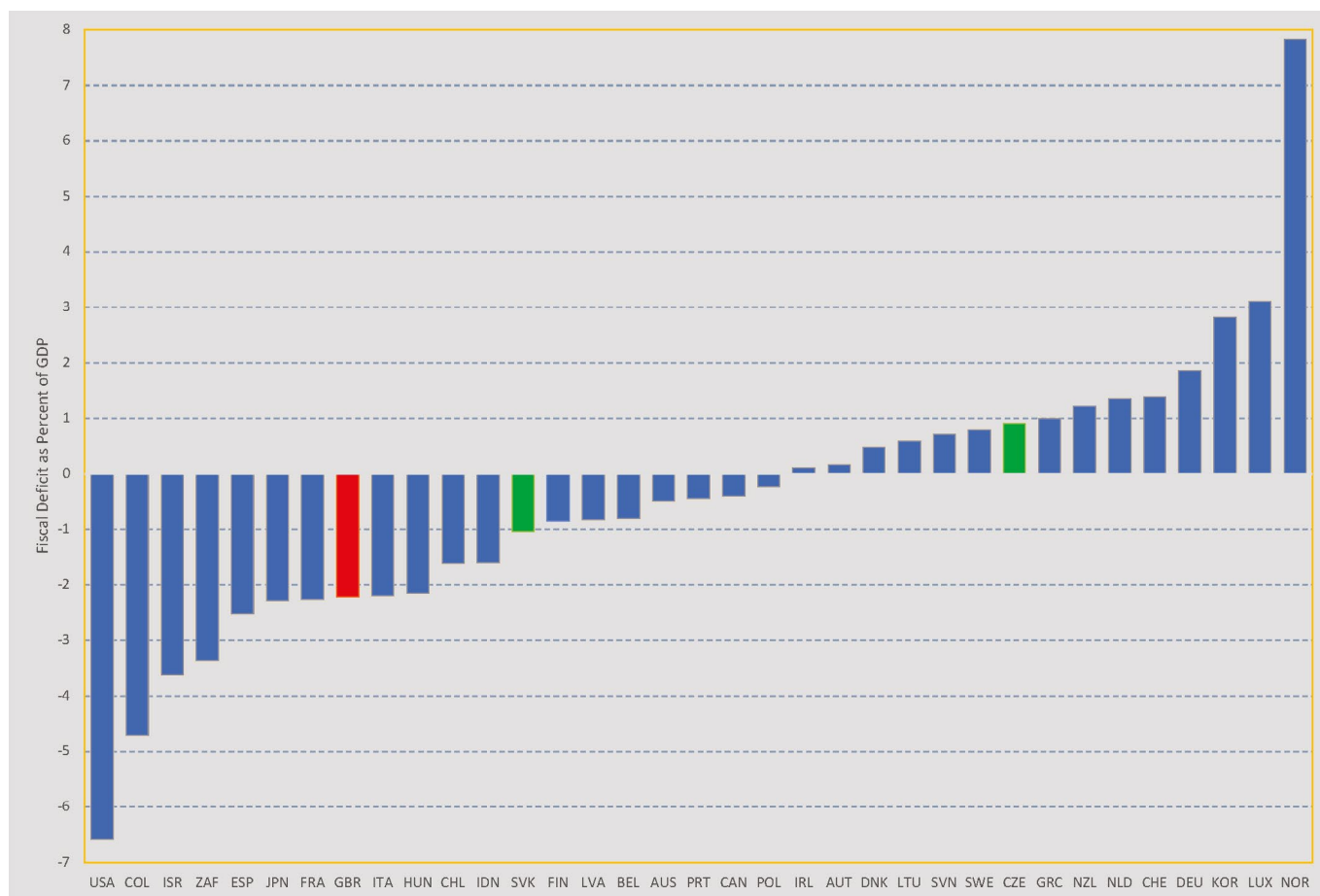


Figure 5.2: Fiscal Deficit as Percent of GDP 2018

Source: <https://data.oecd.org/gga/general-government-deficit.htm>

The UK Government currently pays less than 0.5% on its 10-year bonds. This low rate explains why the cost of servicing the UK's considerable debt is so low.

But the UK rate is higher than some European countries whose economic prospects are viewed more favourably. Interestingly, UK rates are very similar to those of the Slovak Republic, while the Czech Republic pays just under 1%. These latter two countries (highlighted in green in the figures) are of interest, because they separated from each other in 1993. You will be aware that, prior to Scotland's separation from the rest of the UK, this is the most recent European case in which a state broke itself up.

OECD data on long-term interest rates for these countries starts in 2007. Since then, the Czech and Slovak rates have largely followed international trends. Neither country has had a sovereign debt crisis, where private investors are no longer willing to provide loans to government and a bailout is called in from an international organisation, usually the International Monetary Fund (IMF). Given that, unlike Scotland, neither country could be described as a fully-fledged market economy when they became independent, this is a substantial achievement.

The willingness of investors to lend depends on their assessment of risk. As Finance Minister, you will have to persuade the markets that lending to Scotland is relatively risk-free. One way to do this is to have robust and transparent policies and institutions to manage debt. This issue was discussed extensively by the Sustainable Growth Commission, which argued for rules and targets in relation to public borrowing (SGC, 2018). Of course, another form of reassurance is not to borrow very much relative to the tax revenues which you raise and use, partly to service these borrowings. One way to achieve this is to set long-term fiscal targets, an issue that the Sustainable Growth Commission also addressed.

Fiscal discipline

It might seem that discussion of fiscal discipline harks back to pre-Covid times. Covid has caused governments to borrow money on an unparalleled scale in peacetime. Some of the debt has been funded by printing money. This process is called quantitative easing (QE). It works when a country's central bank buys government debt from financial institutions in exchange for cash, allowing these institutions to extend their lending to companies and individuals.

Although it has helped maintain economic activity, QE has also had less desirable consequences, including the rapid growth in house prices (Ryczkowski, 2019; Zhu et al, 2017) increasing inter-generational inequality by, for example, making home ownership more difficult for younger people.

Could an independent Scotland pursue QE as a means of maintaining demand during a pandemic? If it retained sterling, as was recommended by the Sustainable Growth Commission at least in the short run, it would not have any say over monetary policy, including QE. It would be exposed to the implications of Bank of England QE decisions. So if downturns in the Scottish economy occurred at the same time as those in the rest of the UK (as is likely given their close trade ties), then monetary policy decisions taken by the Bank of England would likely align with those that a Scottish central bank would have taken (if they shared a monetary framework). Under these circumstances, Finance Minister, QE would not be an option open to you. Even if Scotland had its own central bank, markets would expect its tactical decisions over monetary policy to be independent of your influence.

A central bank would be necessary if Scotland created its own currency.

Finance ministers in countries with their own currencies understand that borrowing from foreign investors has different implications from domestic borrowing. Issuing debt in a foreign currency (say the pound), would make it easier for the Scottish Government to borrow and at lower rates. Such demand might stem from foreign banks and pension funds wishing to spread their risks across different countries. However, the Scottish Government cannot tax foreign investors in the same way that it can tax domestic investors if its debt servicing costs are heavy.

In addition, if the Scottish currency depreciates relative to other currencies, the real costs of debt repayment to foreigners increases. And if foreign lenders sell Scottish Government bonds back to Scotland because, say, they have lost faith in the Scottish Government, there will be a decline in Scotland's foreign exchange reserves. This process will also happen as bonds mature. Having sufficient foreign exchange reserves to cover short-term debt repayments is one of the criteria that Roubini and Manasse (2009) highlight as a characteristic of countries which avoid sovereign debt crises. I hope you have a plan to deal with this issue.

A further difficulty for you will arise if the Scottish Government decides that its long-term ambition is to join the EU. There will then need to be a plan for joining the Euro. This is not necessarily a quick process. Joining the EU will only occur after the entry conditions have been satisfied. After joining the EU, the process for joining the Euro could take a long time. Only seven of the 13 Member States who joined the EU since 2004 have joined the euro area. The most recent was Lithuania in 2015.

The current conditions for joining involve (1) price stability, (2) the public finances, (3) convergence and (4) exchange rate stability. Whether the EU will change these over the next few years is anybody's guess, but it would be best to assume that they won't. In which case, you should set out a long-term strategy whereby you would meet the conditions. It won't be easy to meet the public finances criteria – not being under the 'excessive deficit' procedure, especially if your government decides it does not want to make sustainable economic growth its primary objective. Compared with substantive hikes in tax rates across the board (you couldn't just rely on squeezing more tax from the relatively affluent), economic growth is a more painless way of increasing tax revenues. At least you will have time to figure all of this out. But it is important to lay out your plans early on. Politicians and the media are easily distracted by the issue of the day.

Conclusion

These issues may seem complex to you as a fledgling Finance Minister, but many small countries handle them on a day-to-day basis. Certainly, dealing with debt markets and foreign exchange transactions would mark a huge increase in the range of issues that you would have to deal with compared with the Finance Minister role under devolution.

One policy consideration which you might want to explore would be to encourage higher levels of domestic saving to reduce dependence on foreign sources of loan funds. It is interesting that the increase in UK domestic debt has been mirrored by an almost identical increase in household saving during the pandemic as households were effectively forced to save (Young et al, 2020). This means that the pandemic has not increased the level of UK indebtedness to foreign actors. This balance is something that you will have to watch carefully since it may colour the attitude of lenders, should you need to borrow.

But again, there would be trade-offs. For instance, increased saving might depress demand in the economy, leading to lower levels of activity. And of course these considerations would come in addition to your duties to ensure that the economy remains on a stable footing and that the labour market functions well in matching workers with jobs and creating new opportunities for employment.

And even though, with Scotland as an independent country, your policy options would be much greater, you have to be constantly aware of the trade-offs involved and the limitations on your power to influence the choices made by workers and by companies. You can at least take comfort from the fact that less prosperous nations with less well-developed institutions than Scotland manage these issues without the roof falling in.

References

- BBC (2020) 'Nicola Sturgeon: Wellbeing as important as economic growth', 22 January. <https://www.bbc.co.uk/news/uk-scotland-scotland-politics-51200821>
- Emmerson, C., Nabarro, B. and Stockton, I. (2020) 'The outlook for the public finances under the long shadow of COVID-19', Institute for Fiscal Studies Briefing Note 14891. <https://www.ifs.org.uk/publications/14891>
- Eurostat (2019) *Unemployment rate by NUTS2 regions*, Brussels. <https://ec.europa.eu/eurostat/web/products-datasets/-/tgs00010>
- Young, G., Emmerson, C., Chada, J. and Johnson, P. (2020) 'COVID-19: deficits debt and fiscal strategy', Institute for Fiscal Studies. <https://www.ifs.org.uk/uploads/Presentations/Covid-19-Deficits-debt-and-fiscal-strategy.pdf>
- Liñeira, R. Henderson, A. and Delaney, L. (2017) in 'Voters' Response to the Campaign: Evidence from the Survey' in M. Keating (ed) *Debating Scotland: Issues of Independence and Union in the 2014 Referendum*, Oxford University Press. <https://oxford.universitypressscholarship.com/view/10.1093/acprof:oso/9780198789819.001.0001/acprof-9780198789819>
- Tversky, A., & Kahneman, D. (1991) 'Loss aversion in riskless choice: A reference-dependent model,' *The quarterly journal of economics*, 106(4), 1039-1061. <https://academic.oup.com/qje/article-abstract/106/4/1039/1873382>
- Manasse, P., & Roubini, N. (2009). "Rules of thumb" for sovereign debt crises. *Journal of International Economics*, 78(2), 192-205. <https://www.imf.org/external/pubs/ft/wp/2005/wp0542.pdf>
- McLaren, J. (2019) 'How Scotland Ranks', *Sceptical Scot*, 1 October. <https://sceptical.scot/2019/10/how-scotland-ranks/>

ONS (2020) *Dataset A01: Summary of Labour Market Statistics*. <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/summaryoflabourmarketstatistics>

Ryczkowski, M. (2019) 'Money, credit, house prices and quantitative easing—the wavelet perspective from 1970 to 2016', *Journal of Business Economics and Management*, 20(3), pp.546-572. <https://journals.vgtu.lt/index.php/JBEM/article/view/9859>

Scottish Government (2019) *About Government Expenditure and Revenue in Scotland* <https://www.gov.scot/publications/about-government-expenditure-and-revenue-scotland/>

Scottish Government (2020) *Gross Domestic Product – Quarterly National Accounts – Quarter 1 2020 (January-March)*. <https://www.gov.scot/publications/gdp-quarterly-national-accounts-for-scotland-2020-q1/>

SGC (Sustainable Growth Commission) (2018) *Scotland – the new case for optimism*. <https://static1.squarespace.com/static/5afc0bbbf79392ced8b73dbf/t/5b0a988c352f53c0a5132a23/1527421195436/SGC+Full+Report.pdf>

Zhu, B., Betzinger, M. and Sebastian, S., 2017. Housing market stability, mortgage market structure, and monetary policy: Evidence from the euro area. *Journal of Housing Economics*, 37, pp.1-21. <https://www.sciencedirect.com/science/article/abs/pii/S1051137716300250>



What are the implications of independence for public revenues and spending?

Graeme Roy and David Eiser

Introduction

For the best part of 50 years – from the finding of North Sea Oil and the creation of the Barnett Formula through to the 2014 referendum and beyond – fiscal policy debates have shaped the independence question in Scotland. ‘Fiscal policy’ in this sense includes both the policy choices over tax and public spending as well as the balance between the two, that is, the fiscal deficit.

In 2014, the ‘No’ side – supported by the Conservative-Liberal Democrat coalition Government – argued that Scotland would face an immediate fiscal challenge. According to a UK Treasury report, large tax rises and expenditure cuts would be required if Scotland became independent (HM Treasury, 2014). The ‘Yes’ side – supported by the SNP-led Scottish Government – countered that Scotland would be fiscally better off under independence, which was laid out in its White Paper on independence, *Scotland's Future* (Scottish Government, 2013).

In this chapter, we revisit these debates and assess if – and how – they have changed. We argue that, like many other aspects of the independence debate, recent events have turned on their head many of the arguments used by both sides in 2014. Brexit, a collapse in oil revenues and the fiscal costs (both now and in the future) from the Covid-19 pandemic all mean that the outlook for an independent Scotland – and Scotland's future within the UK – now looks quite different. But the conclusions are remarkably familiar.

There is no question that an independent Scotland – like many other small nations around the world – could run a sustainable budget. But like the UK, an independent Scotland would face major fiscal challenges both in the short and long run. Based upon the latest data, an independent Scotland is likely to face greater challenges than the UK as a whole (at least in the short-term).

Of course, there are many aspects of the UK fiscal landscape that an independent Scotland could improve upon. The key challenge for proponents of independence is setting out a credible plan to move from the 'status quo' to a sustainable fiscal position in time. We discuss these issues but begin with an overview of the key publication on Scotland's finances: Government Expenditure and Revenue Scotland (GERS).

Government Expenditure and Revenue Scotland (GERS)

The question of whether or not Scotland contributes more or less to the UK public finances – and as a rule-of-thumb would be 'better off' under independence – sparks considerable debate. Never more so than during the annual Government Expenditure and Revenue Scotland (GERS) publication (Scottish Government, 2020a). It is difficult to think of a statistical report that attracts more comment than GERS. Sadly, much of it is uninformed.

GERS estimates the contribution of public sector revenue raised in Scotland toward the goods and services provided for the benefit of the people of Scotland. Whilst there have been attacks on the analytical underpinnings and impartiality of GERS amongst the fringes of independence supporters, these have been comprehensively dismissed (Roy, 2017). The SNP-led Scottish Government has distanced itself from outlandish conspiracy theories, and GERS was the starting point for the SNP's Sustainable Growth Commission report in 2018 (SGC, 2018).

A legitimate challenge to GERS however, is that – by definition – a set of estimated accounts based upon the status quo cannot tell you much about the long-term prospects for an independent Scotland. Indeed, if the very purpose of independence is to do things differently, then a set of accounts based upon the status quo has limited use. But where GERS is helpful is that it provides a picture of where an independent Scotland would 'start from'.

The fiscal debate in 2014: a recap

Throughout a large part of the first referendum campaign, the question of the implications of independence for fiscal policy was mired in an acrimonious debate over whether Scots would be better or worse off. For example, in May 2014, the UK Government published analysis claiming that Scots would be £1,400 per head worse off with independence compared to remaining within the Union (HM Treasury, 2014). Meanwhile, the Scottish Government released analysis claiming that Scots could be up to £1,000 per head better off (Scottish Government, 2014).

The notion of being better or worse off was an attempt to translate the outlook for the public finances into a more meaningful number to the electorate.

One of the reasons for the wildly different outlook for the public finances of an independent Scotland was due to differences in assumptions made by the Scottish Government and HM Treasury – particularly around oil and gas revenues and debt servicing costs. The Scottish Government assumed that oil revenues would remain at around £7bn in 2016/17 (the projected first year of independence), which was more than double that forecast by the Treasury. The Scottish Government also argued, for several reasons, that depending upon how the negotiations transpired, Scotland might inherit less than a population share of UK debt and face no premium on debt servicing costs (for more on monetary union and Scotland's currency options, see the chapter by Peat in this volume). In contrast, HM Treasury assumed that Scotland would automatically be liable for a population share of UK debt (arguing that the hints made during the campaign that Scotland might attempt to not take on any debt at all would be met with severe consequences in financial markets), and face a premium on debt servicing costs, reflecting its status as a smaller nation with no borrowing track record.

Other differences included the costs of setting up new institutions, such as government departments and benefit systems, and the costs of the Scottish Government's proposed policies on tax and welfare (see below).

A final difference was the contrasting beliefs in how the economy would perform post-independence. The Scottish Government was keen to emphasise that independence could provide the opportunity to boost growth, which would in turn help to fund higher public spending in the long-run.

However, in the end, it is debatable how much technical debates over complex issues of national public finances hold sway with the electorate, other than to perhaps entrench views.

Arguably, what carried greater influence was a more accessible discussion about policy choices. The Scottish Government's White Paper on independence contained some proposals, largely consisting of modest tweaks to the UK's existing policy architecture rather than fundamental reforms (see the chapter by Cairney in this volume about policymaking). Proposals to cut Corporation Tax and Air Passenger Duty were put forward, and there were plans to reverse some of the changes to the welfare system

(including Universal Credit), expand the provision of childcare, and to part-fund these policies through spending less on defence – giving rise to the Yes-side's slogan 'Bairns not bombs' (for more analysis of social policies and independence, see the chapter by Rumery in this volume).

The fiscal policy debate only began to have real broad-based resonance in the final stages of the campaign. This was brought about by a change in framing by the Yes side. Rather than focussing on the potential benefits of independence in terms of an abstract monetary gain, remaining in the Union was instead framed as a loss, with explicit reference to particular institutions. The Yes side argued that the risks of remaining in the UK would lock-in 'austerity' that would undermine the NHS, erode the welfare system and increase inequality. It was also argued that the UK Government may seek to scrap the Barnett Formula in the future, eroding any perceived 'fiscal dividend'¹. That this framing held more sway with the electorate is consistent with theories from behavioural economics that people are risk-averse in the context of gains but risk-seeking in the context of losses, particularly where these are expressed viscerally (Liñeira et al, 2017).

What has changed since 2014?

1) The fiscal policy position

Even before the Covid-19 pandemic, the terms and framing of the fiscal implications of independence had changed radically. Shortly after the 2014 referendum, the oil price fell substantially and has only partially recovered. This, together with changes to the offshore taxation regime, has meant that Scotland's expected share of offshore revenues is a fraction of what it was at the time of the White Paper.

1. The Barnett Formula was introduced in 1978 by the Chief Secretary to the Treasury, Joel Barnett, as a means of determining changes to the Block Grant paid to Scotland (and to Wales and Northern Ireland). It has been the mechanism to determine the bulk of Scottish Office/Executive/Government funding for the last 40 years. The idea is straightforward: Scotland is allocated a per capita share of changes in planned spending for 'comparable' services controlled by Westminster departments for England only. By allocating Scotland a share of the change in spending for England, Scotland's baseline spending – which is higher than elsewhere in the UK (with the exception of Northern Ireland) – converges to English levels very slowly if at all (see Cuthbert, 2020).

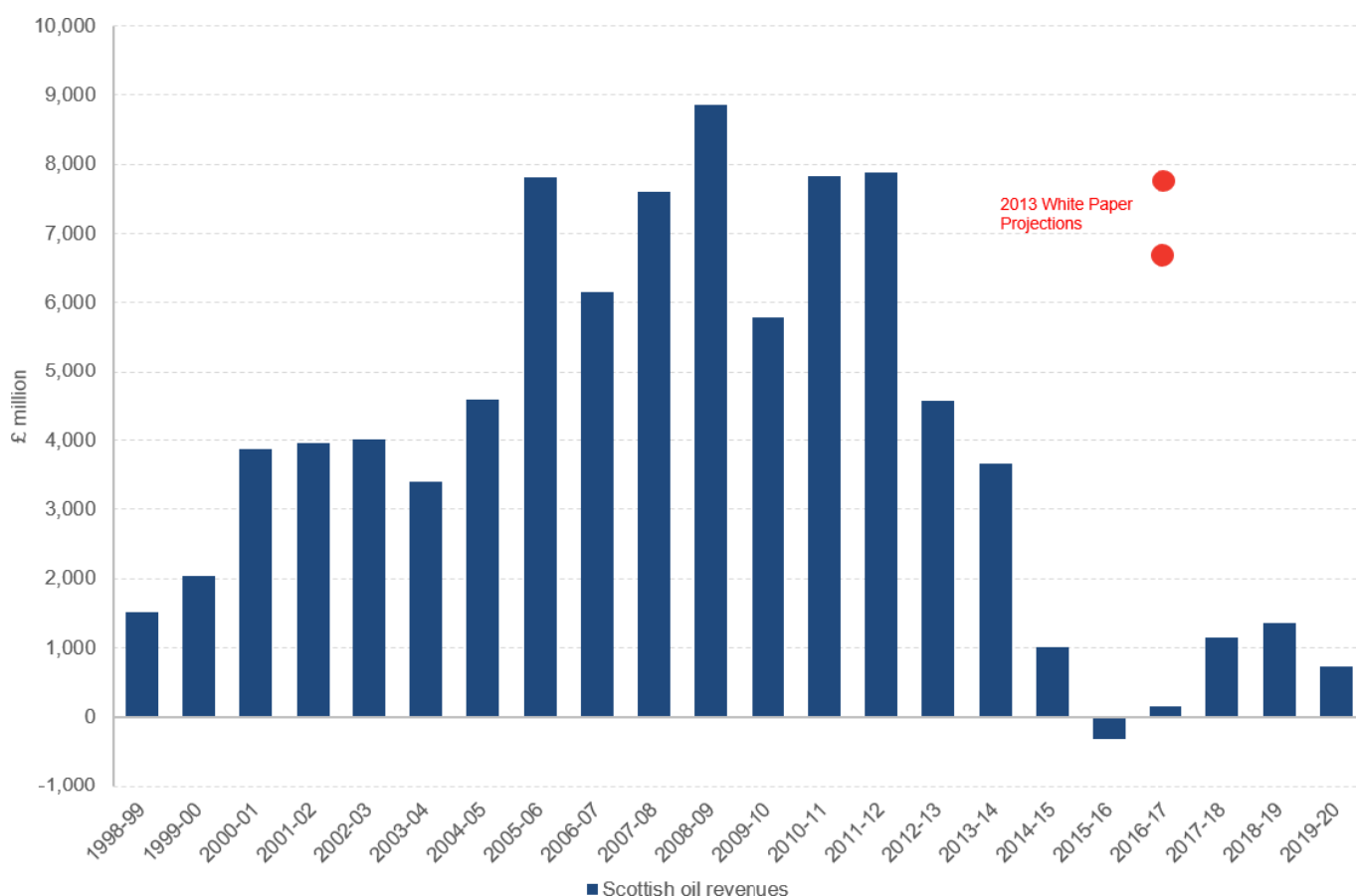


Figure 6.1: Geographical share of North Sea Revenues for Scotland, 1998/99 to 2019/20

Source: *Government Expenditure and Revenue Scotland 2019/20*, Scottish Government

North Sea oil revenues have major implications for Scotland's fiscal position. Taking GERS 2011/12 as its starting point, the Scottish Government projected that Scotland would have a fiscal deficit of between 2.5-3.2% in 2016/17 (the target year for independence). In fact, Scotland's notional fiscal deficit in 2016/17 according to GERS was 9.7%, and had only fallen to 9.4% by 2019/20 (compared to 2.5% for the UK).

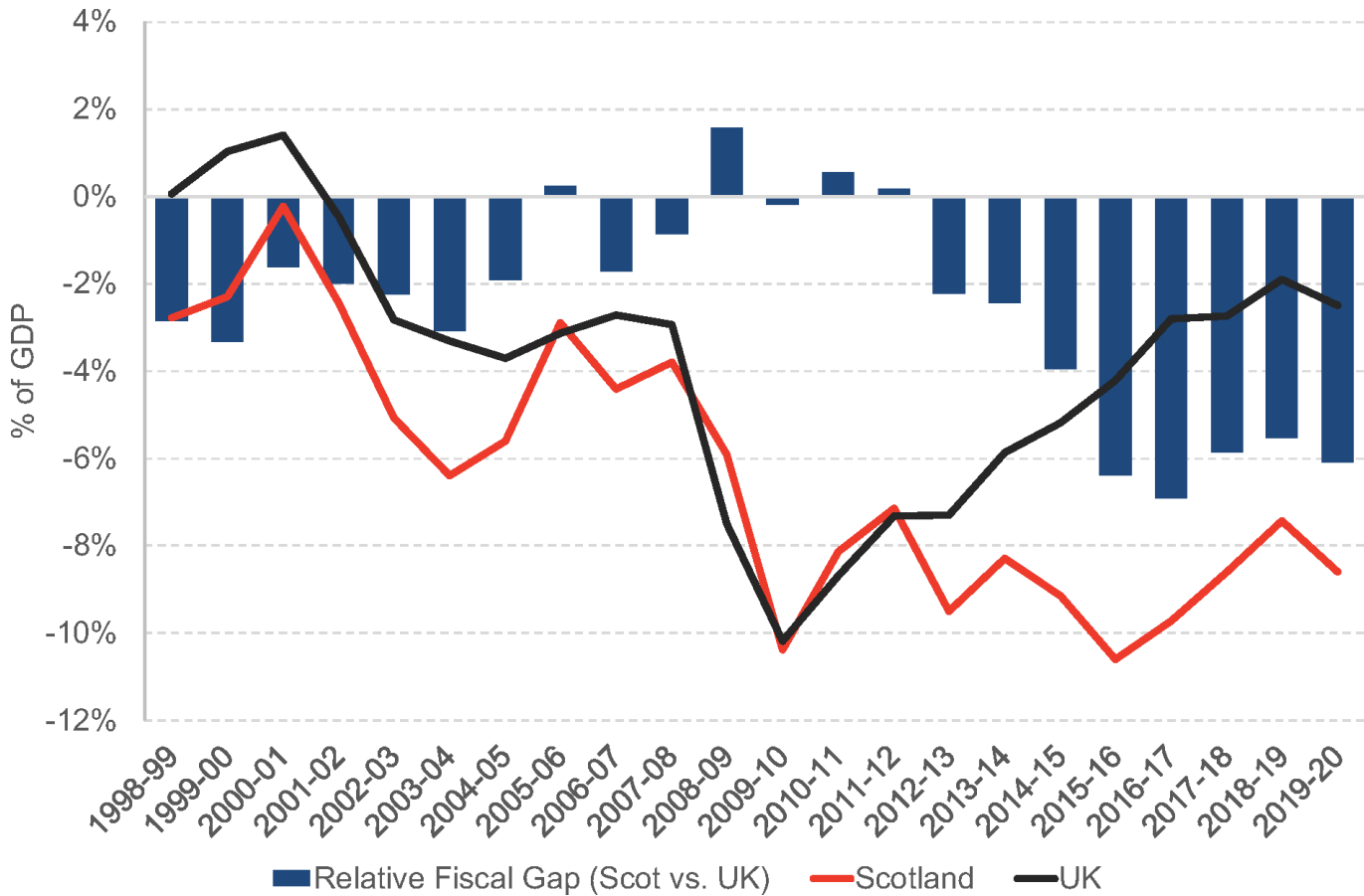


Figure 6.2: Scotland's estimated fiscal position, 1998/99 to 2019/20 (including North Sea revenues) vis-à-vis UK net fiscal balance

Source: *Government Expenditure and Revenue Scotland 2019/20*, Scottish Government

The SNP's Sustainable Growth Commission (SGC), set up to review the economic case for independence, recommended that the fiscal case for independence should not rely on offshore revenues, but instead treat such revenues as a windfall (SGC, 2018). In contrast to the arguments in 2014 – that Scotland would be in a fiscally strong position from day one of independence – the position of the SGC was that the first ten years of independence would be characterised by consolidation to reduce Scotland's deficit to a long-run sustainable level.

Nonetheless, some of the SGC's broader assumptions – on inherited debt, debt servicing costs and institutional set-up costs – remain arguably optimistic. Indeed, one of the things that we have learnt from the devolution of various powers following 2014 is that administration costs are real. The latest estimates put the implementation (set-up) costs of Social Security Scotland at £650m over six years (Scottish Government, 2020b). The SGC estimated the *total* set-up costs associated with independence to be £450m.

On debt, the SGC argued that Scotland would not inherit any legacy UK debt, but would, through an 'annual solidarity payment', make an annual contribution to

servicing a 'reasonable share' of UK historic debt. This payment would also cover other 'shared' partnership services post-independence, such as international aid. This reasonable debt share would, according to the SGC, take into account the division of UK assets on independence; although this would of course be subject to intense negotiations (see Douglas-Scott's chapter for analysis of the division of liabilities and assets after independence).

What about the policy case for independence? The SGC did not go into specifics about the types of fiscal policies that an independent Scotland might implement which, after all, may vary depending on the government of the day. It did however, offer broad support for a Scandinavian style 'flexicurity' model (where flexible labour markets interact with a generous social security system) and a competitive business taxation system (loosely defined).

One thing that we can conclude, however, is that many of the proposals contained in the 2013 SNP Scottish Government White Paper are unlikely to feature in any new prospectus offered by the SNP. Some have been superseded by the exercise of (expanded) devolved powers whilst others dropped from party policy.

For instance, the proposal to cut Air Passenger Duty is now within the Scottish Government's powers but was dropped in May 2019 following the First Minister's declaration of a 'Climate Emergency' at the Spring SNP Conference. The proposal to cut the headline rate of Corporation Tax has been replaced by a woollier commitment to use "targeted changes in tax allowances to encourage higher levels of investment in capital or R&D, and encourage the growth of SMEs" (Scottish Government, 2015: 80). The childcare commitment is largely being implemented under existing powers (Scottish Government, 2017). And aspirations to raise the minimum wage and income tax personal allowance have been implemented in subsequent UK Budgets since 2014.

At the same time, the UK Government's 2019 Spending Round seemed to draw a line under the austerity programmes of the previous decade. On this basis it might be more difficult to build a fiscal policy case for independence on a general anti-austerity agenda, without establishing a more explicit alternative vision. Overall, the SNP in particular has yet to set out a new fiscal policy case for independence.

2) Brexit

Politically and constitutionally, the most visible change has been the UK's withdrawal from the European Union. However, whilst the Brexit process arguably strengthened the 'agency' arguments for independence (the idea that Westminster is not attuned to the preferences and needs of Scotland), it does not change the terms of the fiscal debate as fundamentally as might be expected.

Brexit is anticipated to cause a long-run deterioration in the UK's (and Scotland's) economic prospects (Figus et al, 2018). Consequently, it will lead to a weakening of the fiscal position (as a smaller economy will raise relatively less in tax). The realisation of

a 'hard' Brexit, whereby the UK has now left the Single Market and Customs Union, is likely to have relatively large economic impacts, despite the formal Trade Agreement with the EU having been secured.

But Scotland cannot simply mitigate the long-run costs of Brexit by becoming independent and re-joining the EU. To do so would likely mean creating customs and regulatory frictions between Scotland and the rest of the UK (rUK) (for more analysis, see the chapters by Fontanelli, Hughes and McEwen in this volume). The Scottish Government has argued, justifiably, that frictions with the EU will damage Scotland's economy (Scottish Government, 2018). But trade with rUK is over three times larger than that with the EU (£51.2 bn vs. £16.1 bn in 2018). Brexit is thus a double-edged sword for independence. Brexit may have helped strengthen the political case for independence. But in key areas it arguably makes the economic case more challenging in the short-run transition.

3) Covid-19

The Covid-19 pandemic has required an unprecedented fiscal response. The UK Government is expected to borrow around £400bn in 2020/21, as a result of substantially higher spending and vastly reduced tax take (OBR, 2020). The UK deficit is anticipated to reach 19% of national income under the OBR's 'central scenario'. This is unprecedented in the post-war era. It is almost double the size of the deficit following the financial crisis in 2009/10, and is also more than double Scotland's 'notional' fiscal deficit in 2018/19. Government debt will exceed 100% of GDP, compared to around 40% just prior to the financial crisis. The specifics of these scenarios remain highly uncertain of course. But the conclusion that the virus has caused an unprecedentedly large shock to the public finances is undeniable.

The UK Government has been able to accommodate this fiscal shock without any financing difficulty. This partly reflects the role of the Bank of England in purchasing government debt, combined with the continuation of a long downward trend in interest rates, and hence governments' debt servicing costs. Despite its huge increase in borrowing during 2020/21, the UK Government is actually spending less on debt interest today than it was a year ago.

This ultra-low interest rate environment lies behind the relatively relaxed attitude of most economists and international institutions in the face of debt to GDP ratios topping 100%. In fact, at today's ultra-low rates, debt could increase substantially further without debt servicing costs getting out of control, strengthening the case for saying that there should be no rush to fiscal consolidation until recovery from the Covid crisis is well and truly complete.

But saying that governments can fund large deficits in response to a temporary shock does not mean that governments face no fiscal constraint². At some point, the public finances will need to be placed on a sustainable footing.

What constitutes a sustainable footing for the public finances will be subject to debate. Future fiscal targets might not be solely based on the measures of deficits and debt that we are familiar with, but also take account of debt servicing costs or even measures of public sector net worth.

What does all this mean for the independence debate? The Sustainable Growth Commission argued that an independent Scotland would need a period of fiscal consolidation (which it estimated at around ten years) to reduce Scotland's deficit to close to 3% of GDP. If today's ultra-low interest rate environment persists, there's a case for saying that that consolidation could happen more gradually, perhaps with a slightly different end point.

But none of this alters the fundamental conclusion that some form of fiscal consolidation will be required on independence. A structural deficit of 9% of GDP or higher is unlikely to be sustainable in the long-run, however fiscal sustainability is defined - even if debt servicing costs remain low. The UK as a whole may also require some consolidation in future if the economy is permanently smaller as a result of Covid (and Brexit); but the scale of that consolidation will be greater in Scotland than in rUK, given Scotland's higher initial structural deficit. The specifics will depend on a multitude of factors, such as the rate of economic growth, agreements with the UK Government about the servicing of historic debts, and the debt servicing costs faced by an independent Scotland.

Thus the Covid-19 crisis does not fundamentally change many of the wider fiscal debates around independence. However, it further strengthens the case for an independent Scotland having its own central bank and currency (in order to support the management of its fiscal deficit), although this raises a separate set of issues about the transition to a new currency arrangement and trade frictions with the rest of the UK (for more on this, see the chapters by Peat, Fontanelli and Douglas-Scott in this volume).

Conclusion

The fiscal policy aspects of the 2014 debate were frequently simplistic and short-sighted. The Yes side was unwilling to recognise the likely short-term fiscal challenges of moving to independence – which have subsequently been more explicitly recognised by the

2. There is an unorthodox view – called Modern Monetary Theory – that suggests that such deficits could be run for longer. But this view is rejected by the majority in the economics profession (Chada, 2020). At the same time, it should be noted that even if MMT is accepted as a robust theoretical approach, it does not argue that any deficit – no matter its size – is costless.

SGC. At the same time, they tended to build the fiscal policy case for independence on a combination of marginal changes to existing policy, or the contemporary challenges of UK fiscal policy (austerity).

The No side tended to assume that the status quo would continue, which ignored the fact that the UK as a whole faces major fiscal challenges over the longer term. The OBR's latest Fiscal Sustainability Report makes it clear that, even before Covid, without proactive policy intervention the UK's public finances are on a long-term unsustainable footing due to the pressures of an ageing population and rising healthcare costs (OBR, 2020). Yet during the 2014 independence referendum, neither side made a serious effort to consider the longer-term fiscal challenges that face all major economies, and the extent to which these challenges for Scotland might be more effectively addressed as part of the UK, or as an independent nation. Neither side considered the implications of a major global economic shock.

Both Brexit and Covid-19 change the outlook and framing of the independence debate. Brexit may strengthen the political case for independence but in some areas, it makes the short-term economic and fiscal case – particularly during any transition – more rather than less challenging. Covid-19 invites a conclusion that deficits do not matter, which might be true in the short-term, but is clearly a false prospectus in the long-run.

Neither Brexit nor Covid-19 substantially alter the fundamental issues discussed in 2014. An independent Scotland would undoubtedly be financially viable, but would likely face a period of challenging fiscal consolidation – as noted by the SGC – in its early years. The extent of this consolidation is uncertain and will be debated. Once these transitional challenges are overcome, an independent Scotland would have greater autonomy to address the longer-term fiscal challenges that both it and the remaining UK will need to tackle over the coming decades. Debates over growth, tax increases and tough prioritisation of spending will be needed. Future independence debates should give more consideration to these longer-term challenges in addition to the transitional ones – and consider the extent to which these challenges could be more or less effectively addressed as an independent country, rather than as part of the wider UK.

References

Chadha, J. (2020) *Should Modern Monetary Theory inform economic policy in the crisis?* Economic Observatory. <https://www.coronavirusandtheeconomy.com/question/should-modern-monetary-theory-inform-economic-policy-crisis>

Cuthbert, J. (2020) 'Ambiguous no more: time to de-mystify the Barnett Formula', *Scottish Affairs*, 29(3): 431-449. <https://www.eupublishing.com/doi/full/10.3366/scot.2020.0333>

Figus, G., Lisenkova, K, McGregor, P, Roy, G, Swales, K, (2018) 'The long-term economic implications of Brexit for Scotland: An interregional analysis', *Papers in*

Regional Science, 97(3): 91-115. <https://rsaiconnect.onlinelibrary.wiley.com/doi/abs/10.1111/pirs.12349>

HM Treasury (2014) *Scotland analysis: Fiscal policy and sustainability*. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/314359/Scotland_analysis_Fiscal_policy_and_sustainability.pdf, UK Government, London.

Liñeira, R., A. Henderson and L. Delaney (2017) 'Voters' Responses to the Referendum Campaign' in M. Keating (ed) *Debating Scotland*, Oxford: Oxford University Press, 165-90. <https://global.oup.com/academic/product/debating-scotland-9780198789819?cc=gb&lang=en&>

Office for Budget Responsibility (OBR) (2020) *Economic and Fiscal Outlook, November 2020*. <https://obr.uk/efo/economic-and-fiscal-outlook-november-2020/>

Roy, G, (2017) *Estimating Scotland's Fiscal Position*, Fraser of Allander Institute. <https://fraserofallander.org/scottish-economy/estimating-scotlands-fiscal-position/>

Scottish Government (2013) *Scotland's Future*, Edinburgh: Scottish Government. <https://www.gov.scot/publications/scotlands-future/>, Scottish Government, Edinburgh.

Scottish Government (2014) *Outlook for Scotland's Public Finances and the Opportunities of Independence*, Edinburgh: Scottish Government. <https://www2.gov.scot/Resource/0045/00451336.pdf>

Scottish Government (2015) *Scotland's Economic Strategy*, Edinburgh: Scottish Government. <https://www.gov.scot/publications/scotlands-economic-strategy/>

Scottish Government (2017), *A blueprint for 2020: the expansion of early learning and childcare in Scotland - 2017-2018 action plan*, Edinburgh: Scottish Government. <https://www.gov.scot/publications/blueprint-2020-expansion-early-learning-childcare-scotland-2017-18-action/>

Scottish Government (2018), *Scotland's place in Europe: people, jobs and investment*, Edinburgh: Scottish Government. <https://www.gov.scot/publications/scotlands-place-europe-people-jobs-investment/pages/4/>

Scottish Government (2020a) *Government Expenditure and Revenue Scotland*. Edinburgh: Scottish Government. <https://www.gov.scot/publications/government-expenditure-revenue-scotland-gers/>

Scottish Government (2020b) *Social Security Programme Business Case*, Edinburgh: Scottish Government. <https://www.gov.scot/publications/social-security-programme-business-case-executive-summary/>

Sustainable Growth Commission (2018) *Scotland – the new case for optimism*. <https://www.sustainablegrowthcommission.scot>



How would independence affect Scotland's international trade?

Filippo Fontanelli

Introduction

Within the UK, Scotland exercises a range of devolved powers. Trade policy, including the negotiation of international agreements on trade, is not one of them.

International trade is a reserved matter of the UK government (House of Lords, 2019, para. 124). Therefore, the UK can conclude trade agreements on behalf of all four nations. Scotland retains devolved competence in areas like fisheries and agriculture, which are affected by trade agreements. In spite of their pressing demands, devolved administrations still have no constitutional right to shape the negotiation of international trade agreements. The UK government has acknowledged the interests of the devolved administrations' involvement in treaty-making. However, when it laid down the guidelines for the process of future negotiations, it declined to change the current constitutional arrangement, in which devolved administrations can, at most, offer views and receive information:

“It is important that we [deliver a future trade policy that works for the whole of the UK] within the context of the current constitutional make-up of the UK, recognising that international treaties are a reserved matter but that the devolved governments have a strong and legitimate interest where they intersect with areas of devolved competence” (Department for International Trade 2019).

This constitutional allocation of competences and powers has not changed in the past few years. However, while the UK in theory held the reserved power to make international treaties, it had all but completely delegated this power to the European Union (EU) in the field of international trade. Effectively, the devolved administrations were marginalised in this allocation of competences. For as long as the European Commission acted as sole negotiator for the entire EU, the internal separation of powers within the UK did not matter much in practice.

After Brexit, there has been a repatriation of powers previously held by the EU, including those relating to international trade. Scotland's marginal role within the formulation of the UK's trade policy has again become a live issue. Should Scotland become independent from the UK, it could manage its trade policy autonomously. This is a simple point, but it has a captivating appeal; for instance, the idea of ‘taking back’ control won over the British electorate in the 2016 EU referendum. However, any control that is won by the UK may be qualified by ongoing interdependencies in trading and other relationships with the EU.

Similarly, Scottish independence from the UK, or what I call ‘UK-exit’, would offer Scotland control over its trade policy. However, it would still have to negotiate continuing trading relationships with the rest of the UK as well as the EU, which could pull it in different directions. In trade terms, then, Scottish independence (or UK-exit) can be viewed as similar to Brexit, in that they both involve the cutting of preferential ties with one's biggest trade partner.

This chapter first explains the effects of Brexit on the UK's trade policy and the role of Scotland within it, to illustrate the fundamental change of circumstances that has occurred since 2014, when the first independence referendum took place. It then explains, in light of the possible scenarios post-2021, how Scotland trades and could trade with the EU, non-EU countries and the rest of the UK. The conclusions raise the fundamental question of whether Scottish independence, or ‘UK-exit’ is worth pursuing, as far as trade is concerned.

What has happened since 2014 with trade policy in the UK?

In the public sphere, it often felt like Brexit mostly related to trade: it would dissolve old trade connections and create new trade opportunities. Both statements are true. As a result, an entire country suddenly developed an interest in free trade areas, customs

unions, tariffs, free ports, rules of origin, and the law of the hitherto mysterious World Trade Organization (WTO).

One recurring argument in the build-up to the 2016 EU referendum and its aftermath has been that, with Brexit, the UK Government would take back control over trade matters and the exercise of this new competence would offset, or be worth, the impending economic setback. In short, control over one's destiny would yield gains surpassing the costs. This hypothetical trade-off, however, may not satisfy some Scottish voters for two reasons. First, most Scottish voters did not express a preference for taking back control in trade matters from the EU. Second, since international trade is reserved to the UK, Scotland bears the costs without the gain, as it does not get a say over these matters.

Brexit's disruption of international trade and its adverse effect on the UK's economy, at least in the medium term, are largely uncontroversial (House of Commons Library, 2020). Brexit has drastic consequences for international trade. Primarily, it breaks down an existing customs union, with its privileged terms. Were it not for the last-minute agreement at the end of December 2020, trade between the UK and the EU would have faced tariffs and quotas, just like trade between the UK and, say, China or the US.

The UK-EU Trade and Cooperation Agreement (TCA) has restored some, but not all, of the advantages of UK membership of the EU. The TCA removed tariffs and quotas on goods. It established a system to rein in state aid and to monitor product-related standards imposed by both parties, to avoid unfair competition resulting from de-regulation. The UK continued to let EU fishermen into its waters (fewer than before), and retained the possibility for its fish to be sold to EU markets. Non-tariff barriers, including border checks and formalities, have inevitably kicked in. From day one, trade between the UK and EU has become more difficult, more expensive and – inevitably – has diminished.

With respect to the rest of the world, the UK has taken a step back, settling for a reduced version of the preferential arrangements it had with some countries that have free trade deals with the EU. Conversely, the UK might take as many steps ahead as it wishes, trying to forge new trade deals with third countries, as this competence is no longer managed in Brussels.

On the one hand, Scotland will certainly face the consequences of the UK's disentanglement from the EU, in the form of costlier trade with the EU and its trade partners. On the other hand, Scotland has had limited voice and input into the UK's negotiation of new trade agreements, a delicate enterprise with uncertain outcomes, as the UK's trade negotiations with the EU and the USA in 2020 have shown. If Scotland became an independent country, its economic relationship with the (rest of the) UK would also be subject to negotiations.

I will discuss these three aspects of Scottish trade in turn: (1) trade with the EU, (2) trade with the rest of the world, and (3) trade with the rest of the UK. The pros and cons of an independent Scotland are sketched against each category.

Scotland's trade with the EU

The biggest destination for Scottish exports (about 60%) is the rest of the UK. Scotland sends up to 19% of all its exports to the EU, which corresponds to almost half of its international exports. This graph illustrates the flow of Scottish exports:

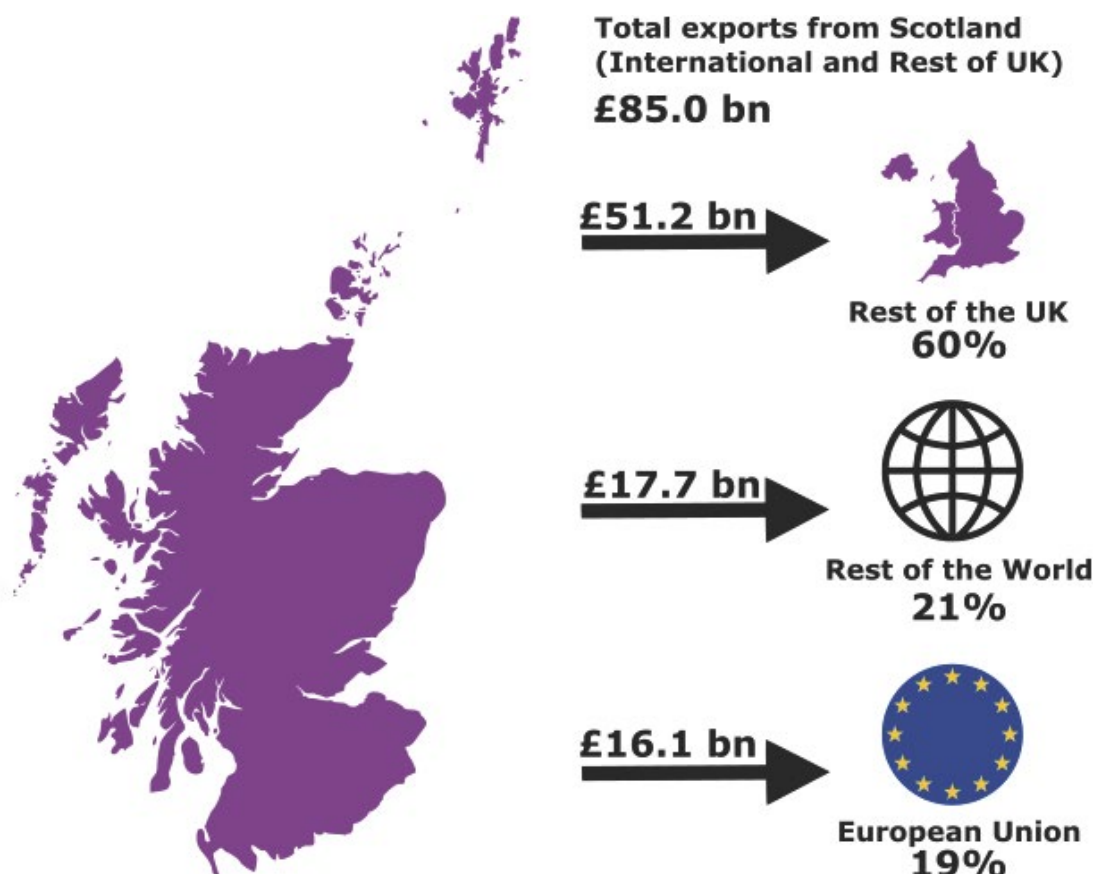


Figure 7.1: Scottish exports

Source: [Scottish Government, Export statistics Scotland: 2018](#)

Conversely, approximately 40% of the goods imported into Scotland from abroad come from the EU (House of Commons Library, 2020b).

These numbers depended on the proximity between the UK and the EU and the favourable terms of the EU single market arrangements, from which Scotland benefitted before Brexit. The following sections consider the previous baseline and two scenarios for trade between Scotland and the EU under different constitutional frameworks. It will discuss in turn (a) Scotland in the UK and EU single market (the old *status quo*); (b) Scotland in the UK post-Brexit (without independence); and (c) Scotland after UK-exit (with independence, with or without EU membership).

a. The ghost of trade past (Scotland in the EU single market)

With EU membership, most obstacles to trade between EU countries are absent. There are no tariffs, that is, EU countries cannot impose a charge on goods that arrive at the border from other EU markets, nor can they discriminate against goods based on their provenance within the EU. Moreover, EU law ensures that many product standards apply across the EU (harmonisation), and requires Member States to recognise each other's standards when a central EU one is missing (mutual recognition). Thanks to non-discrimination, harmonisation and mutual recognition, manufacturers do not have to spend money adapting their products to comply with all the different rules applicable in each country (SPICe 2020). Other elements of the EU single market also facilitate trade: services and service providers can circulate freely, businesses can be opened without restrictions across the EU, and money can be transferred without hindrances.

b. Scotland in the UK (post-Brexit)

The conclusion of the UK-EU Trade and Cooperation Agreement (TCA) averted the imposition of tariffs and quotas on goods travelling between the UK and EU. The UK Global Custom will not apply to EU goods (Department for International Trade 2020b), nor will the EU Common Customs Tariff apply to UK goods (European Commission).

Besides tariffs, smooth frictionless trade is not a given and the TCA can do little against no-tariff barriers. The UK's rules on products might in the future differ from the EU ones, so both markets would need to impose checks at the border to verify the compliance of the imported products with local rules. Without mutual recognition, all regulatory differences will create a bump in the trade flows (House of Commons Library 2018). Moreover, goods must be checked or checkable for their origin, to verify whether they are "made in" the TCA territories and therefore qualify for duty-free treatment under the applicable (and complex) rules of origin. To operate in the EU, UK banks and financial services would have to jump through the hoops of EU regulations, or open shop in the EU. There is no presumption that UK services and service providers will be able to operate in the EU, or vice versa. Without freedom of movement for workers and freedom of establishment for companies, businesses will not be able to work abroad as easily as they did prior to Brexit.

One sticking point in the TCA negotiations was the establishment of a "level playing field" – which the EU demanded to be rigorous, while the UK requested a softer version (SPICe 2020: 22). The removal of custom duties exposes domestic industries to the competition of foreign products. If the cost of production of foreign products is excessively low, the local manufacturers would lose out unfairly. Excessively low production costs, in this context, could have two reasons: a government may give subsidies to its exporting industries; or it may relax production standards for domestic manufacturers regarding safety, environmental protection and animal welfare, etc. In either case, production in that country would be significantly cheaper, skewing the level playing field. In the trade negotiations, the EU sought to preclude this possibility,

or to authorise re-balancing tariffs if either party skews the playing field (European Commission 2020). Ultimately, in the final trade deal, a system was put in place whereby both parties retain the power to adopt regulations without having to follow the other's ones, subject to a minimum duty of non-regression: they cannot adopt laxer regulation to gain a trade advantage. However, in case of wider divergence, an enforcement system applies that could lead to the imposition of punitive tariffs.

While the Scottish Government has reserved the right to keep Scottish rules in line with the EU ones, the UK Government has insisted that it will consider itself free to diverge from them. The two approaches are not necessarily incompatible, but it is plausible to anticipate instances in which the two governments will take a different position on whether to retain or to match an EU rule. Take for instance the recent ban on single-use plastic: it was initiated at the EU level and is being implemented in the UK (The Environmental Protection Regulation 2020). Scotland could find it hard to follow future EU environmental regulations, for instance, if the UK Government does not agree to adopt a mirror-version of them domestically. Conversely, Scotland might find it hard to retain certain rules, inherited from the EU, if the UK government decides to remove or amend them.

There are two trade-related reasons why regulatory differences might be hard to maintain across the four nations. First, different standards might hinder intra-UK trade. While the plan for managing the UK's 'Internal Market' is emerging, notably through the UK Internal Market Act 2020, it is still unclear whether regulatory differences flowing from devolved powers could legitimately hamper smooth trade across the UK or should be avoided altogether. For instance, the UK Internal Market Act 2020 contains an exception relating to public health and safety, but not to other legitimate aims, such as environmental protection. In the White Paper on the UK Internal Market of July 2020, the assumption was that environmental standards, for instance, will be coherent across the UK (White Paper 2020, paragraphs 42-44). Of course, to impose the principle of mutual recognition would ultimately frustrate the effectiveness of more stringent standards and reward the industry of the nations with looser ones.

Second, an uneven regulatory landscape could complicate the UK's negotiation of international agreements. In certain cases, the success of the negotiation of a trade deal might depend on the UK's concession of market access to foreign products that could not be marketed under the current EU-derived rules. It is reasonable to imagine that, if the UK wanted to make a regulatory concession to obtain a trade deal, objections would be made to local regulatory idiosyncrasies. For instance, the UK would need to have a country-wide response to the US's demands that its standards be loosened to allow the importation of certain agricultural food products that the US would like to sell in the UK.

c. Scotland UK-exit (the ghost of future trade?)

If Scotland secedes from the UK, its trade relationship with the EU would ultimately depend on whether it joined the EU as an independent member (for an analysis of whether and how Scotland could join the EU, see the chapter by Hughes in this volume).

As an EU member, Scotland would re-obtain the preferential benefits discussed earlier, and resume free trade with the EU markets, thanks to pillars of the single market (no tariffs, non-discrimination, mutual recognition) and the commitment to a common regulatory model (harmonisation). The gap between the current UK-EU trade deal (TCA status) and the now lost EU membership would be filled, reverting to a pre-2021 scenario. If Scotland were ready to accept the four freedoms of the EU single market (freedom of movement of goods, services, workers and capital), membership of the European Economic Association might also be an option (SPICe 2019: 12-14).

Since the TCA is already in place, if Scotland left the UK and joined the EU it would simply transition from one trading block to the other. The framework agreements could remain unchanged (the EU treaties would start applying to Scotland; the TCA agreement would cease to apply to Scotland). The apparent feasibility of the transition does not factor in potential obstructionism by the rest of the UK, which might have a political interest to complicate an otherwise viable option, or to raise *ex ante* the prospect of non-cooperation to increase the perceived cost of independence. The transition would also entail the creation of a border between Scotland and England, which might have political implications going beyond trade (see the chapter by McEwen in this volume for more analysis).

In general, the prospect of Scotland joining the EU is certainly appealing in a post-independence scenario. In trade terms alone, however, the links with the rest of the UK are much more important than those with the EU and any other third country combined.

Scotland's trade with the rest of the world

As explained above, 21% of Scottish exports reach non-EU markets. That is a considerable amount, marginally higher than that of EU-bound exports. More than 60% of internationally imported goods come into Scotland from outside the EU. Trade with non-EU countries, therefore, is an important component of Scottish trade policy. Again, we can examine (a) the previous baseline (EU and UK memberships) and contrast it with the scenarios of (b) simple Brexit (no independence) and (c) Brexit with UK-exit (independence). Since trade on WTO terms is a non-negotiable minimum, the discussion only considers trade under preferential terms (i.e., more convenient than under WTO law).

a. The ghost of trade past (as an EU member)

Before Brexit, the UK's trade with the rest of the world was a component of the EU trade bloc's policy. The UK traded with the EU's trade partners (e.g., Canada, Japan, South Korea, Turkey) under preferential terms, and with the rest of the world under the rules of WTO law. Trading under WTO terms meant that the UK applied the EU Common Customs Tariff to imports from third countries, and its exports faced the generic tariff that each of them applies indiscriminately to all imports irrespective of their origin.

b. The ghost of trade present (post-Brexit)

From 1 January 2021, the UK has been responsible for negotiating its own trading arrangements with other countries. All trade agreements between the EU and third countries will no longer apply to the UK as such. For instance, from January 2021, UK cheese will no longer enjoy duty-free status under the EU-Japan trade deal (SPICe, 2018).

To minimise this setback, the UK has striven to “roll over” into the future as many pre-existing EU treaties as possible (Department for International Trade, 2020). The UK Government has approached the EU’s various international trade partners and proposed that the terms of their agreements with the EU would apply to the UK after the transition period. This laborious process secured the transition of a number of treaties (Scottish Parliament, 2020), including some that were concluded in the nick of time with major partners (for instance, Norway, Japan, Turkey, Vietnam, Canada). By 31 December 2020, the UK had rolled over 31 treaties, some bilateral and some multilateral, covering some 61 countries and a total share of about 12% of UK’s external trade (BBC, 2020). Among them, the UK-Japan deal stands out as the first that, while adding very little to the existing EU-Japan one, is the first autonomous agreement (not a continuity replica). Canada and Mexico have concluded deals that should come into effect in early 2021, covering another 2% of the UK’s external trade. For reference, trade with the EU represents more than half of UK’s trade. This roll-over enterprise has reached all EU partners except a handful of them, none of which major.

Moreover, the UK is now free to pursue new agreements with strategic trade partners like China, Australia, the US and India. An agreement with Australia and New Zealand is, among those with any trade significance, the fruit that hangs lowest (Department for International Trade, 2020c). Talks of a deal with the US have been so far ubiquitous in the press, but it transpired quickly that the US wants to sell to the UK agricultural products that the EU has so far kept out of its territory (US Trade Representative 2019: 28). The US Trade Representative has assured US producers that no deal can be reached without that concession (US House of Representatives, 2020). This is supposedly a red line for the UK Government, which has been on record promising that food and environmental standards will not be relaxed to please the US or any other trade partner (UK Government, 2020). It is hard to tell how an agreement could be achieved without either party reneging on its promise.

The concerns of the devolved nations – which have no formal power to influence the negotiations – have so far been based on the general shape of the US’s demands rather than on a specific concession made by the UK. It remains true, more generally, that the devolved nations will have to accept the final text of the deals concluded by the UK Government without having much input in them. Scotland would be a largely passive recipient of FTAs concluded by the UK Government, even if their application touches upon devolved matters (environment, agriculture, health) and even if certain segments of its economy could be disadvantaged by a deal whose overall convenience was measured at the UK-wide level.

The UK's pursuit of simultaneous deals with the EU and the US in 2020 posed a challenge and, predictably, required the UK to make a choice. To overcome the level playing field impasse, the UK managed to convince Brussels that its domestic standards are and will be as good as the EU ones, under penalty of trade sanctions. In so doing, the UK might have compromised its chances of offering a meaningful deal to the US: it will be hard now to convince the domestic industry, which must follow such high standards, to endure the competition of US sub-standard products. Moreover, the EU would be vigilant against the introduction of US sub-standard products into the EU single market via the UK. To avoid that risk, a burdensome system of tracking would need to operate, to make sure that US goods do not enter the EU on the sly.

The power to negotiate and conclude trade agreements rests with the UK Government. The Scottish Government can intensify its demands to be involved and consulted, but trade is a reserved matter under the devolution settlement and, ultimately, it is for the UK Government to decide which role Scotland can have. The "roll over" treaties, for instance, were negotiated and concluded without any significant involvement from the Scottish Government (Scottish Parliament, 2020: 7-9). In spite of the Scottish Government's request to grant the devolved administration the formal power to influence negotiations and consent to the final text of the agreements (Scottish Government 2018: 52, 63), the UK Government has so far only made minor concessions, in the form of consultation and information.

c. The ghost of future trade? (Scotland post-independence)

Should Scotland attain independence, it could decide for itself which trade partnerships to pursue, and at what price. The biggest concern would be to conclude a trade agreement with the rest of the UK. This prospect is discussed in the next section, but it is important to remember that a UK-Scotland FTA would condition Scotland's autonomy in forging new trade relationships with third countries, and would all but remove this autonomy, if Scotland and the rest of the UK were joined in a customs union with a common external trade policy.

Conversely, should Scotland join the EU (a customs union in its own right), it would no longer exercise its trade policy autonomously. The EU would manage the trade policy of the bloc, with the obvious advantage in terms of coverage (the EU has many FTAs from which Scotland would benefit automatically) and leverage, and obvious disadvantages in terms of control and policy-making. In short, by changing sides from the UK to the EU team, Scotland would find itself still entangled in the less-than-perfect TCA, just on the other side.

Scotland's trade with the rest of the UK

By far, Scotland's biggest trade partner is the rest of the UK, representing the origin or destination, respectively, of almost two thirds of Scotland's imports and exports.

If Scotland secedes, all the dynamics of the current trade negotiations of the UK-EU divorce would come into play, just on a smaller scale. Trade that currently occurs within the UK's internal market, after independence, would become international trade. An independent Scotland would become an outsider to the rest of the UK, trading either under the minimal guarantees of WTO law or, more probably, under the terms of a specific trade arrangement, subject to a successful negotiation. All the intra-UK market integration – described in the UK Internal Market Act 2020 – would be ripped apart, unless Scotland were ready to accept a complex double regulatory regime (part EU, part UK), as Northern Ireland has done.

In case of UK-exit and Scotland's re-entry into the EU, the Scotland-UK trade relationship would not be up for negotiation. The UK-EU TCA would apply automatically to it. While perhaps it would be desirable to reflect the close relationship between Scotland, England and Wales in a closer association agreement, Scotland (as a member of the EU) would not be able to do so unilaterally. Market integration between Scotland and the rest of the UK, which is full today, would evaporate and reset itself at the underwhelming level provided for by the TCA (save for trade with Northern Ireland, which is already EU-compatible). All the contemporary troubles that are affecting, for instance, trade between Scotland and France in 2021, would then apply to Scottish goods sold in England. Take the disruption experienced now by Scottish fishermen struggling with post-Brexit red tape (BBC 2021). Inefficient trade procedures under the TCA can be avoided if Scotland joined the EU, only to have them emerge at the Scottish-English border, hitting (quite literally) close to home.

The (rest of the) UK's demands for the conclusion of a hypothetical UK-Scotland Free Trade Agreement are at present impossible to fathom, and depend crucially on whether Scotland will be a EU member, in which case there is no margin for tailored negotiations. As the current UK-EU negotiations show, regulatory alignment on day one is no guarantee of a swift deal. Much depends on timing, that is, whether EU membership or a trade deal with the (rest of the) UK would come first after independence. Presumably, the rest of the UK would aim to maintain as much as possible the integrity of the UK internal market and request Scotland to keep its regulatory alignment with the rest of the UK (a sort of intra-UK strict "level playing field") as a condition to have integrated trade upon separation. However, a commitment to comply with the rules of the UK internal market might undermine Scotland's trade policy autonomy and chances to conclude other agreements, chief among them, one with the EU (let alone access the EU as a new member, since EU membership entails accepting the primacy of EU law unconditionally).

Furthermore, if Scotland and the rest of the UK did not also conclude a customs union, and especially if Scotland re-joined the EU, it would be impossible to avoid a customs border between Scotland and the rest of the UK. Northern Ireland has so far been the first hostage of the overlap between the UK internal market and the EU single market, which has presented negotiators with the frankly unsurmountable challenge to avoid an inevitable border. Scotland would be next if it joined the EU: the border between EU and non-EU territories cannot be dispensed with. If Scotland did not join

the EU and joined the rest of the UK in a customs union, it could minimise the need for controls at the border, but there is no precedent of borderless free trade areas, apart from the EU. The hypothetical UK-Scotland customs union would have to break new ground in that respect.

In short, if an independent Scotland joins the EU, there will have to be checks at the English border. Avoiding a border between Northern Ireland and Ireland was possible only with an exceptional solution: the retention of Northern Ireland in the EU's single market, agreed upon due to its size, public order concerns and thanks to the unorthodox establishment of border checks occurring within the UK. Exceptional and novel solutions would also have to be found to circumvent the creation of a Scotland-England border, since absorbing England into the EU's single market to permit Scotland's EU membership is, clearly, a non-starter.

Scotland's independence would come with the classical attributes of statehood, including the possibility of joining international organisations (like the EU) and the creation of borders that make trade across them 'international' (like trade with the rest of the UK). Access to the EU single market, quite apart from the socio-political implications, would present Scotland with trade calculations that yield no simple answer. The EU market is much larger than the UK's, but currently Scotland's biggest trade partner is the rest of the UK. Is it reasonable to jeopardise the relationship with your biggest supplier and client by far, to improve your relationship with the others? Echoes of the arguments against Brexit may resonate against the prospect of EU membership for an independent Scotland.

Conclusions: is divorcing the rest of the UK trade-worthy?

Brexit happened in spite of the opposition of most Scottish people. In matters of international trade, the UK Government is taking all the important decisions and the Scottish Government is left with little or no power to shape the future of the UK Government's trade with the rest of the world, starting with the EU. The negotiations and conclusion of the UK-EU Trade and Cooperation Agreement affirmed the impression that Scotland is, in this field, a rule-taker (Scottish Government 2020b).

It is fair to say that, of course, the first independence referendum was carried out in Scotland without a plausible expectation of what transpired thereafter. A new independence referendum could at least count on a clearer baseline (with the UK-EU TCA in place) and a set of options available to an independent Scotland: to join the EU, to negotiate a deal with the rest of the UK, to simply count on WTO membership; to deal with third parties on its own terms, or to join a trading bloc exercising trade policy collectively.

In any event, it would be difficult to say that Scotland would be better off strengthening its economic ties with the EU if this came at the cost of fracturing those

with the rest of the UK. Unfortunately, while economic integration generally creates social surplus, economic disintegration is, at best, a zero-sum game. Brexit will cast a net economic disadvantage on the UK, including Scotland. The dissolution of the UK might have a similar effect, so all exiters beware.

References

BBC (2020) *Brexit: What trade deals has the UK done so far?*, 20 July. <https://www.bbc.com/news/uk-47213842>

BBC (2021) *Brexit: Fishing firms hold London protest over disruption*, 19 January <https://www.bbc.com/news/uk-politics-55706114>

Department for International Trade (2019) *Processes for making free trade agreements after the United Kingdom has left the European Union*, Command Paper 63, February. <https://www.gov.uk/government/publications/processes-for-making-free-trade-agreements-once-the-uk-has-left-the-eu>

Department for International Trade (2020) *UK trade agreements with non-EU countries*. <https://www.gov.uk/guidance/uk-trade-agreements-with-non-eu-countries>

Department for International Trade (2020b) *The UK Global Tariff*. <https://www.gov.uk/government/consultations/the-uk-global-tariff>

Department for International Trade (2020c) *UK-Australia free trade agreement: the UK's strategic approach*, Policy Paper (updated 17 July 2020) <https://www.gov.uk/government/publications/uks-approach-to-negotiating-a-free-trade-agreement-with-australia>

Department for Business, Energy and Industrial Strategy (2020) *UK Internal Market*, Command Paper 278 (July 2020) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901225/uk-internal-market-white-paper.pdf

European Commission (2020) *What is the Common Customs Tariffs?* https://ec.europa.eu/taxation_customs/business/calculation-customs-duties/what-is-common-customs-tariff_en

European Commission (2020) *Draft text of the Agreement on the New Partnership with the United Kingdom*, 18 March. https://ec.europa.eu/info/publications/draft-text-agreement-new-partnership-united-kingdom_en

House of Commons Library (2018) *Future trade with the EU: Mutual recognition*, Briefing Paper no. 8384, 8 October. <https://commonslibrary.parliament.uk/research-briefings/cbp-8384/>

House of Commons Library 2019, *UK progress in rolling over EU trade agreements*, Briefing Paper no. 7792, 13 November. <https://commonslibrary.parliament.uk/research-briefings/cbp-7792/>

House of Commons Library 2020, *Slowing economic growth, Brexit and the productivity challenge*, Insight, 15 January. <https://commonslibrary.parliament.uk/brexit/slowing-economic-growth-brexit-and-the-productivity-challenge/>

House of Commons Library (2020b) *Statistics on UK-EU Trade*, Briefing Paper no. 7851 (17 June 2020). <https://commonslibrary.parliament.uk/research-briefings/cbp-7851/>

House of Lords (2019), *Parliamentary Scrutiny of Treaties*, 20th Report of Session 2017-19, Select Committee on the Constitution, HL Paper 345, 30 April. <https://publications.parliament.uk/pa/ld201719/ldselect/ldconst/345/345.pdf>

Scottish Government (2018) *Scotland's role in the development of future UK trade arrangements*, 30 August. <https://www.gov.scot/publications/scotlands-role-development-future-uk-trade-arrangments/pages/8/>

Scottish Government (2020) *Export Statistics Scotland*, 29 January. <https://www.gov.scot/publications/export-stats-scotland-2018/>

Scottish Government (2020) *Brexit deal means drop in key fishing stocks*, 29 December <https://www.gov.scot/news/brexit-deal-means-drop-in-key-fishing-stocks/>

Scottish Parliament(2020) *Continuity of UK International Agreements*, Committee on EU and External Affairs, Adviser's paper, 31 March. https://www.parliament.scot/S5_European/General%20Documents/20200331_InternationalAgreementsAdviserPaper_Update.pdf

Scottish Parliament Information Centre (SPICe) (2018) *Preparing for a no-deal Brexit: trade with EU countries*, SPICe Spotlight (7 September 2018). <https://spice-spotlight.scot/2018/09/07/preparing-for-a-no-deal-brexit-trade-with-eu-countries/>

Scottish Parliament Information Centre (SPICe) (2019) *Anatomy of modern Free Trade Agreements*, SPICe Briefing 19-50 (26 July 2019). <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2019/7/26/Anatomy-of-modern-Free-Trade-Agreements>

Scottish Parliament Information Centre (SPICe) (2020) *Issue 8: EU-UK Future Relationship Negotiations – UK legal text special edition*, SPICe Briefing 20-38 (2 June 2020). <https://sp-bpr-en-prod-cdnep.azureedge.net/published/2020/6/2/Issue-8--EU-UK-Future-Relationship-Negotiations---UK-legal-text-special-edition/SB%2020-38.pdf>

Scottish Parliament Information Centre (SPICe) 2020b, *The UK internal market proposals: a comparison with the EU approach*, SPICe Spotlight (29 July 2020). <https://>

spice-spotlight.scot/2020/07/29/the-uk-internal-market-proposals-a-comparison-with-the-eu-approach/

UK, The Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020, Draft Regulation. <https://www.legislation.gov.uk/ukdsi/2020/9780111196205/contents>

UK Government (2020) *Trade and Agriculture Commission membership announced*, Press release, 10 July. <https://www.gov.uk/government/news/trade-and-agriculture-commission-membership-announced>

US House of Representatives 2020, Committee on Ways and Means (2020) *Transcript of the Hearing on the 2020 Trade Policy Agenda*, 17 June. <https://waysandmeans.house.gov/legislation/hearings/2020-trade-policy-agenda>

US Trade Representative (2020) *Transcript of Public Hearing on negotiating objectives for a U.S.-U.K. Trade Agreement*, 29 January 2019. <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/january/public-hearing-negotiating>



Currency options for an independent Scotland

Jeremy Peat

Introduction

The choice of what currency should be used in an independent Scotland will be critical in the debate in any further referendum and of major importance to the prospects of the Scottish economy following independence. At present Scotland, as part of the United Kingdom, uses the pound sterling. There are significant interactions between the performance of that currency and the operation of monetary and fiscal policies. Monetary policy is determined by the independent Bank of England. Broad fiscal policy for the UK is operated by Her Majesty's Treasury, with the implications of UK policy for the fiscal and public finance position in Scotland related (inter alia) to the operations of the Barnett Formula (see the chapters by Bell, and Roy & Eiser, in this volume on the economy and public finances).

Come independence, Scotland will need to make a decision on currency and almost inevitably also be required to operate independent monetary and fiscal policies. The performance, in terms of strength and stability, of any nation's currency matters because it determines the competitiveness of that nation's exports and the price of imports in domestic currency terms.

Nations also need to borrow in the international financial markets and a weak or unstable currency tends to be associated with higher costs of borrowing. A weak or unstable currency can be supported by tight monetary and/or tight fiscal policies. Such policy tightening would result in some combination of higher internal interest rates for businesses and consumers, higher rates of taxation and lower public expenditure. This in turn tends to result in lower economic growth, higher unemployment, and lower levels of business investment. Thus, the performance of a new currency will impact upon the internal and external-facing elements of the Scottish economy, including businesses and households.

In this chapter the options for a Scottish currency post-independence are discussed and analysed, including some discussion of wider implications.

The options

As at the time of the first Scottish independence referendum in 2014, there are still three basic choices for a currency to be used by Scotland post-independence. These options are (a) continued use of sterling; (b) adopting the euro; and (c) a new Scottish currency. Each of these options is discussed in turn below.

Sterling

Continued use of sterling could either involve a formal currency union with the rest of the UK – as proposed by the Scottish Government during the first independence referendum (IndyRef1) – or informal/unofficial use of sterling, with economic and fiscal policies geared to retain the credibility of a stable and sustainable 1:1 relationship between ‘official’ sterling and its unofficial Scottish version. This policy choice can be termed ‘shadowing sterling’.

In the event of a formal currency union, monetary policy would continue to be set by the Bank of England, essentially based on conditions in the rest of the UK (rUK). Scotland would have to determine how best to operate its independent fiscal and broader policies so as to manage the economy and to best meet the government’s objectives, with a fixed exchange rate with sterling and monetary policy set by an external agency in rUK, essentially with very limited consideration given to Scottish conditions.

At the time of IndyRef1, the UK Government stated that it would not countenance a currency union and there has been growing dissatisfaction with this policy within the independence movement since 2014. Therefore, if a second referendum is to be held, it is unlikely that this would remain the favoured option.

Informal use of sterling – ‘shadowing’ – was the preferred option outlined in the Sustainable Growth Commission’s (2018) report on Scotland’s future economy and public finances. The Commission had been established by the Scottish National Party (SNP) to assess projections for Scotland’s economy and finances under different

governance scenarios, including independence. However, while the option of shadowing sterling has the benefit of not requiring the UK Government's formal approval, the monetary and fiscal policy ramifications are likely to be somewhat more complex than for a formal currency union.

Euro

The use of the euro would presumably be post – or pending – Scotland's entry to the European Union (EU) as an independent member state (see the chapter by Hughes in this volume on that prospect).

The Euro might be deemed obligatory if Scotland wished to become a member of the EU, in order to participate in the Exchange Rate Mechanism (ERM – a system that reduces exchange rate variability and seeks to achieve monetary stability in the EU) and work towards entry to the euro zone. But being deemed suited to eurozone entry would be subject to strict conditions regarding fiscal policy that are set by the EU. For instance, Scotland would have to achieve acceptable levels of overall government debt and annual government fiscal deficits.

Pre-pandemic, Scotland's ability to meet these conditions was highly unlikely if it became independent or during the period immediately thereafter. The adverse impact of the Covid-19 pandemic on the public finances of the UK and Scotland will have made the task of achieving acceptable levels of debt and deficit orders of magnitude more difficult for several years (see the chapters by Bell and Roy & Eiser in this volume on the challenges Scotland faces in this regard).

As and when Scotland adopted the euro, monetary policy would be handed over to the European Central Bank (ECB) and set in accordance with the economic and financial conditions across the eurozone. This might or might not suit Scotland, depending on the extent of Scotland's economic and financial convergence with the EU.

A new Scottish currency

The introduction of a new Scottish currency would not be a straightforward or speedy process, and great care would be required to establish a robust, internationally credible and relatively stable currency regime. A Scottish currency would, inter alia, require the establishment of a separate Scottish central bank, which would need to be internationally respected and politically independent. A Scottish central bank would set monetary policy, taking due account of guidelines set down by the Scottish Government and relating directly to Scottish circumstances and prospects.

There would be severe constraints upon Scottish monetary and fiscal policies both before and after the new currency was established. For a Scottish currency to be strong and stable, the international markets would need to have confidence that credible and

sustainable fiscal policies were in place. Inevitably this will be even more difficult to achieve in the aftermath of the Covid pandemic.

Whilst this fiscal credibility of the new Scottish currency is being established, there would be a (potentially extended) period, during which Scotland would have to operate a tight monetary policy, with higher interest rates, and hence higher costs of domestic and international borrowing, than in comparable economies with firmly established credibility. Failure to establish credibility alongside what the markets deemed to be unduly loose monetary policy would be likely to result in a weak and highly volatile Scottish currency, which is not suitable for an economy like Scotland that relies heavily upon the traded sector.

Key considerations – trading with rUK

The rest of the UK (rUK) is far and away Scotland's major trading partner, accounting for some two thirds of Scottish exports (see the chapter by Fontanelli on trade in this volume). This fact alone makes it critical that a relatively stable exchange rate with sterling be achieved and retained post-independence.

In addition, many companies based in Scotland operate across the UK with complex cross-border supply chains. It would be more complex and costly to operate these cross-border supply chains if the currency were to be weak and/or volatile. Then there is the fact of significant cross-border (Scotland/rUK) labour mobility (see Kyambi in this volume) and a wide range of formal and informal co-operation agreements between companies, and indeed households, in Scotland and elsewhere in the UK. All these factors point to the crucial importance of a stable exchange rate relationship between Scotland and rUK.

The EU is Scotland's second largest trading partner. In the post-Brexit era, Scottish companies will already be required to cope with less secure and predictable trading arrangements with companies based in the EU. It would be exceptionally difficult for companies in Scotland to face the need to adapt to both evolving trading arrangements with the EU and an unstable and unpredictable exchange rate for trade with rUK.

These considerations provided a justification for the view during IndyRef1 that a formal currency union with rUK, establishing confirmed and sustainable use of sterling in an independent Scotland, would be the preferred option from an economic perspective. If such a formal currency union is now deemed to be ruled out, not least because of the UK's withdrawal from the EU, then it would be highly desirable to determine if other arrangements to achieve such currency stability could be implemented cost-effectively.

The clear objective of 'shadowing sterling' would be to achieve this currency stability. A key question is what the cost might be of achieving this objective. If Scotland became independent with a high level of public sector debt and, at least initially, a higher annual deficit on public finances than the markets deemed desirable, then achieving shadowing

stability would require high interest rates. This would have significant adverse effects on households, on businesses and overall economic performance. If and when Scotland could demonstrate a sustainable move to a more sustainable fiscal position, then the penalty on interest rates would tend to be reduced.

Ideally this transition to a sustainable fiscal position would be achieved by more rapid economic growth, founded on higher levels of business investment and productivity growth. An alternative scenario, much less comfortable for all, would involve higher taxation and lower public expenditure to achieve a lower deficit. One way or another it would take time and forceful and effective economic management, as well as an uncertain degree of pain for households and businesses.

Scottish entry into the EU and the eurozone would stabilise trading arrangements with the EU, but it would also leave Scotland subject to the vagaries of fluctuations in the exchange rate between the euro and the pound sterling.

If a new Scottish currency were to be established, then it is evident that, on the basis of trading considerations, this should be achieved so that the new currency is relatively strong and stable. A stable currency would require credibility in the international financial markets, which would in turn be contingent upon Scotland's monetary and fiscal policies being viewed as sound, as well as strong prospects for economic growth combined with relatively low inflation. The currency stability would not necessarily be with sterling; instead it would be dependent upon the relative performance of sterling and the new Scottish currency in the international arena.

Some initial depreciation following independence or the establishment of the new Scottish currency may be manageable, and possibly helpful in terms of competitiveness, for the trading sector. However, any extended period with a weak and/or highly volatile currency would pose huge problems for trading companies and those with cross-border relationships with rUK. Furthermore, a weak currency would lead to an increase in the cost of imported goods and services, with the effect of increasing inflation for businesses and consumers. This could come at a time (see below) of higher interest rates and tight policies on public expenditure and taxation (as is also discussed in Roy & Eiser, and Bell, in this volume).

Key considerations – monetary and fiscal policies

If Scotland adopts some form of independent currency, or it 'shadows' sterling, then monetary and fiscal policies would need to be set to achieve an acceptable degree of currency strength and stability; and to create credibility in international markets to permit international borrowing at reasonable rates.

The Sustainable Growth Commission (2018) accepted that, with an informal sterling currency union, the monetary policy for Scotland would still be set by the

Bank of England for rUK. Under these circumstances, there would be no consideration whatsoever as to the implication or suitability for Scotland.

However, when deciding on a post-independence currency, there would be additional considerations involved in determining the cost of borrowing for Scotland in international markets. That would depend upon Scotland's credit rating, and the perceived probability of the sterling link being retained. This perception in turn would take account of the credibility of fiscal policies in Scotland and the validity of institutions being established. At least initially after independence, there might be serious doubts about the sustainability of this regime, implying high costs of borrowing in international markets in the near-term.

If Scotland adopted the euro, then monetary policies would be set by the European Central Bank (ECB), taking account of conditions across the whole of the eurozone. The ECB would include consideration of conditions in Scotland, but only as one small part of the whole picture. There would not be the same concern about the costs of international borrowing once the euro had been adopted by Scotland. Fiscal policy would be set by Scotland, but subject to some constraints imposed by the EU on both annual deficits and overall levels of public sector debt.

If there were to be a new Scottish currency, then domestic interest rates would be set by a new Scottish central bank. The bank would take account of domestic circumstances but also the need to establish a satisfactory credit rating. It appears inevitable that interest rates would be higher than in the counterfactual of continuing as part of the UK.

For either an informal currency union or a new Scottish currency, there would also be a requirement to move steadily towards levels of government debt and annual fiscal deficits deemed appropriate by international markets. The markets would wish to see actual and prospective levels of debt and deficit as consistent with maintaining that 1:1 relationship with 'formal' sterling or sustaining relative stability and strength for a new independent currency.

Scotland has as yet no credit rating in international markets but post-independence it will need to issue sovereign debt as an independent state. The cost of this debt will depend upon the extent to which credibility has been achieved. Following the high levels of governments' borrowing across the world during the Covid-19 pandemic, the markets will be very carefully monitoring fiscal credibility of all economies, especially new arrivals with no proven track record – and in the case of Scotland, a history of high public sector deficits whilst part of the UK.

As other small, independent, countries have discovered, achieving this credibility is feasible and can lead to strong currencies, high credit ratings and strong economies. New Zealand and Singapore are two oft-cited examples of what can be achieved. However, this has taken many years and continuing demonstration of a tight fiscal stance; and will be even tougher in the post-Covid world of historically high levels of public sector debt. There are also many examples of small, independent, countries where credibility has not been readily achieved. No gain without pain.

Other currency risk issues

Currency fluctuations are not only a risk for trading businesses. A currency is also a store of value. The possibility of a new Scottish currency depreciating against sterling would raise issues for individuals and households regarding, for instance, pensions, savings, mortgages, wages and borrowings. There would be difficulties in managing assets held in sterling that needed to be transferred into the new currency, potentially at a lower than 1:1 exchange rate. However, it is worth noting that the future for sterling is itself uncertain, given the UK's departure from the EU. Sterling has depreciated and could depreciate further.

Also, if the new Scottish currency were to depreciate, than wages paid in this new currency could be of less value in terms of the currency of other countries, if recipients employed in Scotland wished to transfer part or all of their wages elsewhere. This was an issue for nationals from A8 countries – in Central and Eastern Europe – employed in the UK when sterling depreciated after the Brexit referendum. It reduced the value of sterling-denominated income in terms of the euro and other currencies, and hence reduced the incentive for people from A8 countries to work in Scotland with the intention of sending some of their earnings to families in their home countries (for more on migration, see Kyambi's chapter in this volume.)

One further point is that, following independence, there would be no prospect of the Bank of England acting as lender of the last resort to banks based in Scotland, as was the case in the 2008 financial crash. Nor would there be any prospect of a newly established Scottish central bank having the resources or indeed the will to bail out banks of any substance. Without this security such banks would be highly likely to relocate their headquarters to rUK or elsewhere, potentially continuing operations in Scotland but as foreign rather than domestic banks.

There would generally be a range of difficult decisions regarding the management of assets and incomes/outgoings for businesses and households, with the optimal option being contingent upon future – and inherently unpredictable – currency movements.

The preferred option

It should be clear from the above that there is *no clear 'stand-out' best option* for a post-independence currency. From my perspective and that of many others, 'shadowing sterling' is to be preferred, at least in the early years of independence. This could provide currency stability for businesses and households, given the close financial and economic links between Scotland and rUK. If and when this arrangement is credibly established, it should also provide a basis from which an international credit rating could be established, which would allow borrowing on the international markets at a reasonable rate – albeit higher than the UK's present and probably future rate.

The relative stability of shadowing would be particularly desirable in the post-Brexit era, with so many uncertainties regarding the UK's trade with the EU and all other global economies. If these Brexit uncertainties were to be combined with currency uncertainties related to trade and other relations with rUK (Scotland's major trading and broader economic partner), then the economic risks would be greater than could reasonably be carried in the post-independence period.

However, adopting the policy of 'shadowing sterling' would only be even potentially acceptable to rUK, if monetary policy were to be determined by the Bank of England, purely on the basis of the interests of rUK. There would be no prospect of Scotland's interests being taken into account. That acceptance of externally determined monetary policy would be a limitation on independence, and it would also impose constraints on Scotland's domestic fiscal and other policies. If, for example, the Bank of England kept interest rates relatively low, then Scotland might be required to operate extremely tight fiscal policy (implying some combination of higher taxes and lower public expenditure), in order to secure or retain credibility and an appropriate credit rating in the international markets, and to borrow to the extent required at manageable rates. As noted earlier lower interest rates (looser monetary policy) can to an extent be offset by tighter fiscal policy and vice versa.

A move to adopting the euro might be feasible once stability in a 'shadowing' environment is achieved and in the years immediately prior to and/or following Scotland's entry to the EU (see Hughes in this volume). The first step is likely to be joining the Exchange Rate Mechanism (ERM) and maintaining a stable currency relationship with the euro for an extended period of time. This would imply having Scotland's own currency as an interim step in advance of entering the ERM. That would have the adverse effects discussed above as a result of potentially losing stability with sterling; and may also require very tight monetary and fiscal policies – as the UK discovered during its brief and ill-fated period in the ERM in the 1990s. The risks might be somewhat reduced if Scotland had successfully managed a policy of 'shadowing sterling' for an extended period of time. There would also be a requirement to meet the so-called Maastricht Criteria, as adapted in the post-Covid era, to demonstrate convergence on a broader front to be prepared for euro entry.

The clear implication is that any move made by Scotland to adopt the euro is in the distant future and not a relevant consideration as we ponder IndyRef2.

Further, to minimise the risk of substantial costs to households and businesses, any consideration of an independent Scottish currency should be deferred until credibility has been achieved in the context of 'shadowing' sterling.

Conclusion

The present Scottish Government appears to favour an early move to a new Scottish currency. This would be a high-risk option. Instead the Sustainable Growth Commission

(2018) recommends that, on achieving independence, Scotland should continue to use the pound sterling, albeit unofficially. This would involve accepting the downsides related to lack of autonomy on monetary policy, severe constraints on fiscal policy, risks for businesses and consumers, and the possibility of major banks moving their headquarters away from Scotland.

There could then be an explicit objective of moving from sterling to an independent Scottish currency, once Scotland's credibility as a sovereign state had been established, and arrangements for managing that currency clarified and deemed suitable in the financial markets. This would be essential to enable the Scottish Government to borrow on the international markets at sub-draconian rates and to provide some reasonable expectation of stability for businesses and consumers.

The Sustainable Growth Commission (2018) suggested that this transition could be achieved in perhaps a decade after independence. This was on the basis of improved productivity and GDP growth well in excess of present and historic levels, permitting major improvement in the public finances. It would also require the generation of substantial international currency reserves and the establishment of credible institutions required to manage Scotland's own currency and monetary policy. The Sustainable Growth Commission's expectations appeared extremely optimistic when their report was published, and appear even more optimistic in a post Covid-19 context. Establishing the conditions for a successful move to an independent currency could well be much further into the future.

Probably the best that could be hoped for would be an extended and indefinite period of shadowing sterling, while the public finances slowly improved and domestic efforts could be focussed on significant improvements in productivity and hence growth of the Scottish economy. During this extended period, Scotland would have to operate fiscal and other domestic policies in such a manner as to satisfy the markets that this link with sterling would be retained for the foreseeable future. Nevertheless, for an indefinite period Scotland would still be likely to remain downgraded in credit-rating terms, meaning that the cost of debt would be significantly higher than for rUK and other highly rated economies.

There would be limitations to the independence of monetary, fiscal and other economic policies; but, to repeat, the key priority for wellbeing in Scotland would be a stable exchange rate and broader economic relationship with Scotland's key trading and economic partner – the rest of the UK.

References

British Academy and Royal Society of Edinburgh (2014) *Enlightening the Constitutional Debate*, London: The British Academy. <https://www.thebritishacademy.ac.uk/publications/scotland-enlightening-constitutional-debate>

Goudie, A. (ed) (2013) *Scotland's Future – the economics of constitutional change*, Edinburgh: Edinburgh University Press. <https://edinburghuniversitypress.com/book-scotland-039-s-future-hb.html>

Jeffery, C. and R. Perman (eds) (2014) *Scotland's Decision: 16 Questions to think about for the referendum on 18 September*, The David Hume Institute and the Hunter Foundation. <https://www.nls.uk/e-monographs/2014/ScotlandsDecision.pdf>

McCrone, G. (2014) *Scottish Independence – weighing up the economics*, Birlinn. https://books.google.co.uk/books/about/Scottish_Independence.html?id=xPomgEACAAJ

McLean, I., J. Gallagher and G. Lodge (2013) *Scotland's Choices – the Referendum and What Happens afterwards*, Edinburgh: Edinburgh University Press. <https://edinburghuniversitypress.com/book-scotland-s-choices.html>

Scottish Government (2013) *Scotland's Future – Your Guide to an Independent Scotland*, Edinburgh: Scottish Government <https://www2.gov.scot/resource/0043/00439021.pdf>

Sustainable Growth Commission (2018) *Scotland - the new case for optimism. A strategy for inter-generational economic renaissance*. Chaired by Andrew Wilson. <https://static1.squarespace.com/static/5afc0bbbf79392ced8b73dbf/t/5b0a988c352f53c0a5132a23/1527421195436/SGC+Full+Report.pdf>



Part 3: Politics and Society



Would Scotland's policy-making and political structures change with independence?

Paul Cairney

Introduction

Major policymaking reforms were not a central feature of the push for Scottish independence in 2014. Rather, the Scottish National Party (SNP) and the Scottish Government (2013) White Paper emphasised the adequacy of the Scottish Parliament and the competence of the Scottish Government, suggesting that Scottish independence would be built primarily on existing policymaking processes. Therefore, policymaking institutions and practices since devolution in 1999 gives us some indication of policymaking under Scottish independence.

This chapter highlights the key features of existing arrangements and the potential for mild reforms to accommodate a new political reality. First, the Scottish Parliament is a venue for political party competition rather than more participatory or deliberative innovations, and serves primarily to hold the Scottish Government to account rather

than share the power to make policy. Second, the Scottish 'policy style' follows the UK tradition, in which there is a tendency to seek a degree of consensus between policy participants and react to events rather than engage in long-term planning to anticipate and prevent major problems. The outcome is a pattern of policy change that can be found in almost all political systems: although governments produce a small number of major policy changes, most policy represents business as usual.

The future of Scottish parliamentary democracy

A well-functioning and effective parliamentary system underpins a well-functioning democratic system. This truism underpinned the establishment of the devolved Scottish Parliament in 1999 which will, almost certainly, continue in a mildly modified form after Scottish independence. The movement for Scottish devolution in the 1990s prompted hopes for political reform and innovative forms of democracy (see McGarvey and Cairney, 2008). Scottish Parliament elections would foster representative democracy and a more representative body of MSPs. A petitions process, and experimentation with a civic forum and mini-publics, would foster participatory and deliberative democracy. New styles of consultation and cooperation with policy participants, such as interest groups or third sector groups, would foster pluralist democracy. Further, these activities would combine to become greater than the sum of their parts.

Yet, in practice, democracy is about people competing to be heard at the others' expense, and one forum often competes with another to represent the main hub for democratic expression. Indeed, the main result of devolution was the temporary experimentation with new deliberative forums such as the Scottish Civic Forum (a self-selecting group of people attending regional and national meetings to discuss current and future policy, which closed in 2007) and a petitions process that relies entirely on parliamentary support and energy. The Scottish Parliament became central to hopes for democratic innovations, but actually served as a Westminster-style venue for representative democracy. In other words, the government would govern (and represent the main hub for interest group activity), while MSPs would scrutinise government policy.

In this model, the Scottish Parliament plays two profoundly important roles. First, it provides a forum for representation. In particular, there were explicitly high hopes that the Scottish Parliament would be more representative of women, coupled with far vaguer and unfulfilled hopes for representation according to race or ethnicity, class, age, and disability (yet, women have represented 33-40% of MSPs, and almost all are white - Keating et al, 2020). Second, the Scottish Parliament legitimises Scottish Government policy. To all intents and purposes, it delegates policymaking responsibility to the Scottish Government then holds ministers to account for the ways in which they carry that responsibility. In many cases, the policy is humdrum and routine, with little partisan competition or committee interest. In some, the policy is high salience, with civil

servants anticipating parliamentary reactions, and party competition infusing committee attention (Cairney, 2015).

As such, we can think of the role of parliament in terms of two sides of the same coin. On one side is the parliamentary activity that matters: MSPs pay disproportionately high attention to some issues in plenary and committee discussions, and ministers and civil servants build their expectation of this response into their policy design. On the other side is the logical consequence to this activity: if MSPs are paying attention to those issues, they have to ignore the rest. The Scottish Parliament only has the ability to scrutinise a tiny proportion of Scottish policymaking activity and MSPs generally legitimise policy without being able to pay it much attention. Since it did not become the hub for new forms of democratic engagement, it has little additional capacity on which to draw. Further, the Scottish Government (2013) White Paper did not envisage major changes to its operation (or even the number of MSPs).

These limitations are reflected strongly in the Scottish Parliament's response to the report of the Commission on Parliamentary Reform (2017). The Presiding Officer's Advisory Group (2019) describes reforms to: encourage greater diversity during MSP recruitment and when seeking oral evidence to committees, publicise the role of the Scottish Parliament and encourage more engagement through schools, and encourage the trial of a modest amount of democratic innovations such as mini publics (in which a selected group of citizens would meet to discuss a political issue – see Escobar and Elstub, 2017); while focusing primarily on ways to amend the rules on plenary and committee activity, *largely to encourage more effective and strategic scrutiny of government policy*.

Unlike in other chapters of this book, Brexit did not feature strongly in this discussion, even though the vote in 2016 preceded the establishment of the Commission on Parliamentary Reform. Its most frequent mention in both reports related to the sense that additional resources for committee scrutiny would be necessary to oversee Brexit as a process and accommodate any extra Scottish Government responsibilities (in areas such as environmental and agricultural policy). In comparison, developments within Scottish Government seemed more significant.

Other Commission recommendations recognise the need to create more meaningful relationships with local government, government agencies, and other bodies responsible for delivering public policy in Scotland. This latter suggestion is crucial to the ways in which Scottish Government has changed over the last decade. Increasingly, its main role is to produce a broad strategy and invite a large number of public bodies to carry it out, often supported by long-term outcome measures rather than the kinds of short-term targets more conducive to straightforward parliamentary scrutiny. As the next section describes, the Scottish Government makes these reforms partly via the choice to share power across the public sector, and partly because it lacks the capacity to control, coordinate, or even understand most of the decisions made in its name.

The future of Scottish policymaking

Scottish independence would prompt a major change to the *spread of responsibilities* of the Scottish Government, particularly in areas such as economic, security and foreign policies (see the chapters by Bell, Roy & Eiser, Fleming and Kenealy in this volume). In other words, the size of government activity, and its coordinative task, would increase. However, this increase of powers is analytically separate from the ways in which it would *make* policy as a result. The latter is often dubbed the Scottish ‘policy style’ (or by the Scottish Government as the Scottish ‘model’ or ‘approach’ to policymaking), to emphasise two key elements:

1. *Consensus-seeking.* A tendency to encourage widespread consultation with stakeholders (such as interest groups, professional bodies, unions, and third sector groups) and to place high trust in public sector bodies. This approach to consultation helps boost policymaking capacity and encourage widespread ‘ownership’ of policy. The Scottish Government has also experimented with more deliberative forms of consultation when dealing with issues for the first time (such as when the *Scotland Act 2016* devolved more social security powers – see Cairney and St Denny, 2020: 119).
2. *Anticipatory policymaking.* A high commitment to produce ‘preventive’ policies, that help reduce social and economic inequalities or public service costs by intervening as early as possible in people’s lives (Cairney and St Denny, 2020).

Yet, these elements are not as distinctive as they first appear. First, this emphasis on consensus-seeking has long been a common feature of policy styles in Western Europe, including in the UK, because all such political systems face the same general dynamic:

- The state is too large to be manageable by a small number of people, and there is a highly crowded policymaking environment in which huge numbers of actors seek influence. Consequently, ministers manage complexity by breaking the state’s component parts into policy sectors and sub-sectors, with power spread across many parts of government.
- Elected policymakers can only pay attention to a tiny proportion of issues for which they are responsible. So, they pay attention to a small number and ignore the rest. In effect, they delegate policymaking responsibility to other actors such as civil servants, often at low levels of government.
- At this level of government and specialisation, civil servants boost their policymaking capacity by relying on specialist organisations for information and advice. Those organisations trade that information/advice and other resources for access to, and influence within, the government.
- Most public policy is conducted primarily through small and specialist policy communities that process issues at a level of government not particularly visible to the public, and with minimal senior policymaker involvement.

- This description of 'policy communities' suggests that senior elected politicians are less important than people think, their impact on policy is questionable, and elections and changes of government may not provide the changes in policy that many expect (Richardson, 1982).

In that context, the policy styles of the UK and Scottish governments often look remarkably different because commentators tend to focus on high salience and high stakes policies in which governments are intensely involved. Or, the Scottish Government is often more open to consultation when it has relatively low in-house capacity. Overall, most policy is processed out of the public spotlight in very similar ways, and the main change would be a shift of this group-government activity towards Scotland in new policy sectors.

Second, there is a large gap between the rhetoric and reality of 'preventive' policymaking. The Scottish Government announced its pursuit of a 'decisive shift to prevention' twelve years after the advent of devolution, and with limited results (Cairney and St Denny, 2020). As in most governments seeking election in liberal democracies, there may be a strong *desire* to address the 'root causes' of policy problems over the long-term, but a stronger electoral imperative to demonstrate governing competence in relation to short-term targets and in reaction to events and crises. The Scottish Government's aim is to become more joined-up and preventive, but policymaking tends to be sectoral and reactive.

These features of policymaking are apparent before and after many major events that had a strong impact on Scottish politics, including the first debate on independence in 2014, the prospect of Brexit and, most recently, the shock of Covid-19. Brexit makes some difference, since it raises the question of who should take responsibility for repatriated policy sectors, such as environmental and agricultural policies, and therefore the possibility of a Scottish policy style with a broader scope. There are also some early signs that the Scottish Government is able to carve out distinctive policy approaches in new sectors such as energy, even when it only represents one small part of a multi-level policymaking system (Cairney et al, 2019). Scotland's First Minister, and the Scottish Government as a whole, also seems to be more able to maintain an image of governing competence and public trust than their UK counterparts in relation to Covid-19. However, a focus on high-profile aims and a small number of specific examples should not distract us from the more pervasive and humdrum elements of policymaking in which Scottish styles (and the outcomes of policy choices) are not likely to be particularly distinctive.

Conclusion

These conclusions should inform expectations on likely reforms to the Scottish Parliament and the Scottish policy style. Recent discussions of parliamentary reform highlight modest innovations in participatory and deliberative forms of democracy, which are destined to apply to a tiny proportion of government and parliamentary business (see the

chapter by Escobar in this volume). Representative and pluralist democracy is where the action is, and Scottish independence is likely to prompt no more than a mild discussion of the size and capacity – rather than role – of the Scottish Parliament.

We should expect more changes to the Scottish Government, to reflect a necessary increase in capacity to process more responsibilities. However, a major change to the Scottish policy style is not inevitable. Or, it may change in ways not predicted by the optimistic language of a movement towards consensus democracy. The inheritance of new responsibilities in 'high politics' sectors such as economic policy will come with the requirement to make the kinds of 'hard choices' associated with UK governments (see the chapter by Bell in this volume). Consensus-seeking in Scotland was relatively straightforward during an initial era of devolution and rising public expenditure. It is more difficult when governments hold full responsibility for the choices that help some groups win at the expense of others.

References

Commission on Parliamentary Reform (2017) *Your Parliament, Your Voice*, Edinburgh: Scottish Parliament. <https://test123582.files.wordpress.com/2016/10/commissiononparliamentaryreformreport-june20171.pdf>

Cairney, P. (2015) 'Scotland's Future Political System', *Political Quarterly*, 86(2):217-25. <https://onlinelibrary.wiley.com/doi/abs/10.1111/1467-923X.12154>

Cairney, P., McHarg, A., McEwen, N. and Turner, K. (2019) 'How to conceptualise energy law and policy for an interdisciplinary audience: The case of post-Brexit UK', *Energy Policy*, 129, June, 459-66. <https://www.sciencedirect.com/science/article/pii/S0301421519301041>

Cairney, P. and St Denny, E. (2020) *Why Isn't Government Policy More Preventive?* Oxford: Oxford University Press. <https://global.oup.com/academic/product/why-isnt-government-policy-more-preventive-9780198793298>

Escobar, O. and Elstub, S. (2017) *Forms of Mini-publics*, New Democracy, May. https://www.newdemocracy.com.au/docs/researchnotes/2017_May/nDF_RN_20170508_FormsOfMiniPublics.pdf

Keating, M., Cairney, P. and Intropido, S. (2020) 'The Political Class in Scotland' in Keating, M. (ed) *The Oxford Handbook of Scottish Politics*, Oxford: Oxford University Press, 500-511. <https://global.oup.com/academic/product/the-oxford-handbook-of-scottish-politics-9780198825098>

McGarvey, N. and Cairney, P. (2008) *Scottish Politics*, Basingstoke: Palgrave Macmillan. <https://www.macmillanihe.com/page/detail/scottish-politics-paul-cairney/?sfl=barcode&st1=9780230390461>

Presiding Officer's Advisory Group (2019) *Report on Parliamentary Reform*, March, Edinburgh: Scottish Parliament. https://www.parliament.scot/POandUKandIRO/POAG_Report.pdf

Richardson, J. (1982) *Policy Styles in Western Europe*, London: Allen & Unwin.

Scottish Government (2013) *Scotland's Future: Your Guide to an Independent Scotland*, Edinburgh: Scottish Government. <https://www.gov.scot/publications/scotlands-future/>



Identity and independence: how do Scots see themselves?

Michael Rosie and Nasar Meer

Introduction

The pattern and character of national identities in contemporary Scotland has received considerable academic attention. The near ubiquity of Scottishness – as compared to a less frequent (perhaps gradually declining) emphasis on Britishness – is a key backdrop to the ‘Scottish Question’. Much research suggests that Scottishness primarily rests upon ‘territorial’ or ‘civic’ markers: where people were born and raised and where they live (e.g. Kiely et al, 2001; Rosie, 2014). Scottishness, it seems, is not based on the kinds of cultural or ethnic resources – language, religion – which mark out other sub-state nations.

Emphasis on territory, and the institutions within it, has meant that Scottish identity is regarded as a predominantly ‘civic’ (rather than ‘ethnic’) phenomenon. Such a distinction, largely based on territory (‘place’) versus culture (‘folk’), is common in academic discussions of nationalism, but has emerged as a (deeply normative) dichotomy in political discourse. Scottishness, at least superficially, is ‘inclusive’, based as it is on birth and upbringing, rather than on ‘bloodline’. It is, as McCrone and Bechhofer (2015) argue, about ‘routes’ as much as it is about ‘roots’. This begs questions, of course, about how *open* these ‘routes’ into Scottishness are and just what boundaries require to be traversed.

It is useful to conceive of identity as flexible, contextual and in constant (re) construction. As well as people claiming identity, they also attribute identities to others, and act as an audience, reacting to the claims and attributions others make. In making these decisions the audience (and indeed the claimant) will be aware of underlying markers and unwritten rules about the national identity in question and the unwritten rules – ‘probabilistic rules of thumb’ (Kiely et al, 2001: 35–36) – for judging them. As a substantial body of work by Bechhofer, McCrone and colleagues has shown, the unwritten rules for Scottishness are based around ‘being from here’, claims that are buttressed by being born in Scotland, or being raised here – thus understanding the in-jokes and the cultural references (see, for example, Bechhofer & McCrone, 2010; Kiely et al., 2001; McCrone, 2002; McCrone & Bechhofer, 2015). Often people rely on accessible identity cues – not least accent. As a rule of thumb if someone *sounds* Scottish then they probably are Scottish. Such cues, of course, can be highly fallible. What, after all, does and does not count as ‘sounding’ Scottish?

Many people in Scotland feel both Scottish and British: these identities should not be seen as necessarily ‘contradictory’ or in ‘competition’ with each other. In what follows we will outline the broad patterns of national identity in Scotland and investigate whether and how they intersect with questions over Scottish independence, not least post-Brexit. We also examine the extent to which Scottish identity is ‘inclusive’: to what extent can those who lack (or are perceived as lacking) Scottish ‘roots’ come to feel, and be accepted as, Scottish?

Identities in Scotland

There are a number of ways to consider national identities in Scotland. To outline the wider picture, we use Scottish Social Attitudes surveys to examine trends. Here we look at two particular measures: an ‘open choice’ question and the so-called ‘Moreno’ scale which examines a *balance* of identities (in this case Scottish and/or British). We look, particularly, at the latest available surveys – 2014 through 2016 – for what they tell us about Scottish identity and support – or not – for independence.

Table 1: ‘Open choice’ identities in Scotland, 2014-2016

Selected identities	2016	2015	2014	2014 Born in Scotland
African/Caribbean	0.6	0.1	0.4	–
Asian	1.4	0.6	0.9	–
British	55.2	54.4	56.9	57.5
English	5.2	3.8	5.4	0.3
European	14.2	7.1	8.6	7.0
Irish	2.1	2.3	2.4	1.7

Selected identities	2016	2015	2014	2014 Born in Scotland
Scottish	79.2	79.5	78.2	93.9
Welsh	1.0	0.6	0.8	–
Other	4.5	3.1	5.5	1.1

The ‘open choice’ question is simple but powerful. Respondents are given a list of national/territorial identities and asked which, if any, they would ‘identify themselves as’. They may pick as many, or as few, as they wish. Table 1 shows the results for all respondents in 2014 through 2016, and, for 2014, the results for those respondents born in Scotland. A longstanding pattern is well captured by table 1: most people (about 80%), and especially those born in Scotland (almost 95%), identify as Scottish. Simultaneously, a very significant proportion (over half) identify as British. The other identities chosen are infrequent relative to Scottishness and Britishness. Simple arithmetic tells us that many people in Scotland feel *both* Scottish and British.

The ‘Moreno Question’ (named after the scholar – Luis Moreno (1988, 2006) – who introduced it to Scotland) investigates such dual identification. Respondents position themselves on a scale, ranging from *Scottish not British* to *British not Scottish*, with three dual identities situated in between. The question can be critiqued on a number of grounds (see, e.g., Bechhofer & McCrone, 2010; Guinjoan & Rodon, 2016) but, notably, it has produced broadly consistent results over many years, with most people in Scotland ‘prioritising’ Scottishness, but with most having some kind of dual Scottish-British identity. Figure 10.1 shows responses to the Moreno Question over the full range of Social Attitudes surveys 1999-2016.

What is striking about Figure 10.1 is that though there has been some fluctuation over the period 1999-2016, there is also underlying stability. The surveys are dominated by those choosing a (i) *Scottish not British* only identity, and by those who regard themselves as (ii) *More Scottish than British* or (iii) *Equally Scottish and British*. These three groups consistently make up 80-90% of respondents – and most year-on-year fluctuation is between these groups. If there is any substantial change it is in the modest growth of those who hold both these identities *equally*: this group has grown from around 20% of respondents in c.2000 to around 30% more recently.

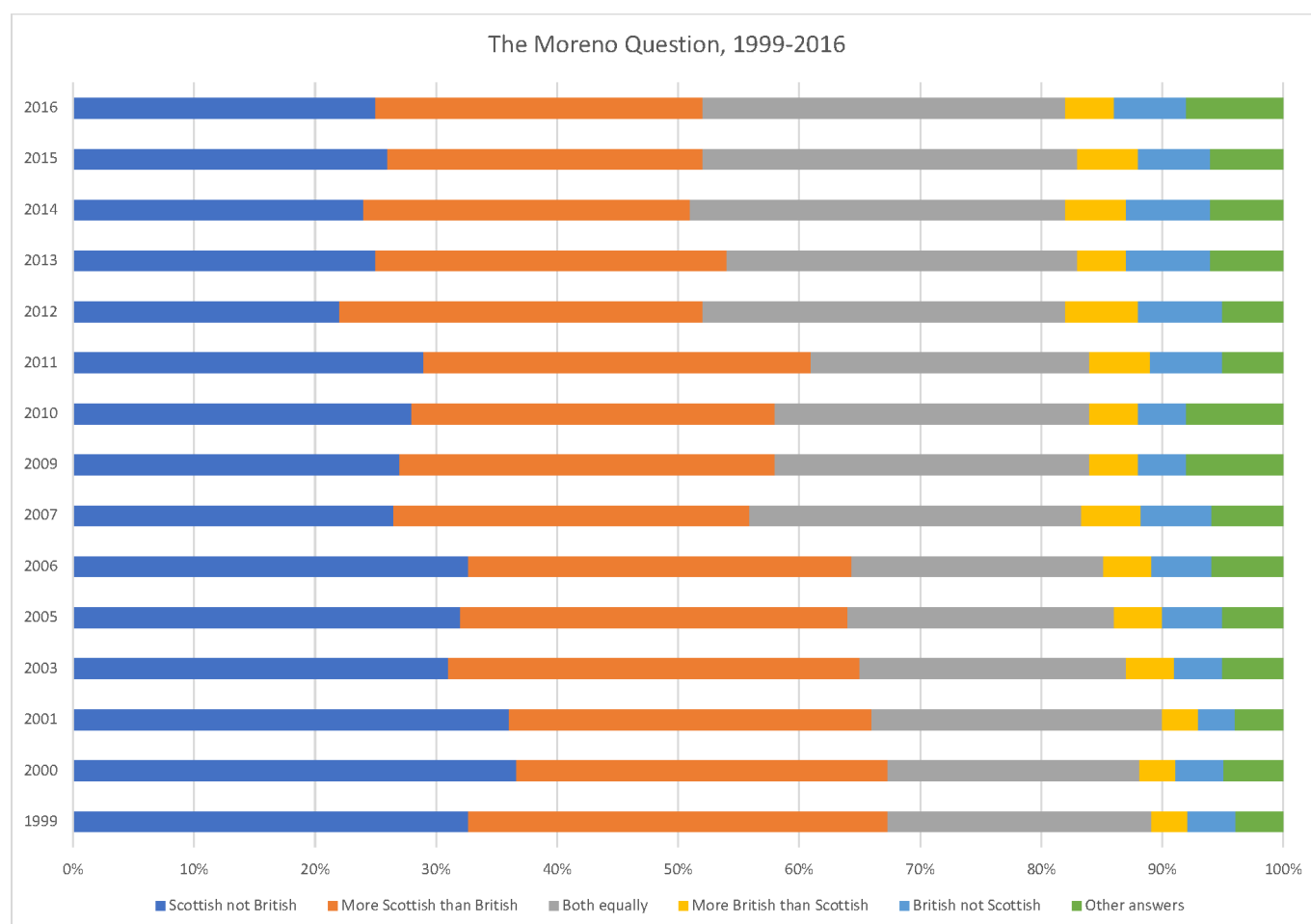


Figure 10.1: The Moreno Question in Scotland

Politics and identity

An important question here is whether it is more likely that patterns of identity have shaped Scottish politics, or that Scottish politics has shaped patterns of identity. As the data above show, identity has been broadly consistent in the 20 years after devolution, so the rapid rise of pro-independence sentiment does not seem to have shaped identity but, rather, may have been shaped by it. Certainly, the pattern of Moreno responses over the last several years does not suggest any direct and simple link between politics and identity – this is a matter of nuance rather than ‘causality.’ That is, the *extent* of Scottish sentiment does not seem to have grown, nor the *extent* of Britishness shrunk – but perhaps some of the meanings and understandings of these identities have subtly shifted?

To investigate this, we offer four time points - 2000, 2005, 2010 and 2015 - and investigate the national identities of those in favour of Scottish independence. Table 2 shows the proportion of respondents who thought (from a choice of options) that Scotland would be best governed as an independent country across the various Moreno categories. Thus, for example, in the 2000 survey 30% of respondents overall supported

independence, but this was considerably higher – 46% – amongst those who described themselves as *Scottish not British*. Conversely, support for independence in the 2000 survey was markedly lower amongst those who were *More British than Scottish* (8%) and *British not Scottish* (9%).

Table 2: Support for independence and Moreno Question (2000-2015)

	2000	2005	2010	2015
All	30	35	23	39
Scottish not British	46	51	44	66
More Scottish	27	34	24	47
Equal	14	20	9	18
More British	8	16	8	10
British not Scottish	9	22	6	18
Other	28	27	14	35

These data suggest a clear correlation between national identity and support for independence in each year, but also highlight important nuances. Those who feel *Scottish not British* are consistently those amongst whom support for independence is highest. However, a substantial minority (and in some years a majority) of this group favour other constitutional options. Indeed, the most striking change in support for independence has come amongst those feeling *More Scottish than British*. Here independence had previously been a minority preference, but in 2015 accounted for almost half this group. Amongst those where Britishness was more pronounced – not least the substantially-sized *Equally Scottish and British* group – support for independence remains relatively low. However, it was not by any means absent and, indeed, support for independence amongst such groups, whilst still modest, appears to be rising.

These trends are, perhaps, better understood by changing the order of the data – after all some of the Moreno responses (not least at the most ‘British’ end) are relatively small in terms of the number of respondents within them. So, what happens if we break down all independence supporters by Moreno categories? Which categories contribute the most supporters to the independence cause? Table 3 explores this.

Table 3: Moreno scale amongst independence supporters (2000-2015)

% by column	2000	2005	2010	2015
Scottish not British	56	47	52	45

% by column	2000	2005	2010	2015
More Scottish	28	31	31	32
Equal	10	12	10	14
More British	1	2	1	1
British not Scottish	1	3	1	2
Other	5	4	5	6
	100	100	100	100

Again, we see that the core independence constituency lies within the *Scottish not British* group. However, a substantial reservoir of support lies within those *More Scottish than British*. Further, in 2015 independence drew *half* of its supporters from groups expressing some degree of Britishness (the *More Scottish* and *Equal* groups formed 46% of all independence supporters).

There are three ‘lessons’ here for Scottish independence campaigners. First, anti-British rhetoric would be self-defeating, since around half of those favouring independence themselves feel British. Second, and linked, Scottishness and Britishness are not in competition, they are not contradictory identities. For most Scots, they are *complementary*. Third, whilst national identities do help us understand the complexities of support for independence, they are, in of themselves, deeply complex. That in 2015 a majority of the *Scottish not British* group did *not* list independence as their favoured constitutional option should always be borne in mind.

The Brexit dimension

We turn, then, to our two final issues, which may be intimately related. First, what added complexities has Brexit added to our question? Second, given the highly racialized nature of UK political culture around the Brexit campaign and its aftermath – not least the ‘hostile environment’ around immigration – how might this impact the identities of those with limited ‘roots’ in Scotland? In short, how open and inclusive are the ‘routes’ into Scottishness?

Turning first to Brexit, divisions on the EU referendum of 2016 map in complicated ways onto the divisions of the independence referendum of 2014. As Henderson et al (2020) note, the post-2016 constitutional landscape leaves Scotland split not between two ‘political tribes’ (Remainers vs Leavers) but four: *Yes-Remain*; *Yes-Leave*; *No-Remain*; *No-Leave*. And on the ‘Yes’ side of things – that is, amongst those who supported independence in 2014 – support for Scottish independence is deemed ‘more important than Brexit preferences’ (Henderson et al, 2020: 133). In short, support for independence broadly unites people across the *Yes-Remain* and *Yes-Leave* divide, a picture that is far less clear amongst those who voted ‘No’ in 2014.

This political point is underscored by our own results regarding Scotland's post-2016 'political tribes' and national identity. The identity differences we find are far more striking across the 2014 question than that of 2016, as shown in Table 4. The first thing to note of this table is the different sizes of each 'tribe', as denoted by the unweighted sample size ($n =$) at the foot of each column. It is also important to note that around one-third of respondents (31%) did not fit in any tribe, largely because they had not voted in both referendums.

In Table 4 we find very similar identity patterns on the 'Yes' side, on the one hand, and on the 'No' side on the other. Here the 'Yes' side, regardless of Brexit vote are dominated by the *Scottish not British* and *More Scottish than British* groups. Conversely both Leavers and Remainers on the 'No' side are more strikingly 'British' in their responses.

Table 4.: Moreno scale amongst 'Political Tribes' (2016)

% by column	Yes-Remain	Yes-Leave	No-Remain	No-Leave
Scottish not British	38	41	9	14
More Scottish	39	33	22	15
Equal	14	18	47	52
More British	*	4	6	4
British not Scottish	2	2	9	11
Other	8	2	7	4
	100	100	100	100
$n =$	237	128	322	169

Minority ethnic groups and independence

Debates around Brexit at a UK level have heightened questions of inclusion and belonging, not least for minority ethnic groups (on the impacts of Brexit on Scotland's Central and Eastern European migrants and their sense of belonging, see Pietka-Nykaza et al, 2020). This returns us the question of whether Scottish identity is 'inclusive' of minorities. What implications, if any, might this have for independence? Some issues here are difficult to grasp with precision. Much of the work on identities in Scotland has been, as we have reported, through the medium of the social survey. Whilst that delivers high-level and reproducible results, it is not a precision tool, and can be poor at uncovering the views of smaller minority populations who are either hard to reach, or will comprise only a small proportion of a representative sample. Nevertheless, some quantitative work can help unpick the nuances alongside more qualitative and minority targeted studies.

Certainly, there is a smaller ethnic minority population in Scotland compared to the rest of the UK: at the 2011 Census, 4% of Scotland's 5.5 million population considered

themselves ‘minority ethnic’ compared to 14% in England. Within this population, there are also different demographic dynamics. In Scotland, the largest ‘visible’ ethnic minority group were Scottish Asian populations at 2.7% (compared to 8% in England), whilst African, Caribbean and Black populations made up 0.8% (compared to 3% in England). Scotland’s 2011 census recorded notable increases in both communities since 2001: Scottish Asian populations had doubled (from 1.4%), whilst African, Caribbean and Black populations quadrupled (from 0.2%). In the coming decades, these dynamics are likely to continue and the ethnic minority population in Scotland is predicted to double from what it was in 2001, approaching 10% by the middle of the century.

There are various qualitative studies which suggest that Black, Asian, and minority ethnic (BAME) groups in Scotland, as well as minority religious groups, have been relatively likely to claim a Scottish identity. Saeed et al (1999) examined Glasgow Pakistani teenagers; Virdee et al (2006) a multi-ethnic neighbourhood; and Hopkins (2007) and Bonino (2015) focussed upon Scotland’s Muslims. Each of these found a widespread willingness to claim Scottishness, and that such claims tended to be founded on issues of place – where the respondent was born and/or brought up. These are echoed by quantitative-based studies such as Hussain & Miller (2006), which found significant Scottish identification amongst Scottish-Pakistanis and a more mixed picture amongst the England-born. Rosie (2014) examined the identity claims of survey respondents amongst BAME, migrants from England and historic religious minorities. Again, substantial identification with being Scottish was apparent, particularly amongst those ‘minority’ respondents *born* in Scotland – but small sample sizes meant that these conclusions were tentative.

Bond’s work on Scotland’s 2011 Census broadly agrees but also suggests that an erstwhile focus on Scotland’s Pakistani Muslims:

... might give a somewhat exaggerated sense of the degree to which multicultural nationalism prevails in Scotland. People in most other minority groups are significantly less likely to identify as Scottish than are Pakistani Muslims, even after accounting for the effects of other important variables. (Bond 2017: 1136).

This is an overlooked point in so far as questions of multinationalism and multiculturalism in Scotland ‘have managed to fire past each other’ (McCrone, 2002: 304). What Bond and some researchers have therefore queried is the comparative inclusiveness of contemporary nationhood in Scotland relative to England. Minimally this highlights that whilst political rhetoric may emphasise inclusivity – Michael Keating (2009: 217), for example, describes the *ideology* of the SNP as ‘impeccably civic’ – serious questions need to be asked about the delivery and limitations of such inclusivity in *practice*.

Whilst our analysis above shows that there is no simple relationship between national identity and constitutional preference, we do have some tentative evidence about BAME views on the constitutional question. One recent poll suggested that as many as 47% would vote in favour of independence in a further referendum, and 38% against (with 12% undecided and the remainder refusing to answer) (Meer, 2019). That suggests a level

of support for independence in such groups (splitting 55-45 in favour of independence when the undecided are excluded) a little higher than in the population at large.

Conclusion

What then, are the prospects for Scottish independence based on our understanding of national identities in Scotland? Firstly, it is striking that whilst support for independence has a Scottish identity at its core, this does not preclude people with British identities supporting independence. Quite the contrary, around half of independence supporters see themselves, to some degree at least, as British. To win a second referendum, the independence campaign will need to retain this *Scottish not British* core, whilst building support amongst those with British identities. Brexit may well have made that a more likely prospect. Independence supporters may differ over Brexit but appear to prioritise support for an independent Scotland over those differences. Those who voted 'No' in 2014 are more divided over Brexit, and an appeal to more multicultural and inclusive values may prove fruitful. As UK political culture around Brexit has developed in exclusionary and xenophobic directions – such as the UK Government's official 'hostile environment' around immigration – independence may yet find crucial support both amongst minority communities in Scotland and the substantial number of Scots within the *No-Remain* camp.

References

- Bechhofer, F. and McCrone, D. (2010) 'Choosing National Identity', *Sociological Research Online*, 15 (3). <https://journals.sagepub.com/doi/abs/10.5153/sro.2191>
- Bond, R. (2017) 'Multicultural nationalism? National identities among minority groups in Scotland's census', *Journal of Ethnic and Migration Studies*, 43 (7), 1121-1140. <https://www.tandfonline.com/doi/abs/10.1080/1369183X.2016.1232162>
- Bonino, S. (2015) 'Scottish Muslims Through a Decade of Change: Wounded by the Stigma, Healed by Islam, Rescued by Scotland', *Scottish Affairs* 24(1): 78-105. <https://www.euppublishing.com/doi/abs/10.3366/scot.2015.0054>
- Guinjoan, M. and Rodon, T. (2016) 'A Scrutiny of the Linz-Moreno Question', *Publius: The Journal of Federalism*, 46(1): 128-142. <https://academic.oup.com/publius/article-abstract/46/1/128/2494053>
- Henderson, A., Johns, R., Larner, J., and Carman, C. (2020) 'Scottish Labour as a Case Study in Party Failure: Evidence from the 2019 UK General Election in Scotland', *Scottish Affairs*, 29(2), pp127-140. <https://www.euppublishing.com/doi/abs/10.3366/scot.2020.0313?journalCode=scot>
- Hopkins, P. (2007) '“Blue Squares”, ‘Proper’ Muslims and Transnational Networks: Narratives of National and Religious Identities among Young Muslim

Men Living in Scotland', *Ethnicities* 7(1): 61–81. <https://journals.sagepub.com/doi/abs/10.1177/1468796807073917>

Hussain, A., and W. Miller (2006) *Multicultural Nationalism: Islamophobia, Anglophobia, and Devolution*, Oxford: Oxford University Press. <https://oxford.universitypressscholarship.com/view/10.1093/0199280711.001.0001/acprof-9780199280711>

Keating, M. (2009) 'Nationalist Movements in Comparative Perspective', in G. Hassan (ed), *The Modern SNP: From Protest to Power*, Edinburgh: Edinburgh University Press. <https://edinburghuniversitypress.com/book-the-modern-snp.html>

Kiely, R., F. Bechhofer, R. Stewart, and D. McCrone (2001) 'The Markers and Rules of Scottish National Identity', *Sociological Review* 49(1): 33–55. <https://journals.sagepub.com/doi/10.1111/1467-954X.00243>

McCrone, D. (2002) 'Who do you say you are? Making sense of national identities in modern Britain', *Ethnicities* 2(3), 301–320.

McCrone, D. & Bechhofer, F. (2015) *Understanding National Identity*, Cambridge University Press. <https://journals.sagepub.com/doi/10.1177/14687968020020030201>

Meer, N. (2019) *Survation* 'Scotland BAME Poll Prepared on the behalf of N. Meer, 12 September'. <https://www.survation.com/wp-content/uploads/2019/10/University-of-Edinburgh-BAME-Poll-2019-Final-Tables.xlsx>

Moreno, L. (1988) 'Scotland and Catalonia: the path to home rule', in D. McCrone & A. Brown (eds), *Scottish Government Yearbook, 1988*, Unit for the Study of Government in Scotland, Edinburgh. <http://www.scottishgovernmentyearbooks.ed.ac.uk/record/23014>

Moreno, L. (2006) 'Scotland, Catalonia, Europeanization and the 'Moreno Question', *Scottish Affairs*, 54: 1–21. <https://www.euppublishing.com/doi/abs/10.3366/scot.2006.0002>

Pietka-Nykaza, E., M. Leith and C. Clark (eds) (2020) 'Special Issue: Scotland and Brexit – Citizenship, Identity and Belonging', *Scottish Affairs*, 29 (3). <https://www.eupublishing.com/doi/full/10.3366/scot.2020.0324>

Rosie, M. (2014) 'A' the bairns o' Adam? The ethnic boundaries of Scottish national identity', in J. Jackson & L. Molokotos-Liederman (eds), *Nationalism, Ethnicity and Boundaries*, Routledge, London. <https://www.routledge.com/Nationalism-Ethnicity-and-Boundaries-Conceptualising-and-understanding/Jackson-Molokotos-Liederman/p/book/9781138359383>

Saeed, A., N. Blain, and D. Forbes (1999) 'New Ethnic and National Questions in Scotland: Post-British Identities among Glasgow Pakistani Teenagers',

Ethnic and Racial Studies 22 (5): 821–844. <https://www.tandfonline.com/doi/abs/10.1080/014198799329279>

Virdee, S., C. Kyriakides, and T. Modood (2006) 'Codes of Cultural Belonging: Racialised National Identities in a Multi-Ethnic Scottish Neighbourhood', *Sociological Research Online* 11 (4). <https://journals.sagepub.com/doi/abs/10.5153/sro.1424a>



Would independence lead to different social and equality policies? The example of disability and care

Kirstein Rummary

Introduction

Around one fifth of Scotland's population define themselves as disabled, and they experience substantial inequality. Only 50% of disabled people of working age are in employment, compared to 80% of the non-disabled population. One quarter of Scottish families with disabled members are living in poverty, compared to 16% of families without a disabled member (Scottish Government, 2015). One in six adults in Scotland is providing unpaid care to a disabled family member.

This inequality has a profound impact on carers' and disabled people's risk of, and experience of poverty, ill-health and mental illness. Half of carers are struggling to pay basic utility, rent and food bills, and 80% report that their physical health is affected by caring (Carers UK, 2020). There is also a gender inequality in caring: 59% of carers are women. Overall, carers save the Scottish economy around £10bn a year: nearly the whole

cost of providing NHS services. Because of caring responsibilities, women in Scotland form 75% of the part-time workforce, and they earn 33% less than men who are working full-time. This is therefore not a minority issue: the wellbeing of Scottish disabled people and carers has a profound effect on their own equality, on the economy, and on the social and political landscape.

Social policies to support them fall into two main categories. Firstly, welfare policies are essentially income-based: benefits designed to mitigate the cost of disability, or to replace income from paid work. Currently these are set at the UK level, but following recent changes will be set at a Scottish national level for disabled people and carers. Secondly, social care policies are about the provision of care and support to enable independent living for disabled people, and support and respite for carers. These are funded and provided at a local authority level, and there is some variation in the eligibility for and provision of support across Scotland's 32 local authorities.

In this chapter the development of welfare and social care policies after the 2014 independence referendum will be discussed. This will be followed by some speculation on the possibilities that could be offered by independence, based on the record of the Scottish Parliament and Scottish Government to date in these areas, and the international evidence from developed welfare states in Europe,

Social policy in disability and care in Scotland since 2014

Much of the Scottish Government's (2013) White Paper on independence, *Scotland's Future*, made claims that an independent Scotland would be 'fairer': that it would reverse unpopular UK policies, for example by diverting funding away from nuclear weapons towards childcare. These promises were predicated on the idea that the Scottish electorate was substantially in favour of progressive social policies and would therefore vote for a vision of independence that was seen to be 'fairer' than remaining in the UK. As we now know, not enough people were persuaded by this vision to deliver a majority vote for independence.

However, immediately after the 2014 referendum it was clear there was an appetite in Scotland for the further devolution of powers, particularly to address equality issues, not least because of the 'vow' made by unionist political leaders promising the Scottish Parliament more control over social policy. The Smith Commission – the cross-party process set up to secure agreement on a new devolution settlement – took submissions from over 14,000 organisations and individuals. Most of these were from the third sector, and some of the most persuasive on issues of welfare benefits and care services came from organisations working in the area of disability rights. The two pro-independence parties, the Scottish National Party (SNP) and Scottish Green Party, as well as many civic organisations, strongly advocated devolution of the full range of taxation and welfare powers, to control economic growth and develop what was claimed to be a 'fairer'

welfare system (Smith Commission, 2014). However, the pro Unionist parties were cautious about the development of differentiated welfare systems across the UK.

Eventually, a number of social security benefits – including Disability Living Allowance/Personal Independence Payments, Attendance and Carers Allowances, and Universal Credit – were devolved to the Scottish Government alongside a significant increase in tax-raising powers and responsibilities. The Scottish Government was already in control of social care and health funding for disabled people through the administration of the block grant. The Scotland Act 2016 enabled the Scottish Parliament to take control of 11 new welfare benefits affecting disabled people and carers, and a new Social Security Scotland agency was created within the Scottish Government in 2018. The Scottish Government now has considerable leeway to vary the administration and delivery of welfare, care and support to disabled people and carers. To a certain extent, the full development of new policies has been delayed by Brexit and Covid-19, but in preparing to exercise these new powers there have been several indications that the Scottish Government intends to take a different approach to care and welfare than the UK Government has to date.

Firstly, there is an even stronger commitment to the cooperative production of policy (see the chapters by Escobar and Cairney in this volume for an analysis of policy-making and participation). ‘Experience Panels’ of users of social security benefits have recruited over 2,000 volunteers to work over a four-year period to shape the social security system. The design of new grants for young carers was prioritised by the panels, and Carers Allowance has been increased to bring it in line with Job Seeker’s Allowance. Following expert testimony from academics and disability organisations, the use of third-party private sector organisations to undertake assessments for both the ESA component of Universal Credit and DLA/PIP has been expressly ruled out. The third sector and wider civic society is expressly involved in both the formulation and the implementation of policy to a far greater extent than at Westminster. However, to date, this has not resulted in the commitment to radical new policies such as Universal Basic Income (payments to all citizens regardless of income, need or labour market participation) which have been trialled but not rolled out (with full roll-out involving wider powers over welfare policy than are presently devolved) (see <https://basicincome.scot/>). This is in part due to an incremental and pragmatic approach to policy making (see Cairney’s chapter in this volume). No political party has much incentive to develop or instigate radical or untested policies that might not prove popular with the electorate.

Secondly, there already had been some deviation in the delivery of social care to disabled people and carers with the development of Self-Directed Support, introduced in April 2014 by the Social Care (Self Directed Support) (Scotland) Act 2013. This enabled those who need social care support to opt to receive it as a cash payment, employing their own carers; to allocate it to an organisation; to allow local authorities to commission services; or a mixture of these. These options cover the whole of Scotland and contrast with the rest of the UK, where the personalisation of social care remains encouraged but optional, and the form of its provision is left to local authority discretion.

However, unlike in the case of welfare benefits, disabled people and carers do not have the right to access a particular level of income or service. Their rights are highly contingent on the discretion of front-line professionals to assess needs, and of local authorities to set criteria for accessing services. Just as in the rest of the UK, healthcare for disabled people and carers is funded by national taxation and social care partly through local taxation. Welfare benefits are set nationally at the UK or Scottish level. Crucially, particularly for social care, Scotland is not immune to the impact of reduced funding to local authorities in the post-2008 austerity regime. The Scottish Government could have mitigated this by substantially increasing funding to local authorities, or by removing the responsibility for social care from local authorities and creating a national set of social care rights similar to welfare benefits. So far it has not opted to do so, and responsibility remains at the local authority level.

Criteria for services have thus been drawn so tightly that only those disabled people at 'significant risk' receive Self-Directed Support. In addition, despite the intention being to make it available to unpaid carers, take-up has been negligible. Again, the Scottish Government does, in theory, have the power to invest considerably more in social care than it does already by raising the levels of the block grant to local authorities, or by keeping social care funding at national rather than local authority level. Doing so without substantially redesigning the policy landscape, however, would probably mean moving funding from the NHS in conjunction with raising local taxation to enable local authorities to invest more in social care. Neither of these options is particularly palatable to the electorate, particularly middle-income voters who benefit the most from the universal nature of the NHS and who would be required to pay more in local taxation for increased levels of social care services. As a result, policy has not developed in particularly radical ways.

The impact of Brexit and Covid-19 on Scottish policymaking for disabled people and carers

In the post-2014 political climate, there has been a strong incentive for the SNP to demonstrate that it is capable of good governance, to maintain and grow political capital. This is particularly so in light of issues such as the Brexit referendum in 2016 where Scotland (and Northern Ireland) voted to remain in the EU, at odds with the electorate in England and Wales. In contrast, the Unionist parties arguably have a strong political incentive to show that Scottish social policy is the same as the rest of the UK, demonstrating that equity across the whole of the UK is preferable.

Recent figures suggest that long-term care spending in Scotland is not being reduced on quite the scale that austerity-driven budgets have dictated in the rest of the UK. In real terms, spending on long-term care has decreased in England by 35% and in Scotland by only 7%. The efforts by the Scottish Government to mitigate the severity of cuts, as well

as its commitment to raising taxes for the wealthiest and changing the design of welfare (Hassan and Barrow, 2019), indicate that the Scottish Government is willing to make different choices than the UK Government. This pro-welfare approach is likely to benefit disabled people and carers. However, the cost implications of Brexit are likely to make the post-2008 austerity regime imposed on public sector spending look mild in retrospect.

Covid-19 has also demonstrated that disabled people and carers in Scotland are no more protected from policy weaknesses and failures than those in the rest of the UK. The initial decision to keep in step with the UK government on the timing of lockdown, and to allow hospitals to discharge elderly and disabled patients straight into care homes without testing or protective equipment for care workers was, with hindsight, a mistake (Bell et al, 2020). However, it was the result of a split between state and private provision of social and nursing care that is the result of the 1990 NHS and Community Care Act. This legislation, and subsequent reforms, meant that residential care is largely commissioned from the private sector rather than being directly provided by the state. The results of this policy since the reforms of health and social care services in the early 1990s are broadly the same in Scotland as the rest of the UK. Thus, devolution has not seen substantial differences in the provision of private versus state residential care. There is little the Scottish Government can do to ensure the private sector complies with guidance without using punitive legislative measures which might have destabilised the sector during the pandemic.

Research from the third sector in Scotland indicates that during the Covid-19 lockdown around 30% of disabled people had formal community-based social care support withdrawn completely, and 40% have taken on new caring responsibilities without support due to Covid-19. Around two-thirds of disabled people struggled to get access to basic food and supplies: many of them fell outside the 'shielding' group that were particularly vulnerable to Covid and received formal help from the NHS and local authorities (Inclusion Scotland, 2020). This is broadly in line with the experience of disabled people and carers in the rest of the UK (Inclusion London, 2020). Whilst pressure from the third sector meant that British Sign Language interpreters were used in Scottish Government daily briefings, the UK Government resisted similar pressure. However, a more sustained approach to involving disabled people and carers' organisations in Covid-19 policy and planning, particularly in planning for future services at local and national level, does not appear to be more evident in the Scottish Government and Scottish local authorities than it is in the rest of the UK.

To summarise, social policy for disabled people and carers since 2014 has deviated somewhat from UK Government policy. However, the deviation has not been particularly radical. The problem of the separation of funding and powers between the nationally funded NHS and locally funded social care remains. Welfare benefits for disabled people and carers may well become more generous and be administered differently, but there is no indication that they will depart radically from the system of work-related capacity and eligibility already in place in the UK. There are no explicit plans to introduce radical changes to the system of funding and delivery of support,

such as Universal Basic Income or a National Social Care Service, or moving substantial funding from the delivery of acute health to community-based social care services.

There are calls from the third sector for such policies to form part of the post-Covid policy landscape, but at the time of writing there have been no firm commitments from the Scottish Government or legislative proposals for the autumn 2020 parliamentary session from the SNP as ruling party. This is not necessarily down to the Scottish Government not having sufficient control over the policy levers to deliver radical change, although that is part of the issue. A more compelling explanation is due to political pressure. At the time of writing, the SNP along with other parties were preparing for the 2021 Scottish Parliament elections. No political party is likely to be elected on a very radical policy platform that would fundamentally alter the funding and delivery of welfare benefits and support for disabled people and carers if such proposals do not directly benefit middle-class 'swing' voters. It may be that post-Covid, the failure of social care services to properly support many disabled people and carers through the pandemic will hold electoral power, particularly if opposition parties can offer more radical but palatable solutions than the status quo.

The possibilities of independence

International comparative social policy research on welfare systems that have better equality outcomes for disabled people and carers than in the UK demonstrate that they have several key components (Rummery et al, 2021).

Firstly, the ideological commitment to gender equality is often enshrined within national constitutions. For example, the Swedish constitution states that 'Equality between women and men is a fundamental constitutional norm' (Swedish Gender Equality Agency, 2018). This means that the development of all welfare and social care policies must be done in a way that does not exacerbate gender inequality. Most explicitly, any policies that lead to the unpaid care of disabled people being undertaken by women are subject to intense scrutiny. All developed welfare states with better gender and disability equality outcomes than the UK have used this constitutional framing to ensure that there is state investment in the provision of social care services, minimal reliance on unpaid care without adequate compensation through the welfare and/or social care system, and that formal carers are relatively well paid (Rummery et al, 2021). Moreover, some welfare states such as Iceland enshrine the right to access formal services to meet needs (which includes social care) specifically to avoid the provision of such services being a private or family obligation. This would have a profound effect on the lives and equality issues faced by disabled people and family carers in Scotland.

At the moment there is no such ideological or political commitment underpinning policymaking in Scotland; nor, due to the nature of the UK constitution, could there be, unless the creation of a new country necessitated the creation of a new constitution. This means that without independence there are not many constitutional levers that

can be used to instigate the radical policy changes that would be needed to address the inequality faced by disabled people and carers.

Secondly, both UK and international evidence indicates that the reasons for the poverty and inequality that disabled people and carers face is multi-faceted, and needs joined-up policy solutions to tackle it (EHRC, 2018). It is caused by lack of opportunities to access education, training and work as well as low levels of welfare benefits, low levels of pay for carers, and very low levels of welfare benefits for unpaid carers. Full control over economic, taxation, work and welfare policies is needed to tackle it systematically. To date, the Scottish Government has only had partial access to some of the levers it needs to develop and implement the radical policies needed to address the complex and multi-level causes of inequality.

Thirdly, both the UK and Scotland have to date not developed substantial institutions such as government departments explicitly tasked with equalities, with powers and budgets to effect substantial change. Iceland and many European welfare states with better gender equality outcomes than Scotland and the UK have dedicated ministries with cabinet responsibilities for equality (Engeli and Mazur, 2018). The UK and Scotland instead have chosen to use 'soft' policy instruments such as equalities impact assessments which are intended to mainstream equalities throughout each spending department. However, the evidence that this approach improves equalities outcomes is not persuasive. When equality outcomes are the responsibility of every department, they are likely to receive less attention unless there are additional powerful policy levers. This makes equalities the hostage of political fortune rather than embedded into the policy architecture. Independence would provide a window of opportunity to create a dedicated equalities architecture mirroring constitutional promises. However, just because the opportunity is there does not mean that it would be taken. Equalities may well not be high on the political agenda during the negotiation of a constitutional settlement.

Finally, whilst it is not necessarily possible or desirable to transfer policies wholesale from one context to another, the international evidence also indicates that you do not need have a 'Nordic' type of social democratic policy to achieve better equality outcomes for disabled people and carers than the UK. Several models in developed welfare states such as Germany and the Netherlands are predicated on a mixed economy of welfare, with partnership in delivery of benefits and social care shared between employers, the state and individuals. These models could easily be transferred to the social and economic policy context of the UK if there were the political will and appropriate constitutional powers to do so. It is very unlikely given the current political system in the UK that this would be a possibility, but it would be possible within an independent Scotland.

Conclusion

Independence would give Scotland the policy levers that are necessary to tackle disabled people's and carers' poverty and inequality. The Scottish Government would have control over taxation, education, employment, welfare, and health and social care to

create joined up solutions to the issue of inequality. It would also provide a window of opportunity to change the policy landscape in radical ways, such as creating national-level social care rights for disabled people and carers, and replacing welfare benefits with graded Universal Basic Income that was not means-tested or contingent on labour market withdrawals.

However, these levers on their own would not be sufficient to address the inequality faced by disabled people and carers. A sustained commitment to radical policy reform in both welfare benefits, pay and conditions of care workers, and particularly the funding and delivery of social care would also be necessary. There is no evidence that Scottish policy makers are particularly radical. Most policy deviance since devolution in 1999 has either been in areas where Scotland previously had different policy systems (e.g. education and crime policy) or has been incremental variation on UK policies (such as free personal care – which does not change the criteria for accessing services, nor their availability, but simply removes service charges for a narrow range of services) rather than radical change (Rummery, 2016).

However, we do not know how radical the electorate would be prepared to be in an independent Scotland compared to a devolved Scotland. On the one hand, it may well be in particular that statewide parties such as Labour and the Liberal Democrats, freed from the need to demonstrate policy congruence with the rest of the UK, would put forward and get electoral success with a far more radical approach to policy than has henceforth been possible. On the other hand, it may be that the inevitable costs associated with gaining independence would lead to a shrinking of the appetite for the radicalism that would be needed to tackle inequality for disabled people and carers.

Independence would give Scotland the possibility of radical change to address inequalities, but it would take wider political commitment to turn that possibility into the changes needed.

References

- Bell, D., D. Henderson and E. Lemmon (2020) *Deaths in Scottish care homes and COVID-19*, International Long Term Care Policy Network. <https://dspace.stir.ac.uk/handle/1893/31237#.X1PGTXIKg55>
- Carers UK (2020) *Hearts and Minds: the health effects of caring*, York: Social Policy Research Unit. http://eprints.whiterose.ac.uk/99752/1/Hearts_Minds.pdf
- EHRC (2018) *Is Scotland Fairer?* EHRC. <https://www.equalityhumanrights.com/sites/default/files/is-scotland-fairer-2015.pdf>
- Engeli, I. and Mazur, A., (2018) 'Taking implementation seriously in assessing success: the politics of gender equality policy', *European Journal of Politics and Gender*, 1 (1-2):119-129. <https://www.ingentaconnect.com/content/bup/ejpg/2018/00000001/f0020001/art00007>

Hassan, G. and Barrow, S. (2019) (eds) *Scotland the Brave: Twenty years of change and the future of the nation*, Edinburgh, Luath Press. <https://www.luath.co.uk/politics-and-current-issues/scotland-the-brave>

Inclusion London (2020) *Abandoned, Forgotten and Ignored: the impact of Covid19 on disabled people*. <https://www.inclusionlondon.org.uk/wp-content/uploads/2020/06/Abandoned-Forgotten-and-Ignored-Final-1.pdf>

Inclusion Scotland (2020) *Initial Findings of Inclusion Scotland's Covid-19 Survey*. <https://inclusionscotland.org/wp-content/uploads/2020/04/Initial-Findings-Report-.pdf> accessed September 2020

Rummery, K. (2016) Social Policy in a Devolved Scotland: Different, fairer? in McTavish, D. (ed) *Politics in Scotland*, London: Routledge. <https://www.taylorfrancis.com/books/e/9781315678672/chapters/10.4324/9781315678672-9>

Rummery, K., McAngus, C. and Edwards, A. (2021) *What Works in Improving Gender Equality: International best practice in childcare and long-term care policy*, Bristol: Policy Press. <https://policy.bristoluniversitypress.co.uk/what-works-in-improving-gender-equality>

Scottish Government (2015) *Scotland's Carers*, Edinburgh: Scottish Government <https://www.gov.scot/publications/scotlands-carers/>

Smith Commission (2014) *Report of the Smith Commission for further devolution of powers to the Scottish Parliament*. http://www.smith-commission.scot/wp-content/uploads/2014/11/The_Smith_Commission_Report-1.pdf

Swedish Gender Equality Agency (2018) *Sweden's Gender Equality Policy*, Angered. <https://www.jamstalldhetsmyndigheten.se/en/about-gender-equality>



In what ways have the immigration issues raised by Scottish independence changed since the 2014 referendum?

Sarah Kyambi

Introduction

What is notable when considering how immigration-related issues have changed is not only how much the context has changed since the referendum on Scottish independence in 2014, but how uncertain the impacts of those changes still are. The two biggest changes, the Covid-19 (coronavirus) crisis and the UK leaving the EU, would have seemed remote possibilities in 2014. Now they dominate the political and policy landscape. The potential impacts of these two events on immigration issues remains uncertain in the event of a future referendum. This chapter argues that while upheavals are possible, as things stand, the substance of probable future policy looks remarkably unchanged. The chapter focuses mainly on policies relating to labour migration.

Covid-19 and migration

At the time of writing it is too early to tell how the Covid-19 crisis will impact on migration, and the policies seeking to direct it. Much will depend on the size and shape of the economic recovery, particularly the labour market (see the chapters by Bell, and Roy & Eiser, in this volume).

The Migration Data Portal assessment (2020) notes that ‘migrants - particularly in lower paid jobs - may be both more affected by and vulnerable to the spread of COVID-19... but migrants also play an important role in the response to COVID-19 by working in critical sectors.’ This looks to be true for the UK. Migrants tend to be more affected than the general population when labour demand falls, experiencing higher rates of unemployment (Papademetriou, Sumption and Somerville, 2009). If unemployment rises, there will be pressure to fill jobs with UK workers and restrict labour migration. But whether the UK workforce will be available to fill those vacancies will depend on levels of labour market mismatch. Will UK workers in particular regions or sectors be willing to move to where the jobs are?

The Covid-19 crisis has highlighted the importance of ‘essential workers’, often on lower wages, such as those working in care homes and supermarkets. Migrants make up a significant proportion of workers in sectors described as ‘essential’ during the initial lockdown. One may have expected this appreciation of key workers to shape immigration policy going forward. However, as yet, there have been no changes to the proposals for the UK’s new points-based immigration system to reflect this (Home Office, 2020b). The proposed UK immigration system favours selection of migrant workers with higher qualifications and higher pay, with few exceptions. Nonetheless, Mr Johnson’s Government may be more open to a less restrictive approach than his predecessors, as indicated by the scrapping of the migration target in July 2019. It is therefore possible that shortages in particular sectors will be addressed through shortage occupation lists and other sectoral or seasonal programmes.

The effect of Covid-19 on the supply side is unclear. Global predictions identify highly skilled migrants potentially postponing plans to move (OECD, 2020). The extent to which international migration may be restricted due to public health concerns, actual or perceived, if migration is linked to the spread of infection is another area of uncertainty that makes predictions difficult.

Migrants are affected by Covid-19 in other ways too. Migrants have less access to welfare support and less eligibility for services, including healthcare. Furthermore, as a more disadvantaged group, migrants are more likely to live in overcrowded housing, which makes social distancing and self-isolation more challenging. Barriers to accessing services and support hampers public health and other responses, resulting in poorer outcomes if infected. This combination of factors is identified as contributing to disproportionate deaths and higher infection rates among Black, Asian and Minority Ethnic (BAME) groups (Public Health England, 2020).

As on other immigration issues, the Scottish Government's view on how best to respond to the migration-related aspects of Covid-19 is less restrictive than that of the UK Government. Scotland's Minister for Public Finance and Migration, Ben MacPherson, wrote to the UK Home Secretary Priti Patel on 15 May 2020, urging her to grant all migrants Leave to Remain or, at the very least, suspend the application of the No Recourse to Public Funds (NRPF) rule and the Habitual Residence Test to ensure everyone in the UK was able to access vital services during the crisis (Scottish Government, 2020b). The Home Secretary declined the request, countering that existing measures and assistance under the Coronavirus Job Retention Scheme and the Self-Employed Income Support Scheme were sufficient as neither scheme is classed as 'public funds' and migrants subject to the NRPF rule would be entitled to access them if eligible.

Brexit and migration

With Brexit it has become more plausible to argue that there will be a need for some form of border control between Scotland and the UK should Scotland become an independent country (see the chapter by McEwen in this volume). In 2014 the expectation was that an independent Scotland would either continue to be, or seek to become, an EU member state. And that it would remain part of the Common Travel Area (CTA), an arrangement between the Irish and British Governments that facilitates free travel for their citizens in both territories (see below). There was disagreement on the scale of the challenge that managing borders, citizenship and immigration would pose for Scotland as an independent country. But the assumption was that Scotland and the UK would continue to operate within shared international frameworks (EU free movement law, CTA) that provide a great deal of commonality. Now, that underpinning legal geography has changed: the UK is no longer an EU member state. And while the CTA looks set to continue, the practical challenges of operating it will increase as a greater number of persons will have free movement in one territory, but not the other.

1. Common Travel Area

The CTA outlives Brexit with a Memorandum of Understanding signed in 2019 between the British and Irish Governments to take all necessary steps to ensure that CTA rights and privileges remain protected (Cabinet Office, 2019). This suggests scope for an independent Scotland to similarly remain part of an arrangement that keeps travel open across the British Isles. However, it is difficult to see how this would operate alongside membership of Schengen for which the UK and Ireland have secured an 'opt in opt out' agreement. The expectation is that States joining the EU agree to eventual Schengen membership. If a similar accommodation cannot be reached, then Scotland may find itself having to choose between membership of the EU and membership of the CTA. Otherwise, unless both systems are substantially the same, it is difficult to see how a common external border can be achieved with two differently delineated, but overlapping, open border zones.

Pre-dating the EU, the CTA allows citizens of both countries rights to travel and reside in either jurisdiction and supports this through a package of rights and entitlements including access to employment, social security, education, healthcare and voting rights. Open travel currently means checks are applied differently by different authorities. Passport checks are generally operated at airports and for some sea crossings, although citizens of either state are exempt from immigration control (Wilkins, Curtis, Gower and McGuinness, 2019). Crucially, the CTA does not provide nationals of third countries in either territory rights to enter or reside in the other. With the UK set to operate different immigration rules at the end of the transition period, it is expected that EEA nationals without settled status will become subject to some level of immigration control in the UK – although not for travel or short-term stays.

For the CTA, much will depend on the extent to which EEA nationals entering Ireland will use this as a route for unauthorised entry into the UK. Arguably, even once transition arrangements end, EEA nationals seeking to stay in the UK without leave will do so by overstaying rather than travelling through Ireland (Butler and Barrett, 2018). Consequently, it is difficult to predict the scale of any difficulty this could pose, let alone hypothesise the possible solutions that States may put in place. Past practice also shows scope for operating bilateral agreements and selective border checks within the CTA where immigration regimes diverge with respect to a limited number of third countries. But the question remains to what extent unauthorised crossings will increase and whether the flexible and evolving nature of CTA arrangements can provide responses viewed as sufficient.

Applying the same reasoning to a newly independent Scotland, membership of the CTA would keep the movement of UK and Scottish citizens open across the UK-Scottish border. But there may need to be arrangements made for controlling the movement of third-country nationals who would likely have rights to reside and work in Scotland, but not the UK. This looks set to be a more complex and more divergent situation than in 2014, but not necessarily one without flexible solutions. The continued operation of the CTA post-Brexit provides something of a test case for how well this could work (provided Scotland can secure a Schengen opt-out similar to Ireland's). However, geography complicates the transferability of the Irish case. The Scottish-UK border being mainly a land border will pose greater difficulties in terms of overseeing crossings, given the greater number of crossing points than for arrivals by sea and air between Ireland and the UK.

Finally, historically the CTA has tended to pull Irish immigration policy into line with UK preferences in order to operate a broadly similar system, obviating the need for border controls (Ryan, 2003). If an independent Scotland became a CTA member, it would be interesting to see whether this will similarly pull Scotland's immigration policy into closer alignment with that of its larger neighbour. Or, whether this situation will be reversed, with the UK's immigration policy pushed into alignment with the EU by virtue of its CTA partners' EU membership (actual or aspired).

2. The border issue

As noted above, at a future Scottish independence referendum, the difficulties concerning border control and immigration share similarities to the operation of borders between the UK and Ireland under the CTA. This may not require controls at the physical border, but divergence between immigration regimes will necessitate some form of immigration enforcement. These may take the form of border controls, in-country controls (such as restrictions of rights to work or access welfare or services being checked by employers and service providers) or a mix of both.

The publication of immigration proposals by both the UK and the Scottish governments in early 2020 shows continued divergence in immigration policy goals. The UK's plans for its future points-based immigration system introduce an English-language requirement, skill and salary thresholds for all labour migrants (including EEA nationals), and a reduction of EEA migrants' family rights to the level required by UK law, which uses a narrower definition of family and requires minimum maintenance thresholds (Home Office, 2020a).

Discussion of the impact of the proposed system before the outbreak, showed the Scottish Government in favour of a less selective approach and more concerned about the impact on sectors like care, agriculture, and hospitality which combine lower rates of pay with higher proportions of migrant workers. By contrast, the Scottish Government's proposals on migration assert a desire to attract and retain migrants, to operate an immigration system that allows migration to Scotland from across a wider range of skill and salary levels, and to review migrants' family and naturalisation rights to better support retention and settlement (Scottish Government, 2020a). Scotland, if seeking to re-join the EU, would lean towards minimal restrictions on EEA nationals coming to Scotland, and as a member state would be required to permit free movement of EEA nationals (Scottish Government, 2013). The further these systems diverge, the greater the potential need for enforcement activity, whether at the border or elsewhere.

Public attitudes on migration

One development that makes flexible solutions more possible is the change in public attitudes to migration since the Brexit vote. Public concerns about immigration are seen by many as a key driver behind the 2016 Brexit vote and a core argument of the leave campaigns (Boswell, 2016). It is arguable that the desire to assuage such concerns has motivated an approach to Brexit that rejects the free movement of persons and proposes a future UK immigration system that rejects preferential treatment of EEA nationals. However, polling data shows a softening of public attitudes and decline in the salience of immigration as a topic of concern in recent years (Blinder and Richards, 2020).

In Scotland, this softening of attitudes could cement a more positive rhetoric on migration. This is arguably reflected in attitudinal data, which shows more widespread understanding of migration's benefits than in England and Wales, even if appreciation

of immigration's benefits does not necessarily translate into support for it (Migration Observatory, 2014). Pre-Covid-19, this more positive approach chimed with Scotland's economic and population needs, as well as the sense that immigration offers Scotland social and cultural benefits (Expert Advisory Group, 2019). Scottish Government proposals consistently suggest a preference for an approach to migration that is less restrictive than current UK policy. By contrast, the UK Government remains determinedly restrictive, justifying this on the basis of public hostility and its 2019 electoral mandate. The softening of public attitudes, combined with the economic upheaval of Brexit and Covid-19, may provide the political space for policy to be changed at the UK level, particularly if labour shortages bite.

Scottish citizenship

It is possible that the UK leaving the EU will also have consequences on how prospective Scottish citizenship is to be defined. In 2014 the suggested definition was broad: including British citizens habitually resident in Scotland, Scottish-born British citizens living outside Scotland, and allowing citizenship acquisition by descent, demonstrable connection to Scotland and naturalisation (Scottish Government, 2013). Yet this proposal may have been underpinned by knowledge that the practical consequences of this inclusive approach seemed remote. At the time, those resident outside Scotland who would have become eligible for Scottish citizenship may have been unlikely to relocate to a newly independent Scotland, even if they did avail themselves of Scottish citizenship.

It is difficult to predict how that calculus may change with Brexit underway. One might expect that more migration to Scotland from the rest of the UK would be desirable, particularly in the context of Scotland's demographic challenges. Yet in practice this may be influenced by the age profile of potential returning citizens. If citizens are older, their return could exacerbate, rather than alleviate, population ageing. The question of how to delimit citizenship is a fraught one. An inclusive approach to citizenship chimes more closely with the current narrative that paints Scottish nationalism as civic, rather than ethnic (see the chapter by Rosie and Meer in this volume). Although it is unlikely, it is possible that a significant enough change, or expected change, may yet alter Scotland's approach to citizenship.

Conclusion

Brexit and the Covid-19 crisis hold potential for significant change in how immigration is approached by an independent Scotland. But too much remains uncertain to make any confident predictions regarding the eventual impact of either. The possibility of securing a Schengen opt-out looks critical in framing the choices ahead for Scotland, such as how to operate its borders with the UK and how to determine its immigration system in a way that allows freedom to travel and reside with the EU and the UK simultaneously. Without an opt-out it is difficult to see how solutions to these two issues can be secured,

although the CTA's near hundred-year history of developing flexible approaches cautions against ruling out further innovation.

In terms of Scotland's future immigration system, the Scottish Government has been consistent in making proposals that favour a less restrictive system. Proposals and discussion papers on migration include less emphasis on selection and arguments in favour of lowering salary and skill thresholds for labour migration. There has been consistent emphasis on the role migration could play in addressing population decline and in sustaining more remote locations, as well as encouraging migrant retention and settlement through more generous family rights and routes to settlement. The demographic driver of this looks unlikely to change. The impact of the Covid-19 crisis on the economy, particularly labour demand, is still unclear. However, it seems sensible to expect the direction of travel to remain broadly the same, particularly if the softening of public attitudes remains sustained. Nonetheless, in the current context, it is still possible for significant shifts to materialise.

References

Blinder, S. and Richards, L. (2020) *UK Public Opinion Towards Immigration: Overall attitudes and level of concern*, Migration Observatory, University of Oxford. <https://migrationobservatory.ox.ac.uk/resources/briefings/uk-public-opinion-toward-immigration-overall-attitudes-and-level-of-concern/>

Boswell, C. (2016) 'Migration: would limiting the free movement of labour be good or bad?' in Jeffery, C. and Perman, R. (eds) *Britain's Decision: Facts and impartial analysis for the EU referendum on 23 June 2016*, Centre on Constitutional Change and Hunter Foundation. <https://www.thehunterfoundation.co.uk/wp-content/uploads/2016/04/Britains-Decision.pdf>

Butler, G. and Barrett, G. "Europe's 'Other' Open-Border Zone: The Common Travel Area under the Shadow of Brexit", *Cambridge Yearbook of European Legal Studies*, Volume 20 December 2018, 252-286. DOI: <https://www.cambridge.org/core/journals/cambridge-yearbook-of-european-legal-studies/article/europes-other-openborder-zone-the-common-travel-area-under-the-shadow-of-brex/80AD2A25114C2CDC3996ABBC EF5F301C>

Cabinet Office (2019) *Memorandum of Understanding between the Government of Great Britain and Northern Ireland and the Government of Ireland*, 8 May, UK Government. <https://www.gov.uk/government/publications/memorandum-of-understanding-between-the-uk-and-ireland-on-the-cta>

Expert Advisory Group on Migration and Population (2019) *UK Immigration Policy after Leaving the EU: Impacts on Scotland's economy, population and society*, Scottish Government, February. <https://www.gov.scot/publications/uk-immigration-policy-leaving-eu-impacts-scotlands-economy-population-society/>

Home Office (2020a) *The UK's Future Points-Based Immigration System*, 19 February, UK Government. <https://www.gov.uk/government/publications/the-uks-points-based-immigration-system-policy-statement/the-uks-points-based-immigration-system-policy-statement>

Home Office (2020b) *The UK's Points Based Immigration System: Further details*. July 2020, CP 258. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/899755/UK_Points-Based_System_Further_Details_Web_Accessible.pdf

Migration Data Portal (2020) *Migration Data Relevant for the COVID-19 Pandemic*, 26 June. <https://migrationdataportal.org/themes/migration-data-relevant-covid-19-pandemic>

Migration Observatory (2014) *Immigration and Independence: Public opinion on immigration in Scotland in the context of the referendum debate*, University of Oxford. <https://migrationobservatory.ox.ac.uk/resources/reports/scottish-public-opinion/>

OECD (2020) *Managing International Migration under COVID-19*, 10 June. https://read.oecd-ilibrary.org/view/?ref=134_134314-9shbokosu5&title=Managing-international-migration-under-COVID-19

Papademetriou, DG., Sumption, M., and Somerville, W. (2009) *Migration and the Economic Downturn: What to expect in the European Union*, Migration Policy Institute. <https://www.migrationpolicy.org/research/migration-and-economic-downturn-what-expect-european-union>

Public Health England (2020) *Disparities in the Risks and Outcomes from Covid-19*, June. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/892085/disparities_review.pdf

Ryan, B. (2003) 'The Common Travel Area between Britain and Ireland', *Modern Law Review* 64(6). <https://onlinelibrary.wiley.com/doi/abs/10.1111/1468-2230.00356>

Scottish Government (2020a) *Migration Helping Scotland Prosper*, 27 January, Scottish Government. <https://www.gov.scot/publications/migration-helping-scotland-prosper/>

Scottish Government News (2020b) *Migrants Plea*, 17 May, Scottish Government. <https://www.gov.scot/news/migration-plea/>

Scottish Government (2013) *Scotland's Future: Your guide to an independent Scotland*, November, Scottish Government. <https://www.gov.scot/publications/scotlands-future/>

Wilkins, Curtis, Gower and McGuinness, (2019) *The Common Travel Area and the special status of Irish nationals in UK law*, Commons Research Briefing CBP-7661 <https://commonslibrary.parliament.uk/research-briefings/cbp-7661/>



How would an independent Scotland tackle climate change?

Antje Brown

Introduction

The question of how an independent Scotland would tackle climate change is difficult to answer as Scotland is so inextricably tied into wider political-economic structures, at the UK, EU and international levels. It would therefore be misleading to assume that Scottish independence would equate to complete policy autonomy on climate change. Even if Scotland became independent from the rest of the UK *and* chose to take radical (and radically different) policy measures, Scotland would still not be able to single-handedly and independently tackle climate change as climate change is, in essence, a complex and truly global challenge.

However, while an independent Scotland would not single-handedly tackle climate change as such, it would certainly be in a much better position to shape its own political discourse on climate change as well as policy targets and societal behaviour. So perhaps a better question would be: how and to what degree would an independent Scotland pursue its own ambitions and targets on climate change?

The following chapter will argue that a second referendum resulting in Scottish independence would offer Scotland constitutional and legal clarity which in turn would enable Scotland to pursue a much more bespoke and arguably more ambitious set of climate change aims. As a policy area, climate change is currently shared between, and often contested with, Westminster. While the often-ambiguous relationship between Westminster and Holyrood has spurred some competitive ambition to outdo one another on climate change, Scottish independence would give Scotland a chance to navigate more freely and without competitive distraction.

Scotland benefits from a comparatively strong civil society (Haf et al, 2019: 935) and its political landscape is currently relatively favourable towards a strong climate change policy. It is therefore likely that we would see a more ambitious drive in that direction. Having said that, we are currently in a period of fundamental change and uncertainty: apart from the impacts of Brexit, we are also dealing with the Covid-19 pandemic, which is unprecedented in its scale and impact. Both events, one arguably more seismic than the other, will leave their mark on every aspect of Scottish politics and society. The following chapter is therefore an attempt to provide an overview of climate change in the Scottish political context while also remaining mindful of the current uncertainties and fundamental challenges that we are facing.

Scotland's climate policy under devolution

In order to understand current developments, we need to understand the wider, historical context within which climate change is being discussed in Scotland. Since devolution in 1999, Scotland developed an environmental policy that has been shaped by a range of constitutional, political, societal and natural resource factors. There are facilitators in the climate change discourse such as a comparatively strong civil society (Haf et al, 2019), but there are also a number of constraints in what Scotland is able to achieve regarding complex and persistent environmental challenges such as climate change.

Indeed, Scotland is operating within a complex system of governance with multiple interfaces, in which institutions and agencies at the Scottish, UK, EU and global levels shape decision-making on climate change. Indeed, when we add energy policy to the equation, a policy area that is inextricably linked to climate change, this multilevel governance becomes even more complex and intricate as both policy areas are devolved to varying degrees. And yet, successive Scottish governments have been striving for a distinct, ambitious and even pioneering approach (Brown, 2019) that would take Scotland beyond the climate change targets set by Westminster. This narrative has been persistent despite some distinct logistical, legal-constitutional and resource interdependencies between Scotland and the UK. For instance, Scotland and the rest of the UK are tied into an energy market and national grid that cannot be disentangled overnight nor would it be in everyone's interest to do so.

Scotland's ambitious climate narrative needs to be understood in the context of policy networks that shape the climate change discourse: here we see a well-established

policy network that engages a range of actor groups, both governmental and non-governmental, from a wide spectrum of stakeholders of society. However, what has facilitated this particular narrative has been a notable development of linkages between pro-independence actors and environmental organisations in Scotland. This feature is perhaps due in some part to the pro-independence position of the Scottish Green Party, which currently holds the balance of power in the Scottish Parliament. In some specific cases, such as Scotland's decision not to build a new generation of nuclear power stations (Scottish Government 2017: 60), the increasingly symbiotic relationship between environmental and Scottish independence actors has proven to be beneficial for both groups; certainly the emerging dynamic between the two groups reinforced both green and independence causes (Brown, 2017). In fact, this dynamic relationship extends to the parliamentary level and has facilitated a working relationship in the Scottish Parliament between the minority SNP Government and the Scottish Greens who since 2016 have claimed a number of environmental policy (and other) victories in the Scottish Parliament (Harvey, 2019).

When we investigate this somewhat symbiotic relationship between green and independence actors, it is useful to contextualise the 2014 referendum. Long before the referendum, networks between pro-independence and environmental actors inside and outside government were already well-established. This relationship gained momentum in the run-up to the referendum with key actors in environmental groups such as Friends of the Earth Scotland openly and publicly endorsing the pro-independence campaign. The rationale was that an independent Scotland would offer environmental groups opportunities to push for greener policies and a more sustainable society. The outcome of the independence referendum did not change the rationale for both actor groups, nor did it change their symbiotic relationship or the environmental policies themselves. But what the outcome did alter was an increased determination to persevere with distinctly Scottish and more ambitious policies. This increased determination cannot be explained entirely by the outcome of the 2014 referendum. More crucially we need to look at the next major event in Scottish politics: the UK Brexit referendum of 2016.

Brexit and climate change politics in Scotland

Researchers with an interest in environmental policy have seen the EU as a positive influence on the UK as a whole (Burns et al, 2019). There is therefore a consensus among environmental researchers as well as activists that Brexit is likely to have an overall negative effect on the environment. Some academics predict a process of de-Europeanisation in the UK (Copeland, 2016) whereby EU ties and obligations are intentionally de-constructed and reversed, although a softer, gradual process of disengagement is more likely (Burns et al, 2019).

However, what does not stand out in these UK-wide projections is the Scottish context and, more importantly, the Scottish Government's opposition to Brexit and

de-Europeanisation. In fact, a majority of people in Scotland (62 per cent) voted to remain in the EU and the Scottish Government has taken a clear stance on seeking to re-join the EU while setting out a commitment to continue following EU environmental principles and rules post-Brexit.

Alongside this EU alignment, we have also seen a persistent pattern whereby Scotland has taken on a deliberately tougher stance on a wide range of policy areas (e.g. fracking, nuclear energy, GMOs, plastics) than the rest of the UK. On climate change, Scotland recently adopted the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019, which sets out a net-zero emission target by 2045 (although the 75% cut by 2030 is the more interesting inclusion in the new Act). The Scottish Government has also established a Citizens Assembly on Climate Change reporting to the Scottish Parliament, whilst also setting annual targets and including the principle of *just transition* in its policy framework.

The Scottish Government has been able to pursue these and other ambitious objectives in areas where competencies were devolved to Scotland, often adopting higher standards when implementing EU directives. Interestingly, the Scottish Government has been able to go further with its targets precisely because the EU (and EU Article 193 in particular) permitted Scotland to go beyond EU-wide environmental standards. Since the UK withdrawal from the EU in January 2020, there is already some evidence that England and Wales seek to move away from EU policy (for instance in the agricultural sector). Before the UK-EU trade deal, the UK Government already intended to further de-align from EU environmental standards after the transition period ended, and refused to abide by the EU's Level Playing Field commitments during the UK-EU trade negotiations (UK Government, 2020; see also Fontanelli in this volume). The Chancellor of the Duchy of Lancaster, Michael Gove (2017), claimed this to be a first step in the direction of a *Green Brexit*, although many other observers, including the Scottish Government, have been more sceptical. With the outcome of the UK-EU trade deal, the UK Government assures non-regression for some standards, with the environment and climate change included, however this new deal does not include an explicit commitment to dynamic alignment, which would involve UK adjustments in line with EU regulations.

With the recent Environment, Agriculture, and Fisheries Bills, the UK Government appears to introduce a weakening of environmental standards in policy areas such as on the chemical status of water. In other areas, there are concerns about the creation of a competence vacuum. For instance, a proposed new Office for Environmental Protection – intended to take over monitoring and enforcement functions from the EU after Brexit – is likely to lead to significant weakening of environmental policy in England as this new office will not have the same binding powers as previously held by the European Courts. The Withdrawal Agreement of October 2019 did not include an earlier stated commitment to non-regression of environmental standards, an omission which the Scottish Government (2019a) strongly criticised. Now, with the UK-EU trade deal, a non-regression arrangement has been included, however, a dynamic alignment has been deliberately left out, much to the dismay of the Scottish Government.

In Scotland we are witnessing a notable trend in the opposite direction: more stringent targets are being pursued alongside an explicit alignment with (and re-enforcement of) EU legislation. As the Scottish Government put it, '[t]he Scottish Government is committed to making sure it meets EU Environmental Standards after Brexit' (Scottish Government, 2020). There is still uncertainty regarding a number of statutory powers as a result of the disappearance of an EU level of governance. The Scottish Government has warned against any efforts by the UK Government to 'centralise' powers set to be repatriated from the EU that sit within Scotland's devolved competences, such as the environment, fishing and agriculture. While the details still have to be established, one thing is clear: unless the UK tries to take power back again, the policy divergence between UK and Scottish environmental policies that we have seen over the past few years can only increase as Brexit evolves and the future of an independent Scotland is being deliberated.

Green pressure is maintained by pro-independence actors and environmental actors in Scotland with the latter regularly reminding the Scottish Government not to fail in safeguarding environmental interests. For instance, in an open letter, sixteen influential bodies, including the Royal Society for the Protection of Birds (RSPB), World Wide Fund for Nature (WWF), Scottish Council for Voluntary Organisations (SCVO), National Trust for Scotland and Royal Scottish Geographic Society, appealed to the Scottish Government to ensure that,

"[w]e must not let Brexit derail us from tackling these huge global challenges head on. Whatever the outcome of the current political uncertainties we need robust, binding, targets for the recovery of Scotland's natural environment, to safeguard both nature and people" (cited in *The Guardian*, 2019).

In an effort to secure these environmental targets, the Scottish Government already introduced a *Continuity Bill* that would "allow the Scottish Parliament to 'keep pace' with EU law in devolved areas" (Scottish Government, 2019b). The Scottish Government also declared that the "EU exit must not impede [Scotland's] ability to maintain high environmental standards" (quoted in Savaresi, 2020). In practice, the Scottish Government has already identified nearly 50 Scottish Statutory Instruments and has been putting these in place before the impacts of Brexit come to the fore. Judging by the numerous statements and measures coming from both the Scottish Government and Parliament, there is a palpable sense of urgency in securing not only the EU principles of environmental law (such as the 'polluter pays' principle) but also securing the legal and enforcement practices that come with these principles.

Independence and environmental policy in a post-Brexit Scotland

It is against this backdrop of Brexit that we are now considering the possibility of a second independence referendum in Scotland. While political forces on either side of the

border debate whether a second referendum will (and should) take place (see the chapter by McCorkindale and McHarg in this volume), the rationale that drove the alliance between pro-independence and environmental actor groups is unlikely to change. Brexit will likely give this alliance further momentum and an increased sense of urgency.

The UN Climate Change Conference of the Parties COP26, which is now rescheduled for 2021 due to the Covid-19 pandemic, already had contributed towards tensions between the UK and Scottish Governments. Prior to the Covid-19 outbreak, both sides sought to use this COP26 opportunity to showcase their ambitions and commitments on climate change, in the usual competitive fashion. With the climate conference postponed, the issue of who is taking the lead is no longer a matter of immediate concern, at least for the time being.

Regardless of whether there is a second independence referendum or not, it is unlikely that the environmental policy networks that have grown in Scotland will evaporate or be distracted from their policy ambitions. However, where a second referendum resulting in an independent Scotland will make a difference, will be in the higher degree of constitutional autonomy and legal clarity that Scotland would enjoy in shaping its own environmental destiny. For now, environmental actors operate within devolved and 'polycentric' (i.e. dispersed) systems of governance, and their actions are shaped by the constraints of this system. For instance, a key aim at present is to secure as many environmental objectives as possible in the negotiations over a future UK-EU trade agreement and beyond (see the chapter by Fontanelli on trade in this volume), despite the removal of EU-level institutions from the polycentric system of governance due to Brexit.

Covid-19: a shift in Scottish environmental and climate change politics?

The past year has seen seismic changes in the way we live and the way we conduct our social, economic and political affairs. Indeed, Covid-19 has not only changed the way we live, it has also exposed fundamental weaknesses in our economic structures and practices. While each government is currently seeking to address the challenges that we face, the narrative by policy-makers and experts is already shifting in Scotland.

As far as a second Scottish referendum is concerned, criticism about the Westminster Government's handling of the pandemic appears to be playing into the hands of the Scottish Government and arguably the Scottish independence narrative. In terms of environmental and climate change politics and policy, the Scottish Government postponed an update on the Climate Change Plan which was due in April 2020 and instead proposed that environmental and climate change policies should be considered with the Covid-19 crisis and its impacts in mind. This synchronisation of climate change and Covid-19 urgencies is reflected in the Scottish Government's current consultation call on the *Green Recovery for Scotland*, a post-Covid-19 plan that would allow for economic recovery while meeting climate change ambitions and ensuring a just

transition towards a more sustainable society. Current conversations on *Green Recovery* go well beyond the established policy networks described above and it is clear to see that Scotland is capitalising on an already 'strong civil society' (Haf et al, 2019). The call for stakeholder views regarding the *Green Recovery* has already generated a large number of responses in the form of documents, public statements and events from researchers at the Royal Scottish Geographical Society, environmental groups such as Friends of the Earth Scotland, business associations such as the Scottish Council for Development and Industry plus other representations such as the Church of Scotland. It is noticeable how wide ranging this engagement is and how all consultees put emphasis on a green and just recovery following Covid-19.

There appears to be a consensus that the few environmental gains emerging from the lockdown, such as a reduction in greenhouse gas emissions, are only a temporary improvement and no substitute for more sustained climate action. It is interesting to note that consultees such as the Committee on Climate Change, an independent advisory group of climate experts, recommend a Holyrood-Westminster partnership in addressing the double challenge of climate change and Covid-19 (Committee on Climate Change, 2020). Whether this partnership comes to fruition in view of the political tensions between the two governments remains to be seen. The postponement of COP26 by one year gives both sides a respite and the main priority of both governments is now to 'manage our way out' of the Covid-19 crisis (Roseanna Cunningham, Scottish Parliament, 4/6/2020). Further considerations following on from the *Green Recovery for Scotland* may well be dependent on cooperation with the UK. What is certain is that the Scottish political system has started a devolved conversation into how we can address in tandem the complex challenges of climate change and Covid-19.

Conclusion

From the perspective of an environmental politics scholar, addressing the question of how an independent Scotland would tackle climate change is an intriguing and complex exercise. There is still a lot of uncertainty as power constellations are still shifting with the impacts of Brexit and now Covid-19. Whereas the 2014 Scottish referendum result took the wind out of the pro-independence sails, Brexit brought the wind right back and with it came a knock-on effect in the form of environmental and climate change policy reinforcement and strengthening.

But not all is well in Scotland in environmental terms and the Scottish Government could pursue even greener policies in all aspects of socio-economic life. As paradoxical as it may sound, the Covid-19 crisis may present an opportunity to convey and then cement a carbon-free future for Scotland as the Scottish Government, Parliament and civil society need to find radical answers to pressing and complex problems.

No matter what constitutional shape Scotland is going to take in future, there will always be complexity and interdependency when it comes to global challenges such as climate change and Covid-19. Scotland is on track, however, to becoming a climate

change leader. Independence, if it ever were to happen, would give Scotland more freedom to accelerate on that track if the political will remains. It will be interesting to see how the constitutional debate over the next few months and years will further shape environmental and climate change policy. Hopefully for the better.

References

Brown, A. (2017). 'The dynamics of frame-bridging: exploring the nuclear discourse in Scotland', *Scottish Affairs*, 26(2), pp.194-211. <https://www.eupublishing.com/doi/abs/10.3366/scot.2017.0178>

Brown, A. (2019) Devolution, climate change and the climate emergency. <https://www.centreonconstitutionalchange.ac.uk/news-and-opinion/devolution-climate-change-and-climate-emergency>

Burns et al (2019) 'De-Europeanising or disengaging? EU environmental policy and Brexit', *Environmental Politics*, 28(2), pp.271-292. <https://www.tandfonline.com/doi/full/10.1080/09644016.2019.1549774>

Committee on Climate Change (2020) *Building a resilient recovery from the COVID-19 crisis to Roseanna Cunningham MSP*. <https://www.theccc.org.uk/publication/letter-building-a-resilient-recovery-from-the-covid-19-crisis-to-roseanna-cunningham-msp/>

Copeland, P. (2016) 'Europeanisation and de-Europeanisation in UK employment policy: changing governments and shifting agendas', *Public Administration*, 94(4), pp.1124-1139. <https://onlinelibrary.wiley.com/doi/abs/10.1111/padm.12283>

Gove, M. (2017) *The unfrozen moment – delivering a Green Brexit*, speech. <https://gov.uk/government/speeches/the-unfrozen-moment-delivering-a-green-brexite>

Haf, S et al (2019) 'Distributing Power? Community energy projects' experiences of planning, policy and incumbents in devolved nations of Scotland and Wales', *Journal of Environmental Planning and Management*, vol.62, No.6, pp.921-938. <https://www.tandfonline.com/doi/abs/10.1080/09640568.2018.1453490>

Harvey, P. (2019) 'Smacking and fracking results show the Greens aren't all talk', *The National* (4th October). <https://www.thenational.scot/news/17945987.smacking-fracking-results-show-greens-arent-talk/>

Savaresi, Annalisa (2020) 'Environmental Governance in Scotland after EU Exit', *SPICe SB20-02*. <https://sp-bpr-en-prod-cdnep.azureedge.net/published/2020/1/9/Environmental-Governance-in-Scotland-after-EU-Exit/SB%2020-02.pdf>

Scottish Government (2017) *Scottish Energy Strategy: the future of energy in Scotland*. <https://www.gov.scot/publications/scottish-energy-strategy-future-energy-scotland-9781788515276/pages/2/>

Scottish Government (2019a) *Scotland's place in Europe: assessment of the revised EU withdrawal agreement and political declaration*. <https://www.gov.scot/publications/scotlands-place-europe-assessment-revised-withdrawal-agreement-political-declaration/>

Scottish Government (2019b) *Protecting Scotland's Future: the Government's Programme for Scotland 2019-2020*. <https://www.gov.scot/publications/protecting-scotlands-future-governments-programme-scotland-2019-20/pages/3/>

Scottish Government (2020) *Environment after Brexit (protection and legislation) February 2020*. <https://www.mygov.scot/brexit-environment/>

Scottish Parliament (2019) *Climate Change (Emissions Reduction Targets) (Scotland) Act 2019*. <http://www.legislation.gov.uk/asp/2019/15/enacted>

Scottish Parliament (2020) Roseanna Cunningham Questions and Answers. <https://www.scottishparliament.tv/meeting/portfolio-questions-virtual-environment-climate-change-and-land-reform-june-4-2020>

The Guardian (26/6/2019) *Scotland 'at risk of losing environmental protection after Brexit'*. <https://www.theguardian.com/uk-news/2019/jun/26/ensure-brexit-does-not-derail-environment-law-warn-scots-activists>

UK Government (2020) *Our approach to the Future Relationship with the EU*, UK Government, 27 February. <https://www.gov.uk/government/publications/our-approach-to-the-future-relationship-with-the-eu>



Part 4: International



An independent Scotland in the European Union: is it realistic and is it a good idea?

Kirsty Hughes

Introduction

The UK, including Scotland, has left the European Union. If Scotland, as an independent state, re-joined the European Union, this would mark a substantive change to its relationship with the rest of the UK (rUK).

This is rather different from the situation in 2014 where, had there been a Yes vote in the independence referendum, the rUK would still have been in the EU. In that scenario, if Scotland had stayed in or re-joined the EU, both Scotland and the rUK would have been part of the EU's single market and most of its other policies.

There is a Brexit conundrum here. On the one hand, the fact that Brexit has happened appears to have shifted some previously pro-UK 'remain' voters towards supporting independence. In early 2020, some polls showed support for independence at 50-52% (see, for example, YouGov, 2020); by June, this had risen to 54% (Panelbase, 2020). As well as the Brexit impact on opinion, the different leadership styles on display in the Covid-19 crisis and the differing paths out of lockdown also seemed to be having an

effect by the second half of 2020 too. But, on the other hand, if an independent Scotland were in the EU and the rest of the UK outside, this would create more challenges, not least over the Scotland-England border (see the chapter by McEwen in this volume). So, Brexit may have increased, and may continue to increase, support for independence, but the fact of Brexit will raise new challenges around the impact of an independent Scotland being in the EU – not least compared to 2014.

This chapter first considers whether an independent Scotland could join the EU, what the process would look like and what hurdles there would be. It then considers the implications of being in the EU for the Scotland-rest of UK border and asks whether joining the European Economic Area instead could be preferable.

Could Scotland be an independent EU member state?

Let's first, though, consider whether an independent Scotland could re-join the EU (as discussed in Hughes, 2019; Hughes, 2020a) – or indeed whether it could, like Norway, be part of the European Economic Area (EEA). And, secondly, let's ask whether either would be a good idea.

If Scotland became independent in a legally, constitutionally sound way and reached an agreed divorce settlement with the rest of the UK (see the chapters by McCorkindale & McHarg, and Douglas-Scott, in this volume), then it would be an independent European state. And European states are all allowed to apply to join the European Union. Indeed, since the EU was first founded 63 years ago in 1957, it has expanded from six original members to 27 (down from 28 member states now the UK has gone).

A whole range of European countries have joined the EU. Greece, Spain and Portugal came on board in the 1980s – welcoming the chance to underpin their relatively newly restored democracies within the EU (after over-turning fascist governments in the 1970s). Then in 1995, Austria, Finland and Sweden joined, followed a decade later – in 2004 – by Malta, Cyprus and eight of the Central and Eastern European countries that had until 1989 – or 1991 in the case of the Baltic states – been part of the Soviet bloc. Bulgaria and Romania joined three years later in 2007, and Croatia in 2013.

These new members came from very different backgrounds. The Czech and Slovak republics had gone through a 'velvet divorce' in 1993 bringing an end to Czechoslovakia. Cyprus joined despite the island still being divided (with only Turkey recognising the northern part of the island since 1974). Croatia was formerly a part of Yugoslavia, which fell apart amidst the dreadful conflict in the 1990s. And these countries are very different sizes – with Malta having a population of just under half a million, while Poland's population is almost 40 million (see Keating's chapter in this volume for a discussion of small states). They are also at different levels of economic development and have different economic structures.

Scotland's accession prospects

Diversity is a watchword for the EU's 27 member states. There is no obvious reason why an independent Scotland would face bigger challenges than the 22 countries that joined the EU since its founding. Indeed, if Scotland became independent in the next few years, then it is quite likely its laws and regulations would still be rather close to the EU's after 47 years of being part of the EU through UK membership. So it might be relatively straightforward to prove that Scotland could meet the EU's rules, which is a necessary and sometimes lengthy process all accession candidates must go through.

Scotland could certainly apply to join the EU – but it would also need to be able to demonstrate that it had fully established democratic institutions and a properly functioning market economy, as an independent state, not as part of the UK. And it would have to take on any new EU laws and regulations that had been adopted in the EU since Brexit as well as adjust any Scottish laws and regulations that had diverged from EU ones in the time since Brexit. The Scottish Government has stated it will aim to stay aligned to EU laws in devolved areas. However, with the UK Government's plans to create a UK internal market – and the associated political clash over that – this alignment may become problematic. The European Commission would assess all of this and set out any areas where changes were needed and assess the steps taken to comply fully with EU laws (including full implementation of the laws).

In a first stage, Brussels would decide if Scotland should become a candidate for membership. This is something that the 27 EU member states would agree together, with all member states having a veto if they thought anything was problematic. Vetoes have been used – notably by France in the 1960s to stop the UK's accession application at that point. But they are rarely used. Concerns have been expressed, in Scotland's case, that Spain might veto its application given its own internal constitutional challenges. This is unlikely as long as Scotland's independence process is fully legally and constitutionally sound. A contested independence process between London and Edinburgh would raise alarm bells in several EU member states.

Once Scotland had candidate status, then the Commission would decide when the time was right to start the actual accession negotiations – and again get agreement from the EU27.

UK opt-outs not on offer

Scotland would be highly unlikely to get the range of opt-outs the UK had – a budget rebate, a euro opt-out, an opt-out from the border-free Schengen area, and an opt-in so the UK could choose whether to be part of common EU justice and home affairs cooperation. The UK and Denmark were the only two member states with an opt-out from the euro – and they got agreement on that when they were already inside the EU, not as candidate countries. But there are eight member states currently outside the eurozone, who aren't yet ready (or in fact willing) to join. Scotland would be expected

to commit to eventually join the euro, but it wouldn't join it on day one and would be unlikely to meet the debt and deficit criteria to join (for more analysis, see the chapters by Peat, Bell, and Roy & Eiser in this volume).

But, those countries outside the euro have to make clear commitments in terms of their monetary policies – they must aim at price stability, and they must consider their exchange rate with the euro as a ‘matter of common concern’ (Hughes, 2018). This is where an independent Scotland could hit a problem. The current policy of the SNP on currency, in the case of independence, is to first use the pound sterling and then move to a Scottish currency ‘as soon as practicable’ (BBC News, 2019; Sustainable Growth Commission, 2018). But if Scotland was using the pound, then it wouldn't be in control of the pound-euro exchange rate – that would depend on monetary policies in the rest of the UK.

Of course, if Scotland moved relatively rapidly to a Scottish currency this might not prove to be a problem (although see the chapter by Peat for potential difficulties). But if it took a longer period of time, then Brussels might choose one of two routes. It could decide that Scotland would have to wait to join until it did have its own currency (or met the criteria to join the euro). Or it could decide that Scotland could be allowed a transition period so that it joined the EU, while using the pound, but committed to joining the euro or establishing a Scottish currency within a negotiated number of years. In the end, this would be a political decision taken by the member states.

Managing the fiscal deficit

There are other economic challenges too. EU member states are meant to keep their fiscal deficits below 3%. An independent Scotland is quite likely to have a considerably larger deficit than this – some suggest around 7% (Gow, 2020). This would have to be brought down to meet the criteria for EU membership. But again, the EU might well decide – as it did with Croatia – that if the deficit is on a clear downward path, with appropriate economic policies, that Scotland could join with a short transition period inside the EU to bring it fully down to 3%.

Also, it's important to factor in that Scotland will not join the EU overnight. The process of applying to join the EU, then negotiating that membership, and then the 18-24 months needed for EU member states to ratify the accession treaty, could at best take four to five years. So bringing a 7% deficit down to say 4.5% over 5 years – and then bringing the remainder down 0.5% a year for the first three years inside the EU is one possible path. How challenging this would be – in terms of the impact on government spending and austerity – would depend on Scotland's overall growth rate at the time – a matter of much debate (see the chapters by Bell, and Roy & Eiser, for an overview of these debates).

Whether the EU's fiscal criteria may change in the coming years due to the impact of the Covid-19 crisis is an interesting question. There would be substantial political

resistance to changing the criteria but given the major increases in public debt due to the crisis, there may still be pressure to either change the criteria (currently suspended due to Covid) or be more relaxed in applying them. Whether any greater flexibility in the criteria, if it occurred, would also apply to accession countries is also uncertain but the key criteria on debt has always included that it be on a sustainable downward path.

Scotland's border with the rest of the UK

A separate type of challenge would arise with Scotland's border with the rest of the UK (rUK). If Scotland was an EU member state, its border with the rest of the UK would be an external border of the European Union (Hughes, 2020b; Hayward, 2020; Bell, 2020). This is very different to the situation back in 2014. Then the debate was about whether an independent Scotland would stay inside the EU – perhaps in a 'holding pen' – or whether it would have to leave then re-join. But the end point in either scenario would have been both the UK and Scotland being part of the EU. There wouldn't have been any border challenges.

Brexit has changed this scenario. Now, Scotland is part of the EU-UK Trade and Cooperation Agreement, which was agreed days before the end of 2020. But, in the event of independence and subsequent EU accession, instead of being part of the new UK-EU trade agreement from the UK side, Scotland would be party to this agreement from the EU side. Even though the UK and EU succeeded in agreeing a zero-tariff, zero-quota deal, this also depends on other criteria being met including rules of origin. So there are other UK-EU customs (and VAT) checks to make sure goods from another country, like China, were not taking advantage of lower tariffs into the UK than EU. And there would also need to be regulatory checks on goods and agricultural products to ensure they met EU rules (see also the chapter by McEwen in this volume).

So the border checks we have now seen from the start of January 2021, at Dover-Calais and other GB-EU border points, will be the same as those between an independent Scotland and England and Wales (Northern Ireland being different again – in the EU's single market for goods). And, as with Brexit, those border checks would be expected to impact negatively on trade and so have substantial economic costs. At the same time, borders would disappear between Scotland and the other EU member states.

But there would probably be one big difference – on free movement of people (Maher, 2020). Ireland and the UK benefit from being in a Common Travel Area (CTA) with UK and Irish citizens (as well as those from the Isle of Man and Channel Islands) having the right to live and work in each other's countries. Even though the UK has left the EU, that will continue. Since the UK opted-out of the EU's border-free 'Schengen' area, Ireland did so too, so that that the CTA could still operate effectively. This is the key opt-out an independent Scotland would want to negotiate (see Kyambi's chapter in this volume for more on migration and the CTA). This could potentially be the best of both worlds – Scotland would then benefit from EU free movement of people, and free movement under the CTA with rUK.

There are other differences from the first indyref in 2014, due to Brexit. The UK has left the EU and become, in international trade jargon, a third country. But if Scotland left the UK it would, as an independent state and following a successful accession process, be in the EU while the UK was not. This could see it benefit from being part of that larger single market and customs union. But currently Scotland's trade with the UK is three times higher than its trade with the EU (see the chapters by Fontanelli, and Bell) so there will be economic costs from a border with the rest of the UK. However, there will also be benefits from being part of EU free movement of people again, and potentially from attracting foreign direct investment (see Roy and Eiser, and Bell, in this volume).

The EU-UK trade agreement does very little for services – a major part of Scottish-rUK trade. More analysis is needed to see to what extent an independent Scotland and rUK could do a bilateral deal on various aspects of services to facilitate trade (as long as it didn't contradict the EU-UK agreement or EU single market rules).

Northern Ireland also has a special status under the Brexit agreement, which sees it stay effectively inside the EU's single market for goods and customs union. If Scotland was in the EU, its trade and border with Northern Ireland would therefore be easier to manage than its border with England and Wales. In the end, there would be much work to do to see how to manage effectively economic relations between Scotland and the rest of the UK – within the overarching EU-UK trade deal.

Should Scotland follow Norway instead?

Norway applied to join the EU but this was rejected in two referendums (in 1972 and 1994). Instead, Norway stayed in the European Free Trade Association (EFTA) and became part of the European Economic Area (EEA). EEA membership means that Norway is fully part of the EU's single market but not its customs union. All the EU member states are also in the EEA alongside Norway, Iceland and Liechtenstein (with Switzerland in EFTA but not in the EEA). All EU member states must also join the EEA. EFTA countries can join but do not have to. EEA membership is agreed by consensus of all 30 members. This could take some time and Scotland would have to show it was fully compliant with all EU single market laws and regulations.

The challenge of being in the EEA, is that, unlike being a full EU member, there's no seat at the EU table, and no vote when the EU agrees new laws and policies. There is a whole set of consultative and institutional arrangements but broadly, despite these, there is a 'democratic deficit' in being in the EEA. This may explain why, since the EEA was founded in 1995, its membership hasn't expanded while the EU's has gone up by 16 states since then.

Some argue that Scotland would benefit from being in the EEA. This would give it direct access to the EU single market, but enable it to have an independent trade policy, currency policy, and be free to develop its own policies in fishing and agriculture. Scotland would be an independent coastal state, in terms of fishing waters, and it

wouldn't have to join the euro. However, even in early 2021, the deep problems for Scotland's fish exports being outside the EU's customs union became rapidly apparent. And, like Norway, it would face a customs border with the EU and a democratic deficit, in that it would be a 'rule-taker' from the EU without representation in EU institutions. Scotland could then also agree a separate trade deal with the rest of the UK. But this wouldn't solve all the border challenges set out above. The UK would no longer be in the EU's single market so there would need to be regulatory checks on goods and services between rUK and Scotland, and customs checks between Scotland and the EU. It might be the worst of both worlds with a customs border between Scotland and the EU and a regulatory border with the rest of the UK.

Transition

In any event, there would have to be some sort of transitional arrangement for an independent Scotland. On the first day after it had left the UK, it would not be a member of the EU or of the EEA. It would probably need to agree a so-called association agreement with the EU to remove trade barriers and help it participate in EU programmes while it negotiated membership. The negotiation of association agreements could take a year or longer, so there might need to be a phase where an independent Scotland stayed, effectively, within the UK-EU trade agreement – this would need to be a three-way discussion and agreement between the EU, the UK and Scotland. There might be some informal Scotland-EU discussions ahead of the actual date of independence so that an association agreement could then be agreed more quickly – but formal talks would need to wait until independence.

Is either the EU or EEA a good idea?

Most European states are either in the EU or the EEA. The UK has now left. Switzerland has its own complex set of treaties with the EU to enable it to participate in the Single Market – an arrangement the EU is in no hurry to repeat. But all the countries of similar size to Scotland – such as Norway, Finland, Ireland, Denmark, Croatia and more – are in one or the other.

So, an independent Scotland would, realistically, face a choice between joining the EU or the EEA. Joining neither would either leave it as a very isolated, small third country outside both the UK and EU/EEA, with potentially very negative economic consequences and giving it little voice in the world. In this case, an option might be for an independent Scotland to stay very close to rUK – perhaps joining a customs union or even staying, effectively, part of its internal market. But then we would be looking at a rather 'lighter' version of independence.

In the 2016 Brexit vote, 62% of Scottish voters were for remain. Re-joining the EU would therefore seem the most obvious route – giving Scotland the chance to have a voice on big EU questions such as climate change, human rights, and industrial strategy.

But because of Brexit, voters in another independence referendum would now have to weigh up the choice of leaving the UK and re-joining the EU, or staying in the UK outside the EU.

This is a political as well as an economic choice. And the fact that the rest of the UK would be outside the EU means that a serious debate around the challenges of a rUK-Scotland border would need much more discussion. One way to open this discussion up a bit would be to ask the question: what sort of EU member state would Scotland be? Would it aspire to be like Ireland – a pro-active, pro-European country situated in the core of the EU, having adopted the euro? Or would it aspire to be like a smaller Sweden – outside the euro (however informally) and aiming at influence in other priority areas such as the environment, gender equality and human rights?

There is much to debate – and there would be some serious work to do to join the European Union. But the EU route is one that would be open to an independent Scotland.

References

BBC News (2019) 'SNP members change leadership's currency plan,' BBC News Website, 27 April. <https://www.bbc.co.uk/news/uk-scotland-scotland-politics-48069470>

Bell, David (2020) 'The Economics of the Scotland-rUK Border' in Hughes, Kirsty (Ed) *An Independent Scotland in the EU: Issues for Accession*, Report, Scottish Centre on European Relations, March. <https://www.scer.scot/database/ident-12533>

Gow, David (2020) 'The EU's Fiscal Criteria: Debt, Deficit and Currency Questions' in Kirsty Hughes (Ed) *An Independent Scotland in the EU: Issues for Accession*, Report, Scottish Centre on European Relations, March. <https://www.scer.scot/database/ident-12533>

Hayward, Katy (2020) 'Borders: Lessons from Ireland' in Hughes, Kirsty (Ed) *An Independent Scotland in the EU: Issues for Accession*, Report, Scottish Centre on European Relations, March. <https://www.scer.scot/database/ident-12533>

Hughes, Kirsty (2018) 'Banquo's Ghost: the Growth Commission, the EU and Scottish Independence', Comment, Scottish Centre on European Relations, <https://www.scer.scot/database/ident-6762>

Hughes, Kirsty (2019) 'Independence, Scotland and EU Accession: Challenges Ahead', Policy Paper, Scottish Centre on European Relations, November. <https://www.scer.scot/database/ident-12153>

Hughes, Kirsty (Ed.) (2020a) *An Independent Scotland in the EU: Issues for Accession*, Report, Scottish Centre on European Relations, March. <https://www.scer.scot/database/ident-12533>

Hughes, Kirsty (2020b) "Scotland, Independence and Brexit" in Zuleeg, F., Aktoudianakis, A., Wachowiak, J. (Eds) *Towards an ambitious, broad, deep and flexible EU-UK partnership?* European Policy Centre, Brussels. <https://www.epc.eu/en/publications/Towards-an-ambitious-broad-deep-and-flexible-EU-UK-partnership~348744>

Maher, Imelda (2020) 'Borders: Free Movement and the Common Travel Area' in Hughes, Kirsty (Ed) *An Independent Scotland in the EU: Issues for Accession*, Report, Scottish Centre on European Relations, March. <https://www.scer.scot/database/ident-12533>

Panelbase (2020) 15-19 June, Omnibus poll for Business for Scotland and Wings over Scotland. <https://www.drg.global/wp-content/uploads/W15277-Scottish-Omnibus-tables-for-publication-v2-240620.pdf>

Sustainable Growth Commission (2018) *Scotland – the new case for optimism – A strategy for inter-generational economic renaissance*, Report, May. <https://www.sustainablegrowthcommission.scot/report>

YouGov (2020) Survey, 22nd - 27th January 2020. <https://yougov.co.uk/topics/politics/articles-reports/2020/01/30/scottish-independence-yes-leads-remainers-increasi>



Would independence change Scotland's approach to human rights?

Kirsteen Shields

Introduction

We often talk about democratic practices, but it was Charles Tilly who really made me think when he described democracy as a *process*. In his 2007 tome, *Democracy*, Tilly sets out that democracy is “a dynamic process that always remains incomplete and perpetually runs the risk of reversal — of de-democratization” (Tilly, 2007). I find this concept useful when thinking about human rights.

Human rights institutions, like the Council of Europe and the United Nations Human Rights Council, emerged from the ashes of the Second World War. They were established on the premise that limiting the powers of the state through multilateral institutions would prevent the atrocities of Nazi Germany and the Holocaust from ever being repeated. Specifically, these institutions sought to limit the persecution of individuals by the state, and to protect individuals from abuse of state power. They did so by placing limits on what governments (and government authorities) could lawfully do (or fail to

do). It is due to the capacity of these institutions to limit state powers that regional and international human rights courts and monitoring bodies have such special significance.

Human rights are not necessarily tangible 'end goals' that once achieved can be ticked off. Instead, they must be actively experienced and protected in order to exist. When we say 'we have human rights' what we really mean is, 'we are entitled to have our rights respected' – and *this* is a process.

The process of respecting human rights largely depends on actions and events driven by political pressures and historical precedent. For instance, governments can support upward processes in building human rights standards both within their territory and internationally.

To give you some examples, major 'upwards spirals' in human rights standards occurred in the period following the Second World War, and again during the period of decolonisation around the world in the 1970s. Both periods were marked by the vast majority of states deciding to incorporate human rights standards into their written constitutions, often by direct reference to the Universal Declaration of Human Rights (1948). The UK is an anomaly in this regard. It does not have a written constitution. Along with Israel, Saudi Arabia, Canada and New Zealand it is one of the few countries to operate on the basis of an 'unwritten constitution'.

It is widely acknowledged that the UK played a pivotal role in drafting the European Convention on Human Rights, notably Conservative politician and lawyer, David Maxwell-Fyfe. Meanwhile, at home, the UK's constitution has developed in a somewhat haphazard fashion, building on common law, case law, historical documents, Acts of Parliament and European legislation. It is not set out clearly in any one document. Whether you regard this a design feature or design flaw may depend on whether you have ever had to rely on it to defend your rights.

As the former Justice Secretary Jack Straw once put it: "Most people [in the UK] might struggle to put their finger on where their rights are." This is because the transfer of power from the monarchy to the people has not been fully realised.

Instead, power has been transferred from the Crown to the Parliament in a piecemeal fashion, leading to a constitutional monarchy arrangement rather than a republic. This was achieved through the Magna Carta 1215 and the Petition of Right 1628, which are historic documents that have no legal force as constitutional documents. Unlike other modern democracies, the UK Parliament has not transferred power back to the citizens through granting constitutional rights in a written constitution. Instead, the Parliament has 'reserved power', and the Crown retains some residual powers (such as the Royal Prerogative).

The UK's constitutional arrangements create a concentration of power, which have increased risks of abuse of power. The composition of the House of Commons is based on a majoritarian first-past-the-post electoral system, and therefore the government of the day will normally have a majority in the House of Commons. The consolidation of

government power in the UK Parliament is combined with the party whip system that serves to quiet dissent from within government, to create what has been described as an 'electoral dictatorship' (Lord Hailsham, 1976).

The Parliament is also above the law courts and is coupled with the leftovers of a hereditary peer system in the House of Lords, which creates the potential to pass any law that the government decrees. The need for external limits and controls (from international institutions) on both the government and the parliament is therefore more acute due to the UK's constitutional design.

It is these limitations that the UK Government seeks to remove through Brexit. Citizens of European Union member states benefit from the oversight of three layers of external human rights protection: the United Nations (UN), the European Convention on Human Rights (ECHR), and EU law.

The UK's relationship with a global and supranational system of governance presents an unprecedented challenge to the UK's 'elective dictatorship'. Prime Minister Boris Johnson has portrayed Brexit as a way of freeing the UK from the 'supervision' of the EU (Barber, 2020). Mr Johnson's spokesperson said that the goal of the UK Government in EU trade talks was to "restore political and economic independence" for the UK, including independence from the vast body of EU law and the authority of the European Court of Justice (Mason, 2020). This chapter examines the implications of the UK's departure from the EU's human rights framework for Scotland, and the challenges and opportunities of independence.

Human rights trajectories

As Brexit has shown us, the UK has the power to dismantle as well as create human rights standards. It is useful to put this into context, by considering instances in the past when the UK has improved its human rights commitments ('upwards spiral'), as well as times when the UK has reduced such rights ('downwards spiral').

A moment of upwards spiralling for human rights occurred in the UK around the turn of the millennium. At this time, the UK adopted the Human Rights Act 1998 and the new devolution agreements (the Scotland Act 1998, the 1998 Belfast Agreement and the Government of Wales Act 1998) contained commitments to respect the European Convention on Human Rights. These pieces of legislation increased the opportunity and grounds to protect some human rights in UK courts (although it should be noted that the Convention rights are focused on civil and political rights and the reach does not generally extend to economic, social and cultural rights). These legal commitments to human rights served to promote a pro-human rights political climate whilst also limiting the instances where the UK or devolved governments were taken to the European Court of Human Rights (as potential violations would be heard in UK courts instead).

More recently, however, we have seen a distinct downwards spiralling in UK human rights standards. This is evident in the following legislation:

- anti-terrorism legislation (the Prevention of Terrorism Act 2005, Terrorism Act 2006, Counter-Terrorism Act 2008)
- the Bedroom Tax (British Welfare Reform Act 2012)
- reductions in social security benefits (Welfare Reform Act 2012 and Welfare Reform and Work Act 2016)
- changes to asylum rules that deny people the right to work for 12 months (it was previously 6 months)
- and the reduced provision of legal aid.

In these cases, the UK Parliament passed legislation that counters and lowers existing human rights standards. These measures were condemned internationally by United Nations representatives; for instance, Raquel Rodniz, the UN Special Rapporteur on the Right to Housing, criticised the Bedroom Tax, and Prof Philip Alston, UN Special Rapporteur criticised austerity measures.

This inward dismantling of rights in the UK has been accompanied by explicit anti-ECHR rhetoric amongst government ministers. In March 2020, the EU's chief Brexit negotiator, Michael Barnier, reported that the UK did not want membership of the European Convention on Human Rights written into the future UK-EU trade agreement, which was confirmed by UK officials. At the time of writing this chapter, the UK Government is reportedly undertaking a review of the Human Rights Act with a view to 'opting out of parts', in other words, reducing its scope.

These developments demonstrate the flimsy nature of UK human rights protection, stemming from the problem with parliament sovereignty where we have a government that rotates between two political parties with bipolar politics.

Under the UK's unwritten constitution, government officials are free to pass laws that disregard legal, ethical and moral constraints. Due to the two-party system that defines UK politics, the (apolitical) human rights project has been politicised as a left-right issue. The only way to escape the politicization of human rights is to create and strengthen legal limits that protect rights despite political attacks or ploys, combined with a commitment by the government to respect the rule of law.

Brexit as a downward spiral?

Brexit has removed the EU's legal limits on the UK government. Before considering the impacts of different types of Brexit on the UK's human rights obligations, it is important to note that the procedural aspects of Brexit may be most significant as they could determine the UK's main approach to human rights for years to come.

As a result of the conclusion of the Brexit negotiations, through the UK-EU Trade and Cooperation Agreement, the UK has lost an external overseeing institution which has to

date provided one arm of strong supranational system of human rights protection (the other arm being the Council of Europe and European Court of Human Rights). The EU has developed the most advanced mechanisms for protecting human rights in the world: the UK is opting out of this with Brexit.

Substantively, Brexit is likely to impact human rights in two ways: by reducing human rights obligations and simultaneously increasing the need for human rights protections as a result of the socio-economic impacts of Brexit (Hepburn, 2020).

If the UK had pursued a 'soft Brexit' and agreed to maintain a close future relationship with the EU including incorporating most EU primary and secondary legislation, and CJEU case law, into UK law, there would have been less risk of a loss of rights in the UK in the immediate term. (It's important to note that citizenship rights are not considered here as human rights.) Beyond traditional civil and political rights, the EU has begun to develop social rights, such as rights to healthcare, social security and pensions, and under a softer Brexit existing provisions could have been directly transferred into UK statute law.

Instead, the UK Government has chosen a 'hard Brexit' which means a looser relationship with the EU and a 'thin' trade deal. Under this arrangement, UK citizens lose established and future social rights protections from the EU. This loss occurs through not only the UK's withdrawal from the EU Charter of Fundamental Rights but also through the potential replacement of existing rights commitments with weaker frameworks than those currently in place.

The impact of Brexit will be all the more acute in the UK because it has essentially been outsourcing its human rights standards from the ECHR. The UK does not have an effective constitutional statement on human rights (the Human Rights Act does not explicitly refer to rights but instead refers to the rights within the ECHR). Although the institutional memory of human rights cases in UK courts would linger (through legal precedent), courts would be obliged to apply any statutory law that replaces (or effectively reduces) the Human Rights Act.

How would independence affect human rights?

As I wrote a long time ago, it appears that unionists tend to think of Scottish independence as the 'break-up' of a state, while independentists think of it as the 'creation' of a state (Shields, 2014). In the creation of a new state there is the potential to do things differently. By drafting a written constitution enshrining human rights, Scotland could attempt to move beyond the politicisation of rights that we've seen in the UK. By establishing domestic legal commitments to human rights at the constitutional level, Scotland could share a similar constitutional model to modern European democracies. Such a model would create a clearer separation of powers between government, the Parliament, and the courts on rights issues than currently exists under

UK arrangements where courts' powers to strike down UK Acts of Parliament are limited, even with regard to rights.

In contrast, by remaining within the union, Scotland would continue to be bound by the UK-wide commitments on human rights that are passed by the UK Parliament. For the time being the UK remains within the European Convention on Human Rights (ECHR) and therefore Scotland benefits from ECHR protections. However, should the UK government decide to leave the ECHR, Scotland would lose these protections. The present UK conservative government regularly gestures that it intends to leave the ECHR (e.g. Stone, 2020; Bowcott, 2020).

Conclusion

While there may be evidence of a downward spiral in human rights at the UK level, there is also evidence of an upward spiral in devolved Scotland. This upward spiral can be seen in institutional resourcing, the passing of new laws that protect rights, and in respect to international commitments to human rights.

Whilst the UK Government has dismantled some of its human rights commitments, the Scottish Government has equally sought to build them. This is evident in a number of areas, including the newly formed Scottish Land Commission (SLC), the Scottish Human Rights Commission (SHRC), and the First Minister's national task force on human rights advises on policy and strategy. The Scottish Land Commission reviews land policy and law with regard to the UN International Covenant on Economic, Social and Cultural Rights, while the SHRC promotes awareness of human rights and the taskforce advises on policy and strategy. It should also be noted that the Scottish Parliament has created cross-party committees concerned with human rights, in particular, the Equality and Human Rights committee (EHRiC).

In addition, the Scottish Parliament has increased commitments to human rights since 2014 through, for example, the passing of the Human Trafficking and Exploitation (Scotland) Act 2015, an increase in the age of criminal capacity, and the establishment of the First Minister's Advisory Group on Human Rights Leadership. There have also been new legislative developments on voting rights reform (Scottish Elections [Reduction of Voting Age] Act 2015 and Scottish Elections [Reform] Bill 2020) and new litigation around abortion and conscientious objection (Greater Glasgow Health Board [Appellant] v Doogan and another [Respondents] (Scotland) 2014). In comparison, the UK government has set out a review of human rights, courts and judges as amongst its priorities (Human Rights Watch, 2020).

Besides institution-building and resourcing, the Scottish Parliament has voted to increase commitments in law through references to the UN International Covenant on Economic, Social and Cultural Rights (ICESCR) in the Community Empowerment Act 2015 and the Land Reform Scotland Act 2016 and through the introduction of the

UNCRC (Incorporation) (Scotland) Bill, which seeks to incorporate the UN Convention on the Rights of the Child into domestic law.

These developments are innovative by global standards. In particular, by integrating references to the ICESCR, the Scottish Parliament has extended the scope of rights considerations at the domestic level beyond civil and political rights to economic, social and cultural rights. In other words, these are rights that create obligations on the government to protect not just the vulnerable but also the poor and the 'working poor'. This broad support for human rights and the rule of law bodes well for the enhanced protection of human rights in Scotland, and it also contributes to the depoliticization of rights globally.

References

- Barber, T. (2020) 'Boris Johnson's Brexit goals are independence and power', *Financial Times*, 18 February. <https://www.ft.com/content/3206e616-5255-11ea-8841-482eed0038b1>
- BBC (2020) *Marcus Rashford: Food voucher U-turn after footballer's campaign*, 16 June. <https://www.bbc.co.uk/news/uk-53065806>
- Bowcott, O. (2020) 'UK government plans to remove key human rights protections', *The Guardian*, 13 Sept. <https://www.theguardian.com/law/2020/sep/13/uk-government-plans-to-remove-key-human-rights-protections>
- EHIC (2018) *Brexit and the EU Charter of Fundamental Rights: Our Concerns*. <https://www.equalityhumanrights.com/en/what-are-human-rights/how-are-your-rights-protected/what-charter-fundamental-rights-european-union-0>
- Hepburn, E. (2020) *Brexit: social and equality impacts*. A Report for the Scottish Government by Dr Eve Hepburn. <https://www.gov.scot/publications/social-equality-impacts-brexit/>
- Human Rights Watch (2020) 'UK Government Has Our Human Rights In Its Sights: Verbal Attacks on Judiciary and Human Rights Act Are Deeply Alarming', 17 February. <https://www.hrw.org/news/2020/02/17/uk-government-has-our-human-rights-its-sights#>
- Lord Hailsham (1976), The Richard Dimbleby Lecture, BBC Radio, 14 October 1976.
- Mason, R. (2020) 'No. 10: UK aim to 'restore independence' from EU by end of year', *The Guardian*, 24 February. <https://www.theguardian.com/politics/2020/feb/24/no-10-uk-aim-is-to-restore-independence-from-eu-by-end-of-year>
- Newey, S. (2020) 'MPs brand Dfid merger an "extraordinary mistake" as concerns over aid scrutiny grow', *The Telegraph*, 9 July. <https://www.telegraph.co.uk/global-health/>

[climate-and-people/mps-brand-dfid-merger-extraordinary-mistake-concerns-aid-scrutiny/](#)

Shields, K. (2014) 'Polling Scotland's poor: surveys still don't reach all parts of the population' *The New Statesman*, 18 September. <https://www.newstatesman.com/politics/2014/09/polling-scotlands-poor-surveys-still-dont-reach-all-parts-population>

Shields, K. (2017) 'Now is the time to consider a bill of rights for Scotland,' *The Times*, 18 July. <https://www.thetimes.co.uk/article/now-is-the-time-to-consider-a-bill-of-rights-for-scotland-s87gtv33s>

Stone, J. (2020) 'Boris Johnson refuses to commit to keeping UK in human rights convention,' *The Independent*, 5 March. <https://www.independent.co.uk/news/uk/politics/boris-johnson-brexit-human-rights-convention-echr-michel-barnier-a9378141.html>

Tilly, C. (2007) *Democracy*, Cambridge: Cambridge University Press. <https://www.cambridge.org/core/books/democracy/26A098816E37F7FB60873348D1BBEBD3>

UK Government (2019) *Operation Yellowhammer, HMG Reasonable Worst Case Planning Assumptions*, 2 August. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/831199/20190802_Latest_Yellowhammer_Planning_assumptions_CD.L.pdf



What would an independent Scotland's defence and security priorities be?

Colin Fleming

Introduction

The establishment of the Scottish Parliament in 1999 meant that political parties had well-established positions on many of the policy areas debated during the independence referendum in 2014, and there was public awareness of how these might be affected by independence. However, this was not true for defence policy, which – given its reserved status – had largely been neglected by the SNP.

The lack of political salience around a post-independence defence policy also meant that few researchers had broached the subject in any meaningful way prior to 2014 (for an exception, see Chalmers & Walker 2001). However, with defence and security so closely linked to the purpose of the state, the prospect of independence changed this position markedly, with defence becoming a prominent issue throughout the independence campaign. A number of documents – including the Scottish Government's 2013 White Paper on *Scotland's Future*, the UK Government's analysis papers on defence and security, and a series of parliamentary committee reports at the Scottish

and UK parliaments – underlined the salience of defence and wider security questions throughout the referendum campaign (Scottish Government, 2013; UK Government, 2013a,b). Key issues during the referendum campaign included:

- the viability and cost of an independent Scottish defence force;
- nuclear weapons, notably the UK's nuclear deterrent;
- membership of NATO;
- security needs in the face of new threats;
- and the economics of defence spending.

The Yes and No sides advanced opposing policy arguments and analysis during the 2014 campaign. The Yes side approached the question from the perspective of a small state (Wival, 2005), envisaging Scotland as an independent European state embedded in collective security systems such as NATO and the EU (Bailes et al, 2013). In place of global ambitions, an independent Scotland's focus would be on the defence of its territorial integrity and territorial interests as well as taking on a regional role contributing to the security of the strategically significant High North.

The No side, led by the UK Government and the Conservative Party, took the opposing view. As a larger state, the UK provided Scotland with a defence dividend that would be in jeopardy should Scotland vote Yes (Fleming, 2017). With global reach, superior military spending power, existing international status (as a permanent member of the United Nations Security Council, EU and NATO), and an economy of scale for its defence industries, starting from scratch was posited as a risk simply not worth taking (UK Government, 2013a). Thus, while the Scottish Government extolled the defence opportunities that would flow from independence, the UK Government and wider Better Together campaign highlighted the challenges and possible vulnerabilities of that outcome.

A lot has changed since 2014. The result of the 2016 referendum on UK membership of the European Union (EU) has raised a new set of questions about what would happen if Scotland became independent. Does Brexit make defence and security planning easier or more difficult for an independent Scotland? Will the UK's exit from the EU lead to isolation from European defence and security initiatives, making it harder to maintain current levels of defence spending and military capability? These are important questions, especially in the context of calls for a greater role for NATO outwith the North Atlantic area. Would a Scottish Government campaigning for independence continue to seek membership of NATO if it sought a role outside the North Atlantic area? Although the Scottish Government supported NATO membership in 2014, this position was not universally supported by the Yes movement or across the SNP.

Add to these issues the global Covid-19 pandemic, and the resulting tightening of the economic purse strings for defence (and other public) spending which are an inevitable consequence, then there is a lot to consider. This chapter explores the extent to which

these factors might impact on the debates about defence should a second independence referendum take place.

The 2014 independence referendum

In the independence referendum of 2014, the Scottish Government presented a very different model on defence compared to that of the UK. Despite significant cuts to the UK defence budget following the then Conservative-Lib Dem Coalition government's Strategic Defence and Security Review (HM Government, 2010) the UK continued to provide a full spectrum of military capabilities and was involved in military interventions such as those in Iraq and Afghanistan.

By contrast, the Scottish Government (2013) identified five 'defence priorities' for an independent Scotland:

1. commitment to the annual budget of £2.5 billion;
2. ensuring a speedy safe withdrawal of nuclear weapons from Scotland;
3. a focus on maritime capabilities, such as air and sea-based patrol, and specialist forces;
4. progressively building a total of 15,000 regular and 5,000 reserve personnel over the ten years following independence; and
5. reconfiguring the defence estate inherited at the point of independence to meet Scotland's needs.

These policies would have included the transition of Faslane in the west of Scotland (currently used for the UK's Trident nuclear weapons) to a conventional naval base and joint headquarters of the Scottish Defence Forces (SDF). These core policy promises fed other aspects of the defence debate.

For example, critical to the Scottish Government's transition of forces was the need for a high level of goodwill between Scotland and the rest of the UK (rUK). Cooperation was central to the Scottish Government's defence plan. Not only did it advance defence cooperation with the rUK (as a normal element of defence planning), it also sought to join NATO, as well as remaining within the EU, thus taking on a role in EU Common Foreign and Defence Policy (see the chapter by Hughes in this volume on Scotland's relationship with the EU).

The Scottish Government's approach paid heed to the deepening defence cooperation between European states as well as between NATO and the EU in defence matters, with a joint NATO-EU defence pact coming into force in 2016 (Fleming, 2014b). However, in the campaigns, there was a clear divergence on how this might be applied, with the No side highlighting problems associated with joining these organisations. For example, there was a clash of arguments around the Scottish Government's anti-nuclear stance and its

commitment to removing the UK's nuclear deterrent from the Clyde and whether this would prevent Scottish membership of the alliance (Scottish Affairs Committee, 2012).

These arguments had a bearing on the transition of Scotland's defence forces. As noted above, the White Paper proposed to undertake a phased transition to a fully operating SDF, which would require close cooperation with rUK. This proposal mirrored the high level of defence cooperation between European states, as well as between NATO members. Yet, while defence cooperation has become an increasingly normal aspect of defence planning across Europe and the wider Transatlantic area, cooperation is by no means assured and would be dependent on the goodwill of the rUK. Close Scotland-UK cooperation on defence matters would require a level of trust that might be severely tested if, for instance, Scotland fast-tracked Trident's removal from Scottish territory (see Douglas-Scott's chapter in this volume for more analysis on Scottish-UK negotiations post-independence). So, taking a hard stance on the deterrent may not only be detrimental to Scotland's chances of joining NATO, but also Scotland's close defence relationship with rUK.

Of course, it is difficult to gauge how members of the Alliance would respond to Scotland becoming independent and its application for membership. If Scotland played ball on the nuclear issue, preventing the weakening of a key NATO member, it would likely soften barriers to Scotland joining (Fleming & Gebhard 2014).

Defence in a post-Brexit world

After the failed 2014 independence referendum, the SNP's success in the 2015 General Election provided the party with the policy and research capacity to re-examine the defence case. This research was further shaped by the outcome of the Brexit referendum one year later, which is an ongoing area of development.

One major change related to what defence equipment a Scottish Defence Force might have on gaining independence. The 2013 White Paper on *Scotland's Future* underlined the Scottish Government's intent to seek a population share of military assets; however, that has now been dropped. The foundation of the SDF's capabilities should instead be based on the Scottish Government's own strategic analysis of the structures required to underpin its security interests, especially in the North Sea and Atlantic where it believes a more substantial maritime force would bring added value to allies.

As a reserved policy area, the SNP's Westminster team has been proactive in demonstrating the importance of defence to the independence prospectus, both in the House of Commons and in submissions to defence-related reviews, such as the UK Government's Ship Building Strategy (2016) and the Modernising Defence Programme (2018). Its submission to the upcoming Integrated Review on security, defence, development and foreign policy, which was delayed due to the Covid-19 pandemic, sets out its position on a range of areas, including the importance of the Eastern Atlantic and High North, cooperation with regional/neighbourhood allies, hybrid

warfare, the equipment plan, recruitment, and nuclear weapons (SNP Submission to the Integrated Review).

Yet, there are several aspects of how the SNP are thinking about defence ahead of a potential second referendum that should be explored further, not least the SNP's position on Scotland's likely defence budget and proposed membership of NATO and other defence and security organisations.

It should be highlighted, too, that UK defence in a post-Brexit and post-Covid world is also under scrutiny, and the financial fallout looks certain to diminish UK capabilities; with the UK's armoured capability being potentially shelved (The Sunday Times, 2020). Outside of the EU's defence structures (and without access to the spending power of the European Defence Agency), it will be harder for the UK to save costs by closer defence relationships with European counterparts. Of course, defence relationships will not disappear completely, and it seems likely that the UK will seek further bilateral relationships, such as that agreed between the UK and France through the Lancaster House Agreement (2010). However, given the financial impediments that were already hampering UK defence, the ability of the UK Government to refocus its attention on the range of challenges it faces (China, Russia, Islamic Terrorism, and cyber-crime, among others) will be challenging, despite the promise of money from the Prime Minister (BBC News, 19 November 2020).

The knock-on effect for the independence debate is whether financial restrictions also mean that defence of Scotland (or at least what the Scottish Government and SNP deem Scottish interests, such as the High North) will be harder to articulate than in 2014. Does the UK still have the same level of global reach? And if it does, is this at the expense of capabilities across Scotland?

Although defence was not explored fully in the SNP's Sustainable Growth Commission report (2018), it 'assumed' that the budget earmarked for defence would be around 1.6 per cent of GDP, which was 'significantly ahead of the small European country average (1.1%) and the 8th highest in NATO'. Although this figure sits under the 2% benchmark set by NATO, it is unlikely that a slightly smaller defence budget would be a barrier to membership if Scotland met the other criteria. However, it does beg the question as to what that money would buy.

Seeking shelter in NATO and other organisations (notably the EU) makes sense from an economic perspective as well as a security one. Integration into the alliance is likely to cost significantly less as opposed to undertaking all defence and security functions outside those structures. Scotland's determination to join NATO would also allay any fears that neighbouring states may have about the fracturing of UK-wide defence; this is especially so for Norway and Denmark, both of which have national interests in the Eastern Atlantic.

There is little doubt that Brexit (and Scotland's desire to remain tied to Europe) has softened international opinion about Scottish independence, potentially removing a barrier to full membership of defence organisations. Certainly, should Scotland vote

to become independent in a second referendum, international goodwill coupled with a new strategic dynamic could help the Scottish Government integrate into these organisations. Membership of NATO, and the security guarantee that it would provide, would also allow the time for a robust strategic review of its own; providing the Scottish Government with the opportunity to better understand what threats are most pressing, and transitioning its defence capabilities accordingly.

This is a key point. What and who is it that Scotland would be defending against? What would be an independent Scotland's strategic calculations? And what type of capability would it need to meet its defence and security objectives?

Of course, Scotland's interests would be shaped by whoever was in power, as different governments may have different defence priorities. However, the window of opportunity during any transition to independence would mean that important decisions would have to be made that could be harder to change at a later date. Would Scotland require its own fast-jet fleet, for example? This was a point of debate in 2014, and although the Scottish Government's policy at the time was to build a fleet from the division of assets with the UK, there were questions as to whether Scotland needed such an expensive capability (Crawford & Marsh, 2012). It is likely an independent Scotland would be able to afford a fast-jet capability – either through an existing share of UK assets or building its own force from scratch. However, it would have a financial cost, and that cost could be spent elsewhere – both in military capability or in building the economy and delivering public services.

The SNP's defence team at Westminster have used the time since 2014 to develop a better understanding the international defence sphere and how Scotland could fit into that ¹. The SNP have analysed the challenges emanating from Russia's reenergised position as a military player, climate change, and the rising prominence of China, the latter of which has produced calls for a restructuring of NATO to work outside its original geographical area. The ties binding NATO have undoubtedly become frayed during the Trump Presidency of the US, which backed an enhanced role for NATO in limiting Chinese influence. NATO Secretary General Jens Stoltenberg has recently underlined this point in a speech in June 2020, arguing that to increase its political and economic unity the Alliance should not baulk from embracing a global role (Stoltenberg, 2020). Given the antipathy towards NATO membership in sections of the independence movement (The Guardian, 2012) the SNP will need to clearly articulate the defence and security benefits of membership if a referendum becomes a real possibility ². Each of these factors will require careful assessment before a new prospectus goes before the Scottish people.

1. I was Senior Researcher for Defence with the SNP Westminster Group during 2016.

2. The 2012 SNP Annual Conference overturned the party's long-term policy against NATO membership by a margin of 425 – 332. Following the vote, two SNP MSPs (John Finnie and Jean Urquhart) defected to the Scottish Greens.

Conclusion

Although there is some continuity in the SNP's position on defence issues since the 2014 referendum, there has been a rethink regarding what defence equipment Scotland might claim as part of a division of assets. This would allow the Scottish Government to better plan and build a defence force around Scotland's primary strategic interests rather than trying to use equipment unsuited to the country's needs. Continuity is evident in terms of the desire for defence cooperation and the promotion of Scotland taking a role filling regional security gaps. Furthermore, there has been a continued emphasis on membership of collective security organisations such as NATO.

This approach may work well to assuage voters' fears that a security gap would result from independence, and it could play well to an international audience that seeks reassurance that Scotland would prioritise regional defence and security. Scotland would face a range of potential security challenges, such as the development of a Scottish Defence Force, joining NATO and nuclear disarmament, however none of these seem insurmountable. Furthermore, despite the unpredictability of international relations, Scotland is unlikely to face a direct state-on-state threat to its security. The 2014 proposals demonstrated both a willingness for Scotland to play its role in the world and an understanding of what was at stake.

The questions that would face an independent Scotland in the area of defence and security are thus political ones, rather than whether Scotland has the long-term capacity to defend its citizens or its immediate strategic neighbourhood. Of course, further analysis of defence capabilities is necessary, such as the need to explore the repositioning of NATO and Scotland's role outwith its immediate strategic ambit, the impact of removing Trident on the SDF's transition, and the impact of Brexit on an independent Scotland's defence alliances and rUK relations.

However, just as Brexit has changed the context in which an independent Scotland may pursue its ambitions, equally the UK Government must examine the implications of Brexit for its existing defence plans. The UK will remain a significant military power and will continue to exert influence, but it has lost its authority in Europe and will sit outside many of the discussions relating to EU defence and security. The UK will also not participate in moves to deepen EU cooperation across defence acquisition. The danger for the UK is that despite promises of a cash injection, it is unclear how the UK will maintain its current capabilities and may result in less assets for regional defence and limitations placed on its current global role (Chalmers 2020). Just as the Yes-supporting Scottish Government will be required to demonstrate its competency in defence matters in any second independence referendum, so will the No-supporting UK Government have to demonstrate that Scotland's defence and security is still best served in the Union after Brexit.

References

- Bailes, A., Þórhallsson, B., and Johnstone, R. (2013) 'Scotland as an independent small state: where would it seek shelter?' *Fræðigreinar – Icelandic review of politics and administration*, 9(1):1–20. <https://uni.hi.is/baldurt/files/2014/09/Scotland-as-a-small-state.pdf>
- Chalmers, M. and Walker, M. (2001) *Uncharted waters: the UK: nuclear weapons and the Scottish question*. East Linton: Tuckwell Press. <https://carnegieeurope.eu/2002/03/14/uncharted-waters-u.k.-nuclear-weapons-and-scottish-question-pub-11573>
- Chalmers, M. (2012) Kingdom's end? *RUSI journal*, 157(3):6–11. <https://rusi.org/publication/rusi-journal/kingdoms-end>
- Chalmers, M., & Jesset, W. (2020) 'Defence and the Integrated Review: A Testing Time', *Whitehall Report*. 2:20, Royal United Services Institute, March 2020. <https://rusi.org/publication/whitehall-reports/defence-and-integrated-review-testing-time>
- Crawford, S. & Marsh, R. (2012) 'A' The Blue Bonnets: Defending an Independent Scotland', *Whitehall Report*. Royal United Service Institute. <https://rusi.org/publication/whitehall-reports/blue-bonnets-defending-independent-scotland>
- Dorman, A. (2014) 'More than a storm in a teacup: the defence and security implications of Scottish independence', *International Affairs*, 90: 3, pp, 679-696. <https://onlinelibrary.wiley.com/doi/abs/10.1111/1468-2346.12133>
- Fleming, C., & Gebhard, C. (2014) 'Scotland, NATO, and Transatlantic Security', *European Security*, 23(3):307-325. <https://www.tandfonline.com/doi/abs/10.1080/09662839.2014.903926>
- Fleming, C. (2014) 'After Independence? The Challenges and benefits of Scottish-UK defence cooperation', *International Affairs*, 90(4):761-771. <https://onlinelibrary.wiley.com/doi/abs/10.1111/1468-2346.12139>
- Fleming, C. (2017) 'Defence and Security', in Keating, M (ed) *Debating Scotland: Issues of Independence and Union in the 2014 Referendum*, Oxford University Press. <https://oxford.universitypressscholarship.com/view/10.1093/acprof:oso/9780198789819.001.0001/acprof-9780198789819>
- House of Commons Defence Committee (2011) *The strategic defence and security review and the national security strategy*. Sixth report of session 2010–2012. House of Commons HC 761. London: The Stationary Office Ltd. <https://publications.parliament.uk/pa/cm201012/cmselect/cmdfence/761/761.pdf>
- House of Commons Defence Committee (2012) *Future maritime surveillance*. Fifth report of session 2012–2013. HC 110. London: The Stationary Office Ltd. <https://publications.parliament.uk/pa/cm201213/cmselect/cmdfence/110/110.pdf>

House of Commons Defence Committee (2013) *The defence implications of possible Scottish Independence*. Sixth report of session 2013–2014. HC 198. London: The Stationary Office Ltd. <https://publications.parliament.uk/pa/cm201314/cmselect/cmdfence/198/198.pdf>

House of Commons Foreign Affairs Committee (2013) *Foreign policy considerations for UK and Scotland in the event of Scotland becoming an Independent Country*. Sixth report of session 2012–2013. HC 643. London: The Stationary Office Ltd. <https://reformafederal.files.wordpress.com/2013/05/643.pdf>

Robertson, A. (2013) *The geopolitics of an independent Scotland*. Copenhagen: Centre for Military Studies. <https://cms.polsci.ku.dk/events/angusrobertson/>

Scottish Affairs Committee (2012) *The referendum on separation for Scotland: terminating trident – days or decades?* Fourth report of session 2012–2013, House of Commons. London: The Stationary Office Ltd. <https://publications.parliament.uk/pa/cm201213/cmselect/cmscotaf/676/67602.htm>

Scottish Government (2013) *White paper on independence. Scotland's Future*. Edinburgh: The Scottish Government. <https://www.gov.scot/publications/scotlands-future/>

Stoltenberg, J. (2020) 'Remarks by NATO Secretary General Jens Stoltenberg on launching #NATO2030 - Strengthening the Alliance in an increasingly competitive world', 8 June, NATO. https://www.nato.int/cps/en/natohq/opinions_176197.htm

Sustainable Growth Commission (2018). *Scotland – the new case for optimism*, SGC. <https://www.sustainablegrowthcommission.scot>

The Sunday Times (2020) 'We must sacrifice tanks and sell more arms to fund hi-tech warfare, warns defence secretary', 5 September. <https://www.thetimes.co.uk/article/we-must-sacrifice-tanks-and-sell-more-arms-to-fund-hi-tech-warfare-warns-defence-secretary-76wb7kwx8>

UK Government (2013a) *Scotland analysis: defence*. London: The Stationary Office Ltd. <https://www.gov.uk/government/publications/scotland-analysis-defence>

UK Government (2013b) *Scotland analysis: security*. London: The Stationary Office Ltd. <https://www.gov.uk/government/publications/scotland-analysis-security>



What kind of international role and influence would an independent Scotland have?

Daniel Kenealy

Introduction

Debates during the 2014 referendum campaign focused predominantly on the effects of Scottish independence on the economy and on public services. Yet, one of the most significant changes that independence would bring is the capacity of Scotland to develop its own foreign policy. Although the Scottish Government currently engages in external affairs, it would have greater opportunities to attempt to influence international politics as an independent – albeit small – state with a distinctive foreign policy (see Keating in this volume on small states).

The term ‘foreign policy’ is a broad one, ranging from how a state seeks to profit from trading in the global economy to how it defends itself from security threats. Given the discussions elsewhere in this volume on global economic (Bell, Roy & Eiser) and defence (Fleming) issues, the focus here is on foreign policy as a diplomatic activity. This is where states seek to promote their policy preferences and their values internationally, including how they deploy military and civilian capabilities. The

chapter begins by considering the foreign policy blueprint contained in the 2013 White Paper, *Scotland's Future* (Scottish Government, 2013). It goes on to consider some of the factors that determine the success or failure of small state foreign policies. The final section focuses on developments since 2014.

The 2013 White Paper

Ahead of the 2014 referendum, the Scottish Government's independence White Paper included a vision of an independent Scotland's international role (Scottish Government, 2013). That document remains an important reference point. The 2013 vision blended continuity and change. In an attempt to reassure voters, the White Paper emphasised that many of the international frameworks and institutions that structured the UK's place in the world would continue to structure an independent Scotland's place in the world. NATO and the EU were the two principal institutions that would do so, the former in the military and defence sphere (see Fleming's chapter) and the latter principally in the economic sphere (see the chapters by Bell, Roy & Eiser, Peat, and Fontanelli in this volume).

The emphasis on change rested on the idea of Scotland possessing a distinctive set of national interests that set it apart from the UK, and a distinctive set of values that it would seek to advance internationally. UK foreign policy was characterised as 'increasingly insular and isolationist' and there were numerous references in the document to the importance of Scotland taking its 'own decisions about involvement in military action' – a reference to the UK's participation in the Iraq war. An independent Scotland would seek an international role as a good global citizen, upholding and strengthening international law, and working to protect human rights, in contrast to a UK Government that was complicit in some of the most unsavoury aspects of the USA-led Global War on Terror.

The other crucial difference between the UK and an independent Scotland that was emphasised in the 2013 White Paper concerned relations with the EU. Frustrated by the 'distrust and disengagement' that 'has dominated Westminster's attitude to the EU for too many years', the White Paper argued that Scotland's interests would be better defended through its own seat at the table and by a Scottish Government that was unequivocally committed to the EU. Such arguments resonate more loudly now that the UK has left the EU, against the wishes of 62% of those in Scotland who voted in the 2016 referendum.

The White Paper distinguished between the *principles* that would drive Scottish foreign policy and the *instruments* through which policy would be pursued. The Scottish Government would champion 'international justice and peace' through a commitment to 'international development, human rights, climate change, and climate justice'. The principles of cooperation, multilateralism, and the rule of law would see Scotland supporting existing international norms as well as seeking to develop and embed new ones. The emphasis would be on working with coalitions of like-minded

small- and medium-sized states – particularly the Nordic states and Ireland – and within international organisations.

The principal instrument of Scotland's foreign policy would be the development and use of 'soft power' – that is, influence derived from a state's diplomatic skills, culture, and reputation, as opposed to 'hard power' relating to its military or economic size. Scottish foreign policy would be successful where it was premised on exporting ideas and policy solutions that had worked at home. A 2,000-person-strong foreign service, with between 70 and 90 international offices, would integrate the Scottish Government's international trade, development, and diplomatic activities, delivering a coherent and joined-up foreign policy. International development was to play a prominent role as an instrument to deliver on the principles of human rights and climate justice, as well as gender equality. An independent Scotland would commit to spending 0.7% of gross national income on development.

Where the White Paper was weaker was in identifying priority areas for action. A long list of international policy areas – from energy to health, from education to development, from migration to peacebuilding – demonstrated a lack of serious thought about the hard choices that face a small state, and especially a *new* small state.

Although softer forms of power would play a dominant role in Scotland's foreign policy, the White Paper embraced Scotland's 'proud military tradition'. An independent Scotland would build-up, over a decade, a defence force of 15,000 regular and 5,000 reserve personnel with military hardware focused on 'maritime capabilities, such as air- and sea-based patrol', and 'specialist forces' with strengths in 'conflict prevention, disarmament, and defence diplomacy' (see Fleming in this volume). Once again drawing an implicit contrast with UK military interventions, Scotland's defence forces would only be deployed 'in accordance with the principles of the UN Charter' and with approval by the Scottish Parliament. The nature of the envisioned defence forces would allow an independent Scotland to contribute to NATO collective security and to UN, NATO or EU missions focused on peacekeeping, peacebuilding, post-conflict stabilisation, and humanitarian assistance. Crucially, the White Paper was clear that an independent Scotland would be unwilling to house the UK's Trident nuclear deterrent, seeking to negotiate an agreement with the UK for its 'speediest safe removal'.

The 'No' campaign in the 2014 referendum was quick to challenge many of the assumptions in the White Paper, such as the ease with which an independent Scotland would be able to secure membership of international organisations and whether Scotland would be entitled to a share of existing UK diplomatic and military assets (UK Government, 2013). At a philosophical level, however, the debate boiled down to whether Scotland's interests were best advanced and protected by being part of a large state – with a seat on the UN Security Council and world class military and diplomatic assets – or by being able to define and pursue its own national interests as a small state (Kaarbo and Kenealy, 2017).

In some respects, therefore, the two sides of the debate were talking past each other with 'No' speaking the language of big states and power politics and 'Yes' speaking the

language of small states punching above their weight. The debate is a familiar one to International Relations researchers and practitioners.

The foreign policy strategies of small states

There would undoubtedly be situations where an independent Scotland would find itself dependent on others, for both economic and military security. Smaller states are more likely to have to compromise their interests and their values in the search for guarantees from alliance partners (see Keating in this volume for a more in-depth discussion). One thinks again of Trident: major powers such as the United States could attempt to exert pressure on a newly independent Scotland to continue to house the UK nuclear deterrent for a longer period of time in exchange for membership of NATO. Generally, for those who view international politics through the lens of big states and power politics, small states are destined to be rule-takers, not rule-makers.

That classic view of international politics as dictated by raw, hard power – whether military or economic – has been nuanced by the emergence of global challenges ranging from migration to health, from data privacy to climate change. Many of these challenges are best met through ideas, innovation, research, and the ability to develop policy solutions that work. States that are strong in those areas are not necessarily the biggest states with the most powerful militaries and the largest economies. Indeed, it is often small states' lack of conventional hard forms of power that enable them to carve out niche roles, or act as brokers, in international politics, because they enjoy more credibility (on the example of climate change, for instance, see Brown's chapter in this volume). There is no single *recipe* for success but a rich collection of case studies suggests some basic *ingredients* for small state foreign policies, namely: prioritisation, reputation, networking, and patience (Ingebritsen et al, 2006; Archer et al, 2014).

The bureaucratic capacity of small states demands that they must focus their efforts on specific policy issues of importance to them and where they are likely to have an impact. This requires a willingness on the part of political leaders to prioritise. Armed with a sense of priorities, small states should attempt to develop a reputation for expertise. Domestic accomplishments – or successes through working with close geographical neighbours – allow small states to speak authoritatively in international arenas. That makes them attractive to others facing similar challenges. Such an approach allowed Scandinavian states to become leading players in the development of global environmental norms through the 1990s and 2000s (Ingebritsen, 2002). Even tiny Liechtenstein has managed to shape policy debates at the United Nations by prioritising and building expertise on issues such as civilians in armed conflict, women and security, and post-conflict peace-building (Thorhallsson, 2012).

Networking and coalition building are vital skills for small states, working not just with like-minded small and medium states but also with non-governmental organisations. Norway and New Zealand, for example, were pivotal in building and sustaining a coalition of actors that resulted in the 2008 Convention on Cluster

Munitions (Bolton and Nash, 2010). International organisations are a good arena for small states seeking to build coalitions, provided they have invested sufficiently in their diplomatic capabilities. Such organisations can serve as key nodes in diplomatic networks, allowing small states to collect information about the interests of others and to try to shape policy agendas at an early stage. Beyond working these arenas effectively, small states often host headquarters and offices of international organisations and actively try to place their nationals into key leadership positions.

Using international organisations smartly has allowed Nordic countries to be significantly represented in UN leadership positions and states such as Ireland and New Zealand to accomplish meaningful things during their terms on the UN Security Council. Within the EU – the most institutionalised and networked of international organisations – smaller states have often punched above their weight, from Belgium and the Netherlands on the development of the Euro, to Sweden on the development of the civilian dimensions of EU defence policy (Maes and Verdun, 2005; Jakobsen, 2009). More recently, Finland used its presidency of the Council of the EU to influence the development of a European Green Deal.

Small states will find few short cuts and those that attempt to bluff – or to free ride on the reputation and image of others – typically fail in their efforts (for example, Iceland's failed bid for membership of the UN Security Council in 2010). Norway, for example, built its reputation as a skilled international mediator over many decades: its role in mediating conflicts in the Middle East and in Sri Lanka enhanced its international reputation, which in turn allowed it to lead within the UN Security Council on negotiations between Ethiopia and Eritrea during 2001-2002. Similarly, Nordic states are taken seriously as humanitarian and peace-building actors because of their long history of military, police, and civilian support for UN operations dating from the 1960s. Patience and a willingness to commit to a medium-to-long term strategy are crucial.

Developments since 2014 (and a dose of realism)

In the context of the referendum, experts on the foreign policy of small states descended on Scotland during 2014 for conferences and policy dialogues. Their presence had a profound effect within the Scottish Government. It prompted more serious thinking about *both* Scotland's external affairs strategy whilst it remained part of the UK *and* an independent Scotland's foreign policy.

Recent years have seen Scottish ministers – and in particular the First Minister – far more visible on the international stage. High-profile speeches on climate change and on the role of women in conflict resolution have been delivered at the UN. Organisationally, the Scottish Government has maintained investment in external affairs activity through successive budgets and has taken measures to work more closely with the various agencies that promote Scotland internationally, such as the enterprise agencies and

Scottish Development International. Co-locating government staff with those of the enterprise agencies in Innovation and Investment Hubs in Dublin (2015), London (2017), Berlin (2018), and Paris (2019) is evidence of a desire within the Scottish Government to develop a more coherent, joined-up approach to its external affairs. Given the insights from existing research on small states, the Scottish Government could go further in prioritising what it wants to develop an international reputation for. The tendency is to promote all of the good things happening in Scotland rather than focusing on key strengths such as energy and climate change, international development, and how wellbeing can be meaningfully embedded in an economic strategy.

Brexit, the most important development since 2014, has strained the resources of the Scottish Government. Although doing little to alter the principles and values set out in the White Paper, which have been reaffirmed in numerous speeches and policy documents since then, Brexit raises tricky questions for Scotland, most notably in economic terms (see Bell, and Roy & Eiser, in this volume). In the event of independence, the Scottish Government remains committed to seeking EU membership (see the chapter by Hughes). The future relationship between the EU and the UK will be one of the most important factors shaping an independent Scotland's international role. The EU-UK Trade and Cooperation agreement featured few details about foreign, security and defence policy. The UK Government is currently completing an Integrated Review of Security, Defence, Foreign Policy and Development. Formal, institutionalised arrangements with the EU look unlikely in the near future. The less the UK wishes to cooperate with the EU, the more difficulty Scotland might face in trying to balance its relationships with those two important partners. This is especially so in the area of defence where it remains unclear how far EU states will press ahead with cooperation outside of NATO and to what extent the UK will participate – or even actively work against – such initiatives.

Given that small states tend to work cooperatively with each other on foreign policy challenges – and often as part of bigger coalitions with non-state actors – an independent Scotland's natural partners would likely be smaller states within the European neighbourhood. Scotland could deepen existing relationships with the Baltic and Nordic states, building on shared interests within the EU and in other international organisations. The Scottish Government's closest external relationship at present is with Ireland and this would likely continue in the event of independence. As a member of the EU that punches above its weight – whilst also managing a close and complicated relationship with the UK – Ireland has many interests in common with Scotland.

Conclusion

Closing on a note of realism and caution, a vote for Scottish independence would be followed by several years of work to establish a new state. The effect would be felt domestically as new institutions would be required to handle new policy responsibilities. Internationally, Scotland would have to invest considerable time and energy to join the organisations, treaties, and agreements that it is currently within by virtue of being

part of the UK. Few experts in international law or international politics doubt that this could be done, but it would take time and resources. Although the existing Hubs provide a base on which to build, setting up a Scottish diplomatic service would take several years. Scotland would begin its life as an independent state with a strong reputation and image, which is only growing more distinctive in the aftermath of Brexit. It would take many years for Scotland to have international impact equivalent to the Nordic states or New Zealand. But, with a willingness to prioritise – alongside some patience and a lot of hard work – an independent Scotland *could* develop a successful and distinctive role in international affairs.

References

- Archer, C., A. Bailes and A. Wivel (eds.) (2014) *Small States and International Security: Europe and Beyond*. London: Routledge. <https://www.routledge.com/Small-States-and-International-Security-Europe-and-Beyond/Archer-Bailes-Wivel/p/book/9780415791083>
- Bolton, M. and T. Nash (2010) 'The Role of Middle Power-NGO Coalitions in Global Policy: The Case of the Cluster Munitions Ban', *Global Policy*, 1(2), pp. 172-84. <https://onlinelibrary.wiley.com/doi/full/10.1111/j.1758-5899.2009.00015.x>
- Ingebritsen, C. (2002) 'Norm Entrepreneurs: Scandinavia's Role in World Politics', *Cooperation and Conflict*, 37(1), pp. 11-23. <https://journals.sagepub.com/doi/abs/10.1177/0010836702037001689>
- Ingebritsen, C., I. Neumann, S. Gstöhl and J. Beyer (eds.) (2006) *Small States in International Relations*. Seattle: University of Washington Press. <http://jsis.washington.edu/publication/small-states-in-international-relations/>
- Jakobsen, P. (2009) 'Small States, Big Influence: The Overlooked Nordic Influence on the Civilian ESDP', *Journal of Common Market Studies*, 47(1), pp. 81-102. <https://onlinelibrary.wiley.com/doi/full/10.1111/j.1468-5965.2008.01833.x>
- Kaarbo, J. and D. Kenealy (2017) 'Perspectives on Small State Security in the Scottish Independence Debate', in A. Neal (ed.), *Security in a Small Nation: Scotland, Democracy, Politics*. Cambridge: Open Book Publishers. <https://www.jstor.org/stable/j.ctt1sq5v42>
- Maes, I. and A. Verdun (2005) 'Small States and the Creation of EMU: Belgium and the Netherlands, Pace-setters and Gate-keepers', *Journal of Common Market Studies*, 43(2), pp. 327-48. <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.0021-9886.2005.00558.x>
- Scottish Government (2013) *Scotland's Future: Your Guide to an Independent Scotland*. Edinburgh: Scottish Government. <https://www.gov.scot/publications/scotlands-future/>

Thorhallsson, B. (2012) 'Small States in the UN Security Council: Means of Influence?', *The Hague Journal of Diplomacy*, 7(1), pp. 135-60. <http://uni.hi.is/baldurt/files/2012/08/Small-States-UN-Security-Council-by-Thorhallsson.pdf>

UK Government (2013) *Scotland Analysis: EU and International Issues*, Cm. 8765. London: HMSO. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/271794/2901475_HMG_Scotland_EUandInternational_acc2.pdf



Independence and interdependence: re-imagining Scottish independence after Brexit

Nicola McEwen

Introduction

In the 2014 independence referendum, the Scottish electorate was asked: *Should Scotland be an independent country?* But what does it mean to be an independent country in an interdependent world? And can it mean the same now as it did in 2014?

Ahead of the 2014 vote, the SNP Government's White Paper, *Scotland's Future*, offered a vision of independence framed within the context of transnational interdependence (Scottish Government, 2013). An independent Scotland was to take its place alongside the UK as a European Union (EU) member state. At the same time, independence would herald a new 'partnership of equals' with the rest of the UK, with open borders, shared markets and, in some areas, shared governance. This was, according to many commentators, 'independence-lite'.

The UK's departure from the European Union, and the 'thin' nature of the EU-UK Trade and Cooperation Agreement concluded in December 2020 (European Commission, 2020b), pose challenges for a version of Scottish independence that is at once interdependent with the rest of the UK and the EU. The UK's departure from the EU single market, and the government's resistance to firm 'level-playing field' commitments in defence of national sovereignty, point towards the prospect of greater divergence in EU and UK regulations in future. That prospect sits uneasily alongside an independence for Scotland that rests on interdependence with its neighbours. In particular, were an independent Scotland to accede to the EU, the Anglo-Scottish border would become an external EU border. This article considers what this may mean for the meaning and scope of Scottish independence, and the relationship an independent Scotland could have with the rest of the UK.

Independence and interdependence in 2014

The Scottish National Party's election to government in 2007 and, in particular, its re-election in 2011 with an overall majority, gave it the opportunity, the resources and the obligation to develop a detailed prospectus of what independence might entail. The 2007 document, *Choosing Scotland's Future*, provided little detail but underlined that 21st century independence for Scotland 'would reflect the reality of existing and growing interdependence: partnership in these Islands and more widely across Europe' (Scottish Government, 2007: 24).

The 2013 White Paper, *Scotland's Future*, as well as emphasising the new powers that independence would bring, fleshed out this vision of independence with interdependence (Scottish Government, 2013). It made frequent references to the close trading links between Scotland and the rest of the UK (rUK), and the common regulatory structures within which business, consumers and public bodies operated. Many of these have been shaped by EU law and it was assumed that the free movement of people, goods, services and capital across the Anglo-Scottish border would continue to be facilitated by common membership of the European single market shared by an independent Scotland and the rUK.

But the White Paper's version of independence foresaw a closer relationship between an independent Scotland and the rest of the UK than would emerge from their shared EU membership. Indeed, core elements of the *acquis communautaire* – the body of EU law that new members are expected to adopt – were shunned in favour of continued interdependence across the British Isles. For example, instead of joining the European Schengen area, it was expected that an independent Scotland would remain part of the Common Travel Area (CTA), thus facilitating the free movement of people across the Anglo-Scottish border. The CTA has been operational between the UK and Ireland since 1952, giving citizens of each state special status in the other, including free movement and citizenship rights (see the chapter by Kyambi in this volume). It was assumed that, upon independence, the existing boundaries of the CTA would remain, while

accommodating Scotland's new status as an independent state, 'meaning there will be no need for passports, exchanges or border checks' (Scottish Government, 2013: 215).

The SNP also rejected adopting the Euro in favour of a formal sterling currency union with the rest of the UK, in which Scotland's government would effectively become a shareholder in the ownership and governance of the Bank of England (see the chapter by Peat in this volume). There is nothing especially unusual about currency unions between independent states, but the loss of monetary policy autonomy it would entail left some independence advocates feeling uneasy (see Brown Swan and Petersohn, 2017). Moreover, its rejection by the then Chancellor of the Exchequer, George Osborne, was a reminder that a partnership of any kind requires a willing partner.

The 'renewed partnership of the Isles', as Nicola Sturgeon described it in a speech at the University of Edinburgh (Sturgeon, 2013), was foreseen in a range of other cross-border arrangements. These included a formal energy partnership, more deeply integrated than the European energy market, a 'joint venture' between a new Scottish Broadcasting Corporation and the BBC, and a continued cross-border remit for a host of public bodies, such as the Office of Rail Regulation, the Civil Aviation Authority, the National Lottery and the UK research councils. It was assumed that Scotland and the rest of the UK would 'work together' in cross-border arrangements on health treatments, in combating serious and organised crime and terrorism, and in administrative arrangements to deliver public services 'when this makes sense' (Scottish Government, 2013: 216). In social security, the Scottish Government accepted the recommendations of its expert working group on welfare to maintain an integrated social security bureaucracy for an undefined transitional period after independence.

Throughout the White Paper, emphasis was placed upon 'the realities of an increasingly inter-dependent world', and an assumption that an independent Scotland would work in partnership with the rest of the UK and other countries to confront policy challenges (p. 215). The then First Minister, Alex Salmond, spoke of Scotland being part of six unions: the European Union, the Defence Union through NATO, the Currency Union, the union of the crowns, the social union and the political union (Salmond, 2013). Independence, he argued, would only end the political union. As for the others, 'we can embrace them in that spirit of interdependence... while using the powers of independence to renew and improve them' (Salmond, 2013).

Elements of this harmony between independence and interdependence may have been inspired by the late Neil MacCormick, Regius Professor of Public Law and the Law of Nature and Nations at the University of Edinburgh, as well as an SNP parliamentarian and latterly a constitutional adviser to the SNP Government. MacCormick's vision was of a 'post-sovereigntist' independence. He believed that, as a matter of law, the European Union constrained the sovereignty of its member states, while also enhancing their sovereignty when they act in concert: 'the sovereignty of the Community's member states has not been lost, but subjected to a process of division and combination internally, and in a way enhanced externally' (MacCormick, 1999: 133). From this perspective, he regarded the pursuit of independent statehood to be compatible with, and enhanced by, a vision in which sovereignty is shared with multiple co-existing polities, both recognising

their interdependence and reinforcing the benefits and influence that comes from their collective endeavours.

The 2013 White Paper didn't go quite this far. It underlined that sovereignty in Scotland, always emphasised in contrast to Westminster parliamentary sovereignty, rested with the people of Scotland to whom 'all state power and authority would be accountable' (Scottish Government, 2013: 548). Nonetheless, the emphasis upon 'partnership' with the rest of the UK, the EU and international organisations throughout the document reflects a view of independence at ease with pooling and sharing decision-making authority.

Whatever the political and constitutional barriers that might have confronted such a vision in the harsh light of independence negotiations, it is reasonable to assume that historical links, economic interests and geography would generate some form of co-existence between an independent Scotland and the rest of the UK. Moreover, had the 2014 referendum led to independence, Scotland and rUK as co-members of the EU would have been equally bound to EU regulatory governance (assuming an independent Scotland would have acceded to the EU in parallel with, or shortly after, independence negotiations). Under that scenario, whatever other challenges it would have confronted, independence posed few barriers to trade and mobility across the Anglo-Scottish border. Now that the UK has left the EU, this can no longer be taken for granted.

Brexit, independence and the Anglo-Scottish border

The powerful call to 'take back control' in the Brexit referendum may have meant different things to different people – control of borders, control of laws, control of resources, control of destinies. But the idea that Brexit will lead the UK to reclaim national sovereignty has been a prominent feature of the UK Government's Brexit discourse since the 2016 referendum. In contrast to the version of Scottish independence articulated by the SNP, where cooperation and 'partnership' are regarded as routes to enhance Scotland's authority and influence in the world, the independence envisioned for the UK by the Johnson administration places a premium on maximising exclusive national decision-making authority.

Although the rhetoric masks some of the compromises made in the Trade and Cooperation Agreement, the deal reached points towards a looser political and economic relationship between the UK and the EU, outside of the EU single market, the EU Customs Union, and the system of EU rules and regulations.

The politics of Brexit have created new opportunities for the Scottish independence movement; this was not, after all, the constitutional future that most Scots wanted. However, Brexit also raises doubts about the degree to which the cross-border cooperation and integration envisaged in the 2013 White Paper would now be tenable. This is especially the case if Scotland, upon independence, was to negotiate reentry into the European Union. The steps EU membership would entail and the barriers to be

confronted are discussed elsewhere in this volume (see the chapter by Hughes). I focus here on the issues that would arise for Scotland's social, fiscal, economic and political relationship with the rest of the UK should the border between them become an external border of the European Union.

EU accession would require meeting the obligations of membership and adopting the *acquis*. In principle, this includes being part of the Schengen area, which permits unrestricted movement across the internal borders of participating countries while committing to protecting their shared external border. Being part of the Schengen area has many attractions that are in keeping with an interdependent vision of independence, but it would require tighter control over the movement of people across the Anglo-Scottish border. That would not be compatible with maintaining the Common Travel Area and would surely be too high a price to pay for EU membership. The Irish precedent, however, suggests that an agreement that permitted Scotland to opt-out of Schengen, given its unique geographic and historic circumstances, could be reached as part of accession negotiations. The Common Travel Area is already recognized in the Lisbon Treaty, reflecting 'the existence for many years of special travel arrangements between the United Kingdom and Ireland' (EU, 2012: 293).

Adopting the *acquis* would also imply a commitment to European economic and monetary union at some point. Again, this would be compatible with an interdependent vision of independence that looked towards Europe. But the Sustainable Growth Commission's (SGC) lengthy 2018 report into the finances and currency options of an independent Scotland gave no serious consideration to adopting the Euro, even as a long-term objective (SGC, 2018). This may be difficult to maintain in accession negotiations, and could be seen in Brussels as signalling a lack of enthusiasm for the project of European integration.

The SNP has moved away from the commitment to negotiate a formal sterling currency union with the rest of the UK. Following the SGC's recommendation, its policy is now to continue to use the pound sterling, accepting the costs to monetary autonomy this would entail (for more analysis of Scotland's currency options, see the chapter by Peat in this volume). Transition to an independent Scottish currency would only be pursued once six tests relating to fiscal stability, credibility and sustainability had been met. Having different currency arrangements north and south of the border would incur some transaction costs but is unlikely to have a dramatic impact on cross-border flows of people, goods, services or even capital. There are plenty of examples of free movement between currency regimes, including within the European single market where 12 countries are not part of the Euro area. The tortuous process of negotiating the UK's exit from the EU while maintaining an open border on the island of Ireland suggests that bigger challenges would be presented in relation to goods and services (see the chapter by Fontanelli in this volume on international trade).

There is no precedent for an EU member state not being part of the EU Customs Union or the single market. Thus, with regard to goods and services, the Anglo-Scottish border upon Scotland's accession to the EU would become a border between two customs and regulatory regimes. Hayward (2019) suggested that in all systems of

border management, it is essential to know: what is crossing the border; that it meets the criteria for doing so; and that we can prevent entry/exit if necessary. The Irish example is illuminating. The Ireland/Northern Ireland protocol to the EU Withdrawal Agreement maintains an open border on the island of Ireland by ensuring that goods produced in Northern Ireland will continue to be subject to EU regulations, thus meeting single market criteria (European Commission, 2020). Implementing that Agreement necessitates checks on goods coming into Northern Ireland from the rest of the UK to ensure they meet the EU's rules of entry. While the 'zero tariff, zero quota' deal has avoided some costs that would otherwise have affected goods trade across the Irish sea, it does not prevent the need for checks and controls on goods in transit. The bureaucracy this entails for traders has already generated frictions, delays and associated additional costs. While some problems might ease as new systems get up and running, the need for checks will remain. Moreover, the prospect of the EU and the UK adopting divergent rules and regulations can be expected to increase non-tariff barriers over time and thus generate more friction in EU/UK trade.

The EU's approach to the Irish border showed that flexible arrangements are possible when there is political will. But that flexibility has to be seen in the light of the unique circumstances of Northern Ireland, the importance of upholding the Good Friday Agreement, and the vital interests of Ireland as an EU member state. It can't be assumed that the same flexibility would be extended to Scotland. An independent Scotland seeking to become a member state of the European Union would have to demonstrate capability to manage the entry and exit of goods and services entering the European market via Scotland. This would include enforcing compliance with EU rules for trade entering Scotland from the rest of the UK, including rules of origin requirements, sanitary and phytosanitary checks, and customs' declarations, and compliance with broader EU regulations.

It is sometimes mooted that it may be advantageous for an independent Scotland to participate in the European Economic Area, via membership of the European Free Trade Association, instead of joining the EU. This could enable access to the EU single market while remaining outside of the Customs Union and other areas of cooperation, including the single currency, fishing and agriculture. This would mean Scotland being subject to EU single market rules without being part of the decision-making structures that determine those rules but, in principle, it could open up the opportunity to negotiate separate trading arrangements with the rest of the UK to minimize cross-border friction. However, this would not eliminate the need for checks on goods and services crossing the Anglo-Scottish border, and would leave an independent Scotland seeking separate trading arrangements with the EU and others. Under that scenario, Scotland could be faced with two new major borders instead of one: a customs border with the EU and a regulatory border with the UK.

Thus, in the post-Brexit environment, independence is likely to require new structures and processes of border management under any scenario. It would be for the UK Government to decide what checks it deemed necessary for goods entering its market, but a Scottish Government would be obliged to check that goods crossing its borders

complied with EU regulations. While it *might* be possible, as part of EU accession negotiations, to agree a derogation for goods that are clearly not destined for onward distribution within the EU single market outside of Scotland, this is far from certain and, even then, some system of border management is inevitable. This may involve office-based bureaucracy as much as physical border posts at Berwick. Either way, post-Brexit independence is likely to generate additional barriers to trade and mobility across the Anglo-Scottish border just as it opens up trade and mobility with the EU.

This bordering process could also make it considerably more difficult to share services and governance, for example, in energy, social security, and service delivery, as was envisaged in 2014. To the (variable) extent that they fall within EU competence, such services in Scotland would have to be regulated according to EU law. If UK law diverges significantly from EU regulations, the efficiency gains that were anticipated by sharing the management and delivery of services across the border are likely to diminish.

Conclusion

The SNP has long sought independence for Scotland whilst recognising the reality and value of interdependence with its neighbours. It is unlikely to depart from that perspective. This contrasts with the nationalism that drove the UK Government's approach to Brexit negotiations, where the repatriation of sovereign authority was paramount. Were it ever to be realized, Scottish independence would not be a constitutional destination. Rather, it would mark a resetting of Scotland's evolving relationship with the rest of the UK, as it negotiated a new, direct, relationship with the EU and the rest of the world.

The same is true of the UK's 'independence' from the EU. The Brexiters' call to 'take back control' may yet confront the reality that statehood always involves degrees of cooperation and collaboration with others. Furthermore, Westminster parliamentary sovereignty means that the current UK parliament cannot bind its successors. Future UK leaders may take a rather different view of the relationship with the EU and seek closer regulatory alignment or perhaps even renewed membership. Or not. Instead, the UK may continue to drift from its European neighbours, charting its own distinctive regulatory course.

The relationship between the UK and the EU has profound implications for an independent Scotland. The closer the alignment between the UK and the EU, the more feasible it will be to combine Scottish independence within the EU with intimate relations and fluid borders with its closest neighbour. Conversely, further UK-EU divergence raises difficult challenges and choices for advocates of independence regarding which economic, political and institutional relationships would be most beneficial to an independent Scotland. No relationship can be determined unilaterally. The SNP's vision of an independence that embeds even a loose partnership with the rest of the UK will require cooperation and goodwill from the UK Government on an ongoing basis.

References

Brown Swan, C and B Petersohn, 2017, 'The currency issue: contested narratives on currency union and independence', in Keating, M (ed), *Debating Scotland. Issues of Independence and Union in the 2014 Referendum*, Oxford University Press. <https://oxford.universitypressscholarship.com/view/10.1093/acprof:oso/9780198789819.001.0001/acprof-9780198789819>

European Commission, 2020, *Protocol on Ireland and Northern Ireland*. https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/eu-uk-withdrawal-agreement/protocol-ireland-and-northern-ireland_en

European Union (2012) Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, *Official Journal of the European Union* (2012/C 326/01). <https://op.europa.eu/en/publication-detail/-/publication/3c32722f-0136-4d8f-a03e-bfaf70d16349>

Hayward, K. (2019) 'Weighing up Alternative Arrangements to the Backstop: A framework for analysis', UK and the EU Blog. <https://ukandeu.ac.uk/wp-content/uploads/2019/09/Weighing-up-alternative-arrangements.pdf>

MacCormick, N. (1999), *Questioning Sovereignty*, Oxford University Press. <https://oxford.universitypressscholarship.com/view/10.1093/acprof:oso/9780198268765.001.0001/acprof-9780198268765>

Salmond, A. (2013) 'The six unions', speech delivered at Nigg Fabrication Yard, 12 July. <https://news.gov.scot/speeches-and-briefings/the-six-unions-introduction>

Scottish Government (2009) *Choosing Scotland's Future: A National Conversation: Independence and Responsibility in the Modern World*, Edinburgh: Scottish Government. <https://www.webarchive.org.uk/wayback/archive/20170401154936/http://www.gov.scot/Publications/2007/08/13103747/12>

Scottish Government (2013) *Scotland's Future. Your Guide to an independent Scotland*. Edinburgh: Scottish Government. <https://www.gov.scot/publications/scotlands-future/>

Sturgeon, N. (2013) 'Independence: a renewed partnership of the Isles', speech delivered at the University of Edinburgh, 7 June 2013. <https://www.youtube.com/watch?v=ZTH-negqicE&feature=youtu.be>

Sustainable Growth Commission, 2018, *Scotland – the new case for optimism. A strategy for inter-generational economic renaissance*. <https://www.sustainablegrowthcommission.scot/report>

UK Government (2020) *The Future Relationship with the EU: the UK's Approach to Negotiations*, <https://www.gov.uk/government/publications/our-approach-to-the-future-relationship-with-the-eu>



Part 5: Views from Elsewhere



An independent Scotland? What might the English think?

Michael Kenny

Introduction

The Scottish Referendum of 2014 was one of the few constitutional events in the last half century – other than Brexit – to leave a deep impression upon the English mind. The campaign leading up to the vote was viewed with great interest south of the border; English politicians and commentators mainly expressed their aversion to the prospect of independence; and the devolution ‘vow’ made by the leaders of the three main parties in British politics in the final days of the campaign, generated a significant, negative, response from many Conservative MPs (Wintour, 2014).

Prime Minister David Cameron judged that this changing national mood needed to be assuaged. And so, in the immediate aftermath of his relieved announcement of the result, he declared that ‘the millions of voices of England must also be heard’ (Cameron, 2014).

For the UK’s Prime Minister to speak directly to a collective sense of English neglect was itself a striking moment in British constitutional politics. But the remit of the subsequent review that he launched was deliberately narrowed to the issue of whether

English legislation at Westminster needed the consent of England's MPs alone, as well as those of the House of Commons as a whole. This culminated in a new set of rules being added to the Commons' Standing Orders in 2015 – known as 'English Votes for English Laws' (EVEL) – which established a new right of veto for England's representatives over government business that only applied to it (Gover and Kenny, 2016). The technical complexity of this new system, and its irrelevance given the electoral arithmetic of every UK parliament that has been elected since (which has resulted in UK governments which have the support of a majority of English representatives), means that it remains invisible to the wider public and unloved by MPs who struggle to understand its operation.

But while the 'English moment' triggered by the 2014 Referendum petered out in institutional terms, its legacy at the level of national culture and awareness was, arguably, much more profound. For a lengthy period, British politics had been conducted on the assumption that people living in England were uninterested in the questions of nationhood and self-determination that animated Scotland, Wales and, in more complex ways, Northern Ireland. Englishness was, for the most part, defined around culture and tradition, and the patriotism of England's leading post-war politicians was expressed in stolidly British terms (Kenny, 2014). The lack of interest taken by the English majority to the introduction of devolution in the years after 1999 seemed to confirm this orthodoxy.

But this assumption no longer holds. From the mid-2000s, the English people and their political representatives were increasingly drawn towards issues of sovereignty and nationhood. Partly this was because of the increasingly salient and divisive impact of the immigration issue, but it also reflected the growing importance of the UK's membership of the EU and the absence of a popular referendum on the issue. The divisive nature of these issues began to filter into high politics. And while there was some annoyance about the undue influence of Scottish MPs at Westminster and the disproportionate funding of public services in Scotland, the changing mood of the English was not primarily driven by reforms in the governing structures of the UK (Curtice, 2010). It was much more directed at the perceived constraints upon British sovereignty associated with membership of the European Union (Wellings, 2012).

England and the 2014 referendum

But the 2014 Scottish independence referendum broke this mould. This was the moment when the broader, institutionally unanchored feelings of nationhood, which had begun to coalesce since the previous decade, connected with the complicated realities of the multi-national union in which England was the dominant player.

This referendum was a watershed for the English because of the shock it engendered at the prospect that Scotland might decide to end the union which had bound the two nations for over three centuries. And it was notable too for the panic which the closeness of the polls in the final days of the campaign instigated among many of Britain's politicians. The rush to assemble an enhanced devolution package in response

served to crystallise a rising feeling in some of England's poorest regions that the English 'provinces' were, by contrast, invariably neglected by the central state.

Another feature of this historical episode mattered for the English too. The sight of a neighbouring people being given the opportunity to exercise its sovereignty through a popular referendum made a considerable impression, especially for those people from different parts of England – left-behind towns, rural hinterlands and more affluent shires – who had for various reasons come to see themselves as increasingly disenfranchised. 'When do we get a vote?' was the question I recall being asked at almost every event at which I spoke on this issue, south of the border, in the run up to the 2014 vote. In polling conducted on the eve of the referendum, ICM found that 50% of respondents felt that "England and Wales should also have been given a say" on whether Scotland should remain within the union (Clark, 2014).

England and the Brexit referendum

Two years later, the English – along with their fellow UK citizens – got their chance to vote on a question where issues of sovereignty, national identity and statehood were all key, and which also afforded a rare opportunity to signal to the political establishment in London the belief that their interests were neglected. The decision to extricate the UK from the EU – a union of much shorter historical duration – had the inadvertent consequence of setting the UK government on a collision course with the devolved governments (Keating, 2018), and instigated an extended political crisis given the scepticism of a majority of MPs at Westminster towards Brexit. The deep, geographically rooted divide within the English mindset which this vote threw into relief, turned into one of the major fault lines within British politics.

These complicated developments – which are caricatured by clichés about 'English nationalism' – form a crucial historical backdrop to any future referendum on Scotland's future. Judgements about how the English might respond to IndyRef2 – and indeed other domestic constitutional questions – tend to assume a degree of certainty about the collective English mind when, in truth, the latter has only just begun to awaken to the asymmetrical and lopsided nature of the UK's devolution model (Kenny, McLean and Paun 2018).

Equally, the depth and nature of England's deep internal divisions over whether the English are an ancient, self-governing nation, or a people happy to share the state they feel is their own with other minority national groups on relatively accommodating terms, are also now an important influence on judgements about the union. Over time, the orientation of many younger, metropolitan graduates in the largest cities, especially London, has been towards a capacious, multi-cultural and ethnically diverse idea of Britishness. Elsewhere, a growing pride in a distinctively Anglo tradition has developed over the last two decades, and is a characteristic attitude of many of the voters, in former Labour seats, who swung behind Boris Johnson in December 2019 (Jennings and Stoker, 2016; Matharu 2020).

Public attitudes

These dynamics may well condition popular responses to a second Scottish Referendum and its potential outcomes. Overall, polls from the last few years report a plurality of the English electorate who feel comfortable with the idea that the Scottish people have the right to determine their own future. And there are few signs of mass support for older visions of Britain as a unitary state and a unified nation.

During the campaign leading up to the 2014 vote, polls showed large majorities of those south of the border who wanted Scotland to remain in the UK.

Table 1: People in England who prefer Scotland to remain in the UK

	Yes	No
YouGov, April 2014	59	19
Populus, May/June 2014*	55	15

** ‘I hope that Scotland votes to remain part of the United Kingdom’ or ‘I hope that Scotland votes to leave the UK and become an independent country’*

More recently, a survey undertaken for the Future of England series, in the summer of 2018, found that 20% of people in England wanted Scottish independence, and 52% were clearly opposed to this outcome (YouGov, 2018). And it may well be that a similar pattern recurs in the face of IndyRef2.

But it would be unwise to take for granted how the English will respond in future on this issue for two particular reasons. The first of these concerns Brexit, and its impact on domestic territorial relationships. For many supporters of this cause, in England - and to a slightly reduced extent in Wales (Scully 2019) - the belief in the imperative to deliver on the mandate secured by the 2016 Referendum assumed a priority over some of the values and purposes long embedded in British politics, including, for some, preservation of the domestic union. At times during the political crisis engendered by the struggle to pass an agreed deal with the EU through parliament, 2018-19, the idea of exercising British sovereignty by leaving the EU seemed to run into conflict with the preservation of its internal constitutional order (Kenny and Sheldon, 2020). Whether the prospect of the will of the English majority being thwarted by politicians arguing that the domestic union could not be risked carries longer term consequences for English perspectives remains to be seen. But it may well colour some perceptions of the prospect of Scotland – which has signalled its clear priority to remain closely aligned to the EU – leaving the UK.

The other factor that makes future attitudes increasingly hard to anticipate is the impact upon English sensibilities of growing awareness of the electoral strength of the SNP, and of nationalist politics in Scotland more generally. Over time, this appears to have made the English more pessimistic about the future of the union. Whereas in

2014 most English respondents expected a 'No' vote in the Referendum, by July 2016 70% of British voters thought Scotland would vote for independence in a future poll (Learmonth, 2016). And in the 2019 Future of England poll, 66% of English voters thought a second referendum in which Scotland voted to leave the UK was 'likely' (YouGov, 2019).

The Union and territorial politics

This growing pessimism about the continuation of the union in its current form may well become an important factor within the UK's territorial politics. It overlays a traditionally rooted fear among English unionists of the rise of potential threats to the state, and an enduring tradition of worry about the undue influence that nationalist politicians can exert at the heart of British politics and decision-making, when neither of the British parties enjoys a clear majority of seats in parliament. The rather casual indication by Labour leaders John McDonnell and Jeremy Corbyn, in the run-up to the 2019 election, that the party would very likely permit IndyRef2 in return for SNP support (BBC, 2019), revealed much about the hostility to the British state encoded within their brand of politics. It also reflected a wider movement in progressive English opinion in recent years that is particularly admiring of Nicola Sturgeon, compared to other political leaders, and which sees Scottish independence as a noble cause (Harris, 2019).

Within England's Conservative heartlands, by contrast, an opposite reaction has set in, and the belief that the union needs to be more actively defended and promoted has become prevalent in the upper echelons of the Tory party. First under May's leadership, and latterly under her successor, a more muscular and assertive approach to the unionist cause has emerged. And there is a commitment to a policy agenda involving greater direct investment by the state in devolved territories – in contrast to the focus upon greater fiscal autonomy pursued by the Cameron administration – and a more assertive promotion of the benefits of union. This strain of 'neo-unionist' sentiment (Keating, 2020) became apparent in the upper echelons of the Tory party at Westminster during the Brexit crisis, and was kindled both by heady talk of the reclamation of sovereignty for the UK as it left the EU and also by a growing concern that Brexit itself might well put England on a collision course with Northern Ireland and Scotland (Kenny and Sheldon, 2020).

While this discourse is closely related to the party's political positioning in both Scotland and Wales, it is also intended for English ears, and reflects a growing awareness of the need to respond to the diminishing consent there for governing arrangements which many view as remote and unresponsive, and some see as unfair. The risk it runs in Scotland and Wales is that central government appears to be losing respect for the devolution arrangements in these territories and alienates moderate unionist opinion.

Conclusion

Winding forward to a future IndyRef 2, and the prospect of a majority of Scots voting for independence, the feelings of the English will be one of the factors that shapes and constrains negotiations on the future relationship between the two countries. Polling conducted at the time of the first referendum indicated that a fairly trenchant approach would be favoured by most people in rUK – the English included.

The Future of England survey in 2014 found a plurality of voters who thought that in the event of a Yes vote, Scotland should not be able to use the pound, and the British government should not support an independent Scotland in joining the EU and NATO – and that those who identified most strongly as ‘English’ rather than British felt this most strongly. Most people did though favour the continuation of free movement across the English-Scottish border (CCC, 2014; see also the chapter by Kyambi in this volume on migration and the Common Travel Area).

A large number of the English have been on an unheralded journey, during the course of the past two decades, towards a new sense of nationhood – still British, but with a new, more decidedly Anglo accent. Brexit provided an occasion for the political expression of this vein of national sentiment, but it also revealed a deep internal division within the English psyche. As Brexit wanes from the political horizon, there is a good chance that it is on questions of domestic governance and the UK’s own constitutional order that the conflicting politics of English identity will play out. And any assessment of the territorial and political implications of IndyRef2 will need to factor in the changing feelings towards Scotland and the union that are apparent south of the border.

References

- BBC (2019) ‘Corbyn: UK Parliament should not block Indyref2’, 15 August. <https://www.bbc.co.uk/news/uk-scotland-scotland-politics-49352971>
- Cameron, D. (2014) *Scottish Independence Referendum: Statement by the Prime Minister*, 10 Downing St Press Release, 19 September. <https://www.gov.uk/government/news/scottish-independence-referendum-statement-by-the-prime-minister>
- CCC (2014) *Both England and Wales oppose Scottish Independence – but the English favour a harder line with Scotland*, Centre on Constitutional Change, Press Release. <https://www.centreonconstitutionalchange.ac.uk/sites/default/files/migrated/news/Both%20England%20and%20Wales%20oppose%20Scottish%20Independence.pdf>
- Clark, T. (2014) ‘Independent Scotland should not use pound, say 63% of English and Welsh’, *The Guardian*, 15 September. <https://www.theguardian.com/politics/2014/sep/15/independent-scotland-not-use-pound-english-welsh-voters>
- Cohen, T. (2016) ‘Why did Theresa May ditch a no deal Brexit?’ Sky News, 4 April. <https://news.sky.com/story/why-did-theresa-may-ditch-a-no-deal-brexit-11683841>

Curtice, J. (2010) *Is an English backlash emerging? Reactions to devolution ten years on*, Institute for Public Policy Research. https://www.ippr.org/files/images/media/files/publication/2011/05/Is_An_English_Backlash_Emerging_1753.pdf

Gover, D. and M. Kenny (2016) *Finding the good in EVEL: An evaluation of 'English votes for English laws' in the House of Commons*, Centre on Constitutional Change. <https://www.centreonconstitutionalchange.ac.uk/sites/default/files/migrated/papers/EVEL%20Report%20Gover%20and%20Kenny.pdf>

Harris, J. (2019) 'My England is a mess. Scotland's case for splitting is stronger than ever', *The Guardian*, 28 April. <https://www.theguardian.com/commentisfree/2019/apr/28/england-mess-scotland-splitting-away>

Jennings, W. and G. Stoker (2016) 'The Bifurcation of Politics: Two Englands', *Political Quarterly* 87(3): 372-382. <https://onlinelibrary.wiley.com/doi/abs/10.1111/1467-923X.12228>

Keating, M. (2018) 'Brexit and the Nations', *Political Quarterly* 90(2): 167-176. <https://onlinelibrary.wiley.com/doi/full/10.1111/1467-923X.12619>

Keating, M. (ed) (2020) *The Oxford Handbook of Scottish Politics*, Oxford University Press. [insert hyperlink: <https://global.oup.com/academic/product/the-oxford-handbook-of-scottish-politics-9780198825098>

Kenny, M. (2014) *The Politics of English Nationhood*, Oxford University Press. <https://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199608614.001.0001/acprof-9780199608614>

Kenny, M., I. McLean and A. Paun (2018) *Governing England: English identity and institutions in a changing United Kingdom*, British Academy and Oxford University Press. <https://britishacademy.universitypressscholarship.com/view/10.5871/bacad/9780197266465.001.0001/upso-9780197266465>

Kenny, M. and J. Sheldon (2020) 'When planets collide: the British Conservative Party and the discordant goals of delivering Brexit and preserving the domestic union, 2016-2019', *Political Studies*, June. <https://journals.sagepub.com/doi/abs/10.1177/0032321720930986>

Learmonth, A. (2016) 'Majority of Brits believe Scots would vote to exit UK', *The National*, 8 July. <https://www.thenational.scot/news/14903826.majority-of-brits-believe-scots-would-vote-to-exit-uk/>

Matharu, H. (2020) 'Labour Must Win Over England Or Accept Never Winning Power Again', *Byline Times*, 5 March: <https://bylinetimes.com/2020/03/05/labour-must-win-over-england-or-accept-never-winning-power-again/>

Wellings, B. (2012) *English nationalism and Euroscepticism*, Peter Lang. https://books.google.co.uk/books/about/English_Nationalism_and_Euroscepticism.html?id=UdaQpwAACAAJ

Wintour, P. (2014) 'Politicians' Scottish funding pledge brings anger from rest of the UK', *The Guardian*, 16 September. <https://www.theguardian.com/politics/2014/sep/16/politicians-scottish-funding-pledge-anger-daily-record>

YouGov (2018) YouGov/Future of England Survey Results https://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/8gzxmxtckl/FOE_England_June2018_Results_w.pdf

YouGov (2019) YouGov/Future of England Survey Results https://www.cardiff.ac.uk/_data/assets/pdf_file/0008/1708631/Copy-of-England-16-Oct-AH.pdf



Small states in a big world

Michael Keating

The small state debate

Much of the argument about an independent Scotland has focused on how it could fare as a small, independent state in the global era. At one time, it was generally thought that large states had the advantage in the modern world. They could defend themselves; they commanded large domestic markets; they could mobilise resources for welfare; and there were economies of scale in government and the administration of public services. In recent years, however, attention has turned to the advantages of small units in general and small states in particular.

It is difficult to say whether small states are more or less effective than large ones, not least because of the difficulties in defining what is meant by a small state. The 'smallness' of a state could be measured by population, by land area or by Gross Domestic Product. It might also refer to geo-political location or whether it commands a strategic position. Size is always relative. So, Canada, despite its vast area and population of 37 million, is seen as a small state in North America while Sweden, with a population of 10 million, is a large state in the Nordic region.

The relative nature of 'smallness' is one reason to be suspicious of analyses that present statistical correlations between the size of states and GDP per capita (or rates of growth) to show that small states do better than large ones. The variance *within* each group always threatens to swamp differences *between* the groups of 'small' and 'large'

states. There are so many other factors at work that we can rarely say that size is the crucial one. In any case it is unlikely that size, however measured, is the key factor. At best, size might make some choices easier or harder in specific contexts.

Recent work on small states avoids broad generalisations based on size. Instead, it examines the different ways in which small states can adapt to a globalised world. Small countries are vulnerable in a world of large states. On the other hand, they may have opportunities not open to their larger neighbours. This chapter examines three different models of adaptation, concluding that, whichever model is adopted, it will require internal reform as well as external independence.

Opportunities

Small size may provide states with opportunities. Decision-making and adaptation may be easier where there is a small population and shorter lines of communication. In countries where the relevant stakeholders can fit into one room, priorities may be identified more easily and consensus reached. Ideas may circulate more rapidly. It may be easier to engage the public in debate and allow more voices into debate. Policy may be implemented more effectively, and veto-points reduced, if the chain of action is shorter. Feedback to policy-makers may be more effective. On the other hand, small policy communities may be prone to group-think and too much emphasis on consensus might inhibit risk-taking or pushing through necessary adjustments that affect one section of the population.

Vulnerabilities

Small states do not control their external environment but must adapt to changing economic trends, trading patterns, currency fluctuations and economic cycles in other countries. Unable to command substantial military forces, they are vulnerable to security threats. Only the largest and most powerful states can ignore these constraints, although even they (whatever some of their politicians think) are also embedded in webs of international interdependency.

Small states will also lack the policy-making capacity of their larger counterparts. Their research capability may be limited, and they may not have the wealth of policy institutes and think tanks that encourage new thinking in the modern world. This means that they must mobilise their potential to best effect. Publicly funded research is often highly important to small states, as are universities as centres of innovation. The public service may be another source of innovation, rather than a mere transmission belt for policies decided by ministers. It is also important that small states engage in policy exchange and learning with other jurisdictions, both importing and exporting ideas and experiences (Keating et al, 2012).

Scholars in recent years have identified two requirements for small states to deal with these vulnerabilities and thrive in the era of globalisation (Baldersheim and Keating, 2015). The first is an external shelter to provide security and access to markets. This could take the form of military alliances or free trade agreements (see Kenealy, Fleming, and Fontanelli in this volume). Often it means membership in international or supranational organisations such as NATO or the European Union (see the chapter by Hughes). Small states have little use for doctrines of absolute national sovereignty, which are of more interest to those states with the means to enforce it. Rather, they have a large stake in rules-based international regimes.

The second requirement is an internal buffer or adjustment mechanism to allow them to respond flexibly and rapidly to changes in the external environment, including recessions and shifting patterns of trade. This can take many forms, but we can identify three ideal-types: the homogeneous state; the market-liberal model; and the social investment model (Keating and Harvey, 2014).

The homogeneous state

The first model is the small 'homogeneous' state, which has featured prominently in international debates (but not much in Scotland). The economists Alesina and Spoloare (2003) argue that small 'nations' (by which they actually mean states) are ethnically homogeneous. They further argued that, because of this homogeneity, people share attitudes and preferences and can better engage in common endeavours in competition with other nations. This is a misleading and dangerous idea. Ethnicity is a complex and contested concept and, however it is defined, no society is ever homogeneous. Indeed, the idea of ethnic homogeneity is widely seen as morally repugnant. It is widely agreed that social, technical and economic innovation springs from diversity (see Rosie and Meer's chapter in this volume for an analysis of identity and diversity in Scotland).

Alesina and Spoloare extend their argument by stating that small states emerge in eras of global or regional free trade, when they can enjoy wide market access without belonging to larger political units. This enables them to remain homogeneous and small. However, this assumption is factually wrong. The emergence of small states between the two world wars actually coincided with a breakdown in the global trading order. Small states are not necessarily outward-looking.

Market-liberal state

The second model is the market-liberal state, which entails accepting and bending to external pressures. This strategy is commonly known as neo-liberalism and is associated with Thatcherite policies in the United Kingdom, where the aim was to 'roll back' the state. It is based on attracting foreign and domestic investment with low taxes and consequently low levels of public service provision. Welfare benefits are low and provided only to the most needy, rather than being universally available. Wages

are flexible downwards as well as upwards to retain competitiveness in international markets. Trade unions are weak and collective bargaining largely absent. There is free movement of workers in and out, to adjust to the needs of the labour market. Such a model, rolling with the global waves, may generate high rates of overall growth but it is highly cyclical, with steep booms and recessions. This is sometimes (misleadingly) described as the Singapore model. We have found evidence of it in the post-Soviet experience of the Baltic states (Keating and Harvey, 2014). It is also illustrated by the experience of New Zealand in the 1980s as it adjusted to the loss of British markets when the UK joined the European Community.

Social investment welfare state

The third model is the social investment welfare state (Hemmerijck, 2013). Social investment is a way of treating public expenditure not as a drain on resources, but as a contribution to development. This includes directly productive investments, such as infrastructure and research, as well as appreciating that things like health and education enhance the quality of the labour force and are valuable in themselves.

A social investment welfare state requires a large public sector in order to provide these public goods. Public expenditure also acts as a stabiliser across economic cycles, sustaining demand and employment during downturns. Tax levels are correspondingly high. In a globalised world, where investment capital can move around, there are limits to the rates of business taxes. Instead, there are broad-based consumption taxes. There is a universal welfare state, meaning that public services are for everybody, not just the poor. This reconciles the middle classes to the welfare state and sustains public support for it, generating a sense of shared national purpose.

With these commitments and limited resources, high-welfare small states cannot afford to allow high and persistent unemployment. They therefore use active labour market policy to get people back into work quickly. Being vulnerable to currency crises and unable to sustain the huge debts that are accumulated by super-powers, small states will be fiscally prudent and balance their budgets, at least over the economic cycle. This does not mean that they cannot sustain large welfare states, but that these must be paid for through taxation.

The evidence suggests that small states can generate consensus around social investment policies, but it is not ethnic or cultural homogeneity that encourages social cooperation and trust. It is, rather, the performance of government (Rothstein, 2017) and repeated success, which is then communicated back to the population in a virtuous circle. Strong government performance may be combined with political literacy in the form of knowledge of social and economic issues. It is therefore important that institutions be properly designed so as to encourage innovation and cooperation and not allow multiple veto points to develop.

Another adjustment mechanism is 'social partnership' in which business, labour and the state cooperate to make necessary adjustments without massive unemployment or loss of production. This requires broadly representative employer and employee groups with a high coverage, so that each can plausibly be presented as speaking for the community rather than a sectoral interest. Sometimes, these states have a model of capitalism that embraces a 'coordinated market economy' rather than being based on short-term share value maximisation. The result is that levels of output can be maintained and economic cycles are less pronounced.

A specific version of the social investment state is the 'social democratic' one, which places an emphasis on social and economic equality as an end in itself. The argument is that there is not a trade-off between growth and equality, as exponents of the market-liberal model tend to assume. On the contrary, more equal societies tend also to be more efficient (Wilkinson and Pickett, 2010; Stiglitz, 2012). This ideal-type resembles the social democratic 'Nordic model' that has been invoked in the Scottish debate, although in practice the Nordic countries have all taken rather divergent paths over recent years.

Mixing and matching

Ideal-types should never be confused with real cases. Social partnership in particular has declined in much of the Nordic zone from the old days of corporatism, when the key representatives of capital and labour could bargain and deliver deals. Capital is now much more footloose, while trade unions have lost members and influence. Social partnership is more evident in Norway these days than in Sweden. Austerity has affected public services, which have themselves become more differentiated. Yet there is still a difference between the low-cost, market-liberal mode of adjustment and the high-cost, social investment mode.

What is not possible is to mix and match elements of these different modes at will, as each of them has an internal logic in which the various elements support each other. The SNP Sustainable Growth Commission's (2018) efforts to combine models from Denmark, Finland and New Zealand is thus questionable, as these start from very different points. Ireland may have committed this error during the Celtic Tiger years. Public spending was increased but the country did not develop a fully-fledged universal Nordic-style welfare state; the health system remains an inefficient mix of private and public schemes. Low corporate taxation was used as a prime development tool, building up an extensive foreign direct investment (FDI) sector, which was detached from the domestic economy. There was an effort at social partnership, but it was undermined by low union membership while the FDI sector was able to free-ride on it to secure wage control. Public sector workers appear to have benefited disproportionately. Ireland's revival since the Global Financial Crisis has again depended on attracting foreign direct investment with the lure of low taxes, neglecting the domestic sector. The health service is not up to European standards and a property boom has led to a crisis of affordable housing.

How does Scotland compare?

Few people in Scotland have entertained the idea that it is a 'homogeneous' society. On the contrary, nationalists and unionists celebrate diversity and welcome immigration (see Rosie and Meer, and Kyambi, in this volume). There have been occasional advocates of the market-liberal pattern of adjustment for an independent Scotland, such as MacLeod and Russell (2006). Politically, however, it is scarcely viable as, unlike the post-Communist republics, it has a mature and extensive welfare state. Scotland is highly dependent on the public sector not only for social services but for economically crucial sectors such as research (where it has a low private contribution and a large public one) and education. The model that is favoured in debate is, rather, the Nordic, social democratic, social investment welfare one. What is less often appreciated is the degree of internal adjustment that this would require were Scotland to operate this model as an independent state.

There is a tendency in Scottish public policy towards universalism in the provision of public services and there has been less political disparagement of public provision. On the other hand, Scottish public opinion seems to share the proclivity of England for low taxes, with only a few tentative moves to higher and more progressive levels. Income taxes have been increased by one penny except in the lowest range. Thresholds for the higher rate have not been raised as much as in the rest of the UK. The Sustainable Growth Commission (2018) correctly notes that small states cannot finance extended welfare provision by borrowing, and they have to live within their resources. However, the conclusion of the SGC – that Scotland's expenditure increase must be linked to that of the economy – does not follow; the tax base can be broadened and taxes increased. That would require Nordic levels of trust in government and the public services.

Scotland does have small policy communities with short lines of communication and it is not difficult to fit the key players into one room if necessary. Scotland, like the UK as a whole, had some experience of social partnership in the 1960s and 1970s. There were British and Scottish-level development councils and extensive planning for the future. Even in those days, however, membership of the partner organisations was never universal enough for them to stand in for society as a whole. Partnership was eventually reduced to a mechanism for wage and inflation control. It collapsed altogether in the 1970s, paving the way for a much more costly and less effective strategy for controlling inflation through mass unemployment. Since then, trade union membership has steadily declined, especially in the private sector.

Since devolution, social partnership has hardly featured, in contrast to other devolved territories in Europe. In some ways, there was probably more cooperation before devolution, when Scottish actors could unite to lobby Westminster. Since devolution they have to compete with each other for limited resources. There is a lot of consultation and working with civil society groups but this is on a sectoral basis, within the distinct policy communities around economic development, social inclusion, education or the environment. What is lacking are forums for bringing these together and making the positive-sum compromises that could underpin a national development strategy.

Scotland has also suffered from a lack of capacity in making policy and innovation. It has avoided some of the big mistakes made by UK governments in England (like the repeated reorganisations of the health service) but has not lived up to expectations about new ideas. There is still a lack of spaces where people from academia, the public service and civil society can engage in sustained exchanges about policy ideas and practice.

Conclusion

The argument about small states is not only relevant for the debate about independence. A devolved Scotland with enhanced powers could potentially exploit its size and small policy communities to link up welfare, active labour market policies, training, education and economic development. It could design a less punitive and more productive social security regime. The example of Quebec shows how a non-sovereign government can reshape the social and economic model in significant ways, resisting the general Canadian drift to social and economic inequality. It is not small size in itself or formal sovereignty that matter, but the way in which small nations can adapt to the global marketplace and steer their own futures.

Successful small states have usually developed their social and political institutions and practices over a long period of time, or following critical events such as war or regime change. Older nations, like Scotland, have a legacy of institutions and practices from the industrial era, which may make adaptation more difficult. So, becoming a successful independent state would require not merely external adaptation but also extensive internal change.

References

Alesina, A. and E. Spoloare (2003) *The Size of Nations*, Cambridge, MA: MIT Press. <https://mitpress.mit.edu/books/size-nations>

Baldersheim, H. and M. Keating (eds) (2015) *Small States in the Modern World*, Cheltenham: Edward Elgar. <https://www.e-elgar.com/shop/gbp/small-states-in-the-modern-world-9781784711436.html>

Hemmerijck, A. (2013) *Changing Welfare States*, Oxford: Oxford University Press. <https://global.oup.com/academic/product/changing-welfare-states-9780199607600?cc=gb&lang=en&>

Keating, M. (ed.) (2017) *A Wealthier, Fairer Scotland. The Political Economy of Constitutional Change*, Edinburgh: Edinburgh University Press. <https://edinburghuniversitypress.com/book-a-wealthier-fairer-scotland.html>

Keating, M. and M. Harvey (2014) *Small States in a Big World. What Scotland Can Learn*, Edinburgh: Luath. <https://www.luath.co.uk/productss/small-nations-in-a-big-world-what-scotland-can-learn>

Rothstein, B. (2017), 'Solidarity, Diversity and the Quality of Government', in Keith Banting and Will Kymlicka (eds), *The Strains of Commitment. The Political Sources of Solidarity in Diverse Societies*, Oxford: Oxford University Press. <https://global.oup.com/academic/product/the-strains-of-commitment-9780198795452?cc=gb&lang=en&>

Stiglitz, J. (2012), *The Price of Inequality*, New York: Norton. <https://wnnorton.com/books/The-Price-of-Inequality/>

Sustainable Growth Commission (2018), *Scotland. The New Case for Optimism*, Edinburgh: Sustainable Growth Commission. <https://static1.squarespace.com/static/5afc0bbbf79392ced8b73dbf/t/5b0a988c352f53c0a5132a23/1527421195436/SGC+Full+Report.pdf>

Wilkinson, R. and K. Pickett (2010), *The Spirit Level: Why Equality is Better for Everyone*, Harmondsworth: Penguin. <https://www.penguin.co.uk/books/179/179241/the-spirit-level/9780241954294.html>