

## **An Independent Scotland? The Scottish National Party's Bid for Independence and its Prospects**

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**Abstract:** The September 2014 referendum is a milestone in Scotland's history. After 307 years of union with England and a 15-year experience with devolution, Scottish nationalism is within reach of its ultimate goal. Independence would be consensual and Scotland and the rest of the UK would retain multiple links. The EU dimension looms large in the debate and is entangled with the UK's own review of its membership. Scotland's referendum is part of a wider trend seeing other 'stateless nations' in the democratic world pursuing independence. Even if opinion polls indicate voters will likely reject secession, Scotland's experience holds important lessons for the wider world.

**Keywords:** Scotland, UK, independence, Europe

Scotland's bid for independence is one of the most prominent cases of secessionism in today's Europe, and indeed the Western democratic world. It is also one in which the connections with EU membership – for an independent Scotland, for the rest of the UK (rUK) if Scotland secedes, and the UK as a whole if secession is rejected – are particularly prominent and complex. It is thus worth exploring, to shed light on a challenging phenomenon for both domestic polities and the EU and to help policy actors at both levels in developing appropriate responses. In this article, we first provide a brief outline of the rise of nationalism in Scotland in the 20<sup>th</sup> century and of the current constitutional and political status under the terms of the devolution implemented in 1999. We then discuss the context and the campaign for the 18 September referendum on independence. Subsequently, we focus on the Scotland-UK-EU connection before broadening the analysis by looking at Scotland from a comparative perspective. The concluding part summarises the discussion and argues that the case of Scotland holds lessons that are relevant well beyond the British Isles.

### **The rise of Scottish nationalism**

At no time since the Treaty of Union between Scotland and England in 1707 was there any effort on the part of a central government to impose uniformity across the state. There was no UK nation-building project aimed at eradicating Scottish institutions or destroying other

distinctly Scottish facets of life and society. Indeed, successive UK governments were more than willing to acknowledge, even contribute to the development, of Scottish institutions. This ensured that Scottish national identity continued to exist within the new Kingdom of Great Britain and later United Kingdom. What was unified was the Parliament, but distinctly Scottish institutions of civil society and local political institutions continued to exist. Scottishness was not eradicated by union, only the Scottish Parliament. This meant that a Scottish base continued to exist that might be mobilised in favour of a political programme aimed at either more autonomy or greater resources for Scotland.

Two key features of twentieth century politics are relevant in understanding how this Scottish base came to be mobilised in favour of autonomy. The first was the changing nature of the state. An interventionist welfare state developed. This intervention was often, though not always, articulated via Scottish institutions. Important areas of public policy, affecting the daily lives of people living in Scotland, were delivered via Scottish institutions contributing to the sense that Scotland continued to be a distinct entity. The other key development was democratisation. Politics was no longer the prerogative of the elites but a growing body of people. The combination of democracy and welfare intervention, operating within a structure of government that acknowledged a strong Scottish dimension, provided the basis for the mobilisation of greater demands for more resources for Scotland (essentially more public expenditure) and also calls for Scottish control of Scottish affairs. Indeed, the very term 'Scottish control of Scottish affairs', or some variant, was used at various intervals in the twentieth century by all main political parties including those hostile to a Scottish Parliament.<sup>1</sup>

Scottish nationalism did not so much emerge in the latter half of the twentieth century but evolved into a new form, demanding autonomy as well as more resources. There had long existed parties and campaign groups arguing for a Scottish Parliament. The Scottish National Party (SNP) was founded in 1934 but remained on the fringe of Scottish politics for the next three decades.<sup>2</sup> It won its first seat in Parliament in 1967 in a by-election and has consistently, if often precariously, retained a presence in the House of Commons since then. There had long been tensions amongst supporters of a Scottish parliament. Some felt it best to pursue the goal through established parties, others through a party that gave greater priority to the goal. There was also a tension between those who wanted home rule within the UK and those who wanted an independent Scottish state. An SNP breakthrough in 1974, when it won 11 seats in Parliament with 30 percent of the Scottish vote, led the then

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<sup>1</sup> Mitchell, *Scottish Question*.

<sup>2</sup> Finlay, *Independent and Free*.

Labour government to propose establishing a devolved assembly. This was subject to a referendum held in 1979, which resulted in a very narrow majority in favour of devolution, insufficient to overcome what Parliament at Westminster deemed sufficient.

What gave supporters of a Scottish Parliament impetus in the 1980s was the perception that UK central government had little sympathy for Scotland. Margaret Thatcher was perceived, fairly or otherwise, as particularly 'anti-Scottish'. If Scottishness was defined in contradistinction to some 'other', that other came to be personified in Mrs Thatcher. When Scots voted overwhelmingly in favour of a Scottish Parliament in the referendum in 1997, they did so for conservative reasons. Scots saw devolution as the means of conserving Scottish institutions and welfare policies.<sup>3</sup> In essence, devolved government was a means of conserving institutions from the Conservatives. The Scottish Parliament can either be seen as a major break with the past or a pragmatic adjustment.<sup>4</sup>

### **Devolved government**

The first decade of devolution coincided with massive growth in public spending across the UK. The Scottish Parliament, with only superficial tax varying powers, benefitted as much as anywhere in the UK. The funding available to the Parliament for public policy derived from a grant allocated by London. This grant was essentially the same as it had been prior to devolution. Known as the 'Barnett formula', after a former Chief Secretary to the Treasury (though Barnett himself had little to do with the establishment of the formula), it is an allocation mechanism that adjusts levels of spending at the margins to take account of matters that are devolved, Scotland's population share and changes to public expenditure in England. In essence, if a decision is made to increase or decrease spending on health in England, Scotland will receive a comparable increase or decrease. However, the Scottish Parliament and its executive are under no obligation to fund services according to how the money is allocated. This power to *vire* means that a significant increase in English health expenditure, which did indeed occur at an annual average rate of 5.7 percent during Labour's period in office after 1997, would also result in an equivalent increase for Scotland, even though this amount did not have to be spent on health. Despite the existence of this power, spending priorities in Scotland tended to follow those south of the border.

The new Parliament was in a position to spend relatively lavishly on public policies and to pursue policies that diverged from those elsewhere in the UK. This divergence generally

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<sup>3</sup> Denver *et al.*, *Scotland Decides*.

<sup>4</sup> Paterson, "Scottish Home Rule".

took the form of extending state intervention, although some policy innovation was also introduced. University students in Scotland were exempt from paying tuition fees, unlike in England. Elderly people were given more generous support when they became incapacitated than elsewhere in the UK. There was less enthusiasm for some of the more market-driven public policy changes pursued by New Labour in London. The approach of the Scottish Executive was more conservative, less inclined to innovate. Its approach was old-style interventionism.

This may have been the result of the election of a Labour-led coalition in the first elections to the new Scottish Parliament in 1999. Labour was disinclined to pursue objectives that were significantly different north and south of the border though, as noted above, there were a number of exceptions that attracted considerable attention. These distinct policies combined with the growth in expenditure to ensure that support for the Scottish Parliament remained very high.

Its early years were marked by controversy over the cost of a new parliament building at Holyrood (next door to the monarch's official residence in Scotland), a cost that escalated well beyond initial projections and became the subject of persistent media criticisms. The parliamentary authorities were sensitive to criticisms of waste and adopted tight rules governing expenses. This meant that Holyrood was not afflicted by the expenses scandals that surrounded the Westminster Parliament in 2009.

Elections were held under a mixed-member proportional electoral system, which was more proportionate than the simple plurality system that had rewarded Labour in Scotland with far more elected representatives than its share of the vote merited. The expectation had been that the electoral system would prevent any party from winning an overall majority, including the Scottish National Party which was perceived as Labour's main threat despite lagging well behind Labour in share of the vote and seats prior to devolution.

The Labour-led coalition with the Liberal Democrats remained in office through the first two fixed term parliaments (1999-2003 and 2003-07). It gained a reputation, deserved or not, for slavishly following the party line from London. It suffered from a quick succession of leaders. The first Scottish First Minister (as the head of the Scottish government is known) died after 17 months in office. His successor was in office for only a year before having to resign due to some minor problems with his expenses from when he had been a member of parliament at Westminster. Jack McConnell, the third First Minister was criticised by some on his own side for lacking vision, and his failure to criticise the Labour government's involvement in the

Iraq war contributed to the sense that 'London Labour' ran Scotland. As the 2007 election drew near, the Scottish National Party became a serious threat to Labour especially after Alex Salmond returned to lead the party in 2004. Salmond's personal ratings as prospective First Minister easily outstripped McConnell's.<sup>5</sup> The SNP became the largest party in 2007 by just one seat. Its attempt to form a coalition with the Liberal Democrats failed, resulting in a minority government. With only 47 seats out of 129, the party was in government for the first time and almost all commentators and SNP opponents predicted that either there would be another election before the end of the four-year fixed term or an alternative government would be formed. In the event, the SNP lasted the course and succeeded in winning an overall majority, something many commentators deemed highly unlikely if not impossible, at the 2011 election.

But that victory had little to do with independence. The SNP won because it was deemed to have been highly competent in government, especially as compared to its rivals.<sup>6</sup> SNP support for independence played an indirect part. This signalled the SNP commitment to Scotland, a willingness to stand up for Scotland in any disputes with London. But the SNP overall majority did not mean a majority for independence. Indeed, polls suggested that support for independence had been flat-lining. Scots liked the party of independence more than they liked independence itself. The SNP understood this well and had been keen to demonstrate their competence as part of a strategy of building support for independence. They had not prioritised independence in election campaigns since devolution but had proposed that an SNP government would seek to hold a referendum. Now that the SNP had an overall majority, a referendum would be difficult to avoid. However, it was suggested by SNP opponents that holding a referendum on independence was not within the powers of the Scottish Parliament and that this was a decision that only Westminster could make. But the UK government decided not to challenge the Scottish Parliament on this matter. The Edinburgh Agreement between the UK and Scottish governments and Westminster parliamentary approval avoided any legal challenge to a referendum.

### **The independence referendum**

On 18 September 2014, the Scottish people will be asked, "Should Scotland be an independent country?", a question that was agreed by the independent Electoral Commission. The electorate will be similar to that for local government and Scottish

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<sup>5</sup> Johns *et al.*, *Voting for a Scottish Government*.

<sup>6</sup> Carman *et al.*, *More Scottish than British*.

Parliament elections, but the voting age has been lowered to 16 from 18 for this referendum. The electorate will include UK citizens resident in Scotland; Commonwealth citizens resident in Scotland who have been given leave to remain in the UK or do not require such leave; EU citizens resident in Scotland; members of the House of Lords resident in Scotland; service personnel serving overseas but who are registered to vote in Scotland. In essence, the franchise is based on residence rather than ethnicity and excludes those who may describe themselves as Scots living outside Scotland and includes many people who may not see themselves as Scottish but live in Scotland.

Two campaign groups have been formed – *Better Together* and *Yes Scotland* – which will campaign alongside the political parties. The referendum has been billed as a historic event by both sides and most commentators, and has generated considerable interest, both within and beyond Scotland, and media coverage. Nonetheless, campaigning largely resembles familiar election campaigns. One difference has been the return of large local public meetings, at least amongst campaigners for independence. The key difference is, of course, that no party is seeking to win public office. In any contest involving a proposition for change there is the likelihood that the battle is framed in simple dichotomous terms: *status quo* versus change. However, this campaign differs in that each of the three main parties opposing independence is committed to offering more powers to the Scottish Parliament in the event of a No vote. The Scottish government had proposed that a third option should be on the ballot paper to allow a choice between the status quo, more powers and independence, but this was strongly opposed by the UK government. The battle over the ballot paper reflected each side's awareness that the Scottish electorate has consistently shown most support for more powers than either the status quo or independence. The polarized choice has meant that the key battleground for votes is amongst those whose first preference is 'more powers'.

The referendum has followed the pattern of the 1997 devolution referendum. The formal issue is the constitutional status of Scotland, but the debate has a number of dimensions. Firstly, there is the issue of national identity. Underpinning debates on whether Scotland should be independent is the sense that Scotland is a distinct national community. This does not mean that those who self-identify as Scots automatically support independence. But the acceptance of Scotland as a distinct entity is a basic prerequisite. If nationalism is defined as "primarily a political principle that holds that the political and national unit should be congruent",<sup>7</sup> then those who felt Scottish might be expected to vote for independence and

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<sup>7</sup> Gellner, *Nations and Nationalism*, 1.

the referendum would produce a clear majority for independence. However, identity is more complex. While pressed to respond to a binary question as to whether they are Scottish or British, most voters in Scotland refer to themselves as Scottish, but when a range of options are available, most voters see themselves as Scottish and British in some combination. Indeed, senior members of the SNP, including First Minister Salmond, see themselves as having a British identity alongside a Scottish identity. In 2011, the SNP won more votes than the Conservatives amongst those voters who saw themselves “British not Scottish”.<sup>8</sup> Identity is important, but does not explain everything.

Another dimension is party politics. While survey findings suggest that differences between attitudes on a range of matters differ little between Scotland and England,<sup>9</sup> the more authoritative measurement is actual political behaviour at elections. Divergence in political behaviour has long been noted.<sup>10</sup> Scottish electoral politics have diverged with those south of the border since the late 1950s, largely taking the form of the decline of the Conservative Party in Scotland, but this only became significant when a large section of the electorate became aware of it and saw it as significant. That happened during the eighteen years when the Conservatives were in power after 1979. Governing Scotland with diminishing support had no formal constitutional implications as UK governments are accountable to Parliament at Westminster as a whole. However, the sense that Scotland was a distinct community and that the governing Conservatives had little support undermined the legitimacy of the government and fuelled demands for a Scottish Parliament. The return to power of the Conservatives in coalition with the Liberal Democrats in 2010, but with only one seat in Scotland, has ensured that the party system is an important backdrop to the referendum. For some voters, Scottish independence is seen as a means of avoiding the prospect of a succession of Conservative governments.

A third related matter is everyday public policy. The unpopularity of the Conservative government is linked to the unpopularity of Conservative policies. On coming to power in 2010, Prime Minister Cameron and George Osborne, his Chancellor of the Exchequer, inherited a major economic and financial challenge. Notably, Labour lost no seats to the Tories in the election and there was a small swing to Labour from the Tories in Scotland, while there was a 5.6 percent swing to the Conservatives from Labour in England and Wales.<sup>11</sup> The UK government’s austerity programme and individual social policies, including changes to welfare benefits, have re-awakened memories of policies from when the

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<sup>8</sup> Carman *et al.*, *More Scottish than British*, 36.

<sup>9</sup> See for example Curtice and Ormiston, *Is Scotland more left-wing*.

<sup>10</sup> See notably Miller, *The End of British politics?*

<sup>11</sup> Kavanagh and Cowley, *The British General Election*.

Conservatives were last in power. Feeding into this perception of divergence in attitudes and policies has been the rise of the United Kingdom Independence Party (UKIP) in elections in England that has not been matched in Scotland. Although the party managed to win one Scottish seat in the 2014 European Parliament (EP) election, its performance in the country was a pale reflection of the one it achieved south of the border. The situation is even more stark in local elections as UKIP has no councillors at all in Scotland, but now has a significant body of elected local councillors throughout England.<sup>12</sup>

The interplay of these different dimensions contributes to the debate on Scottish independence. The debate has focused on a range of position and valence issues.<sup>13</sup> Valence issues are those on which there is broad agreement on objectives with party competition focused on competence in delivering on these objectives. Position issues are matters on which there are significant policy positions between parties. The economy is the central valence issue in the referendum with advocates of independence and the union each insisting that economic prosperity will be enhanced by their preferred constitutional status or undermined by the opposite. Feeding into these debates have been arguments over the stability of different constitutional positions.

The currency of an independent Scotland has been part of this debate. In November 2013, the Scottish government set out its vision in *Scotland's Future*, in which it proposed that an independent Scotland would retain the pound sterling.<sup>14</sup> This drew on work by the Scottish government's Fiscal Commission, which included a number of eminent economists including Sir James Mirlees, Nobel Laureate in Economics. In one of the most sober contributions to this debate, Mark Carney, Governor of the Bank of England, set out his views on a single currency. His argument was that it would be possible to operate a single currency, but this would limit the autonomy of an independent Scotland.<sup>15</sup> However in a carefully choreographed set of statements, the Chancellor of the Exchequer, his Liberal Democrat colleague who serves as Chief Secretary to the Treasury, and Labour's Shadow Chancellor announced that they would each oppose an independent Scotland being part of a single currency. This was augmented by a series of assertions made by the Treasury's Permanent Secretary in an unprecedented public statement. He advised "strongly against a single

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<sup>12</sup> See BBC, "European election: UKIP wins first Scottish MEP seat", 26 May 2014, <http://www.bbc.co.uk/news/uk-scotland-scotland-politics-27575204> and *English council results*, 2013, <http://www.bbc.co.uk/news/uk-politics-21240025>.

<sup>13</sup> Stokes, "Spatial models of party competition" and "Valence politics".

<sup>14</sup> Scottish Government, *Scotland's Future*, 110-12.

<sup>15</sup> M. Carney, "The economics of currency unions", speech to the Scottish Council for Development & Industry, Edinburgh, 29 January 2014, <http://www.bankofengland.co.uk/publications/Documents/speeches/2014/speech706.pdf>.

currency” for four reasons: 1) the Scottish government was leaving open the prospect of moving to an alternative currency in the future and the success of currency unions required the “near universal belief that they are irreversible”; 2) Scotland’s banking sector was “far too big in relation to its national income”, meaning that rUK “would end up bearing most of the liquidity and solvency risk” involved; 3) the “problem of asymmetry”, with an independent Scotland not having to “face the same risk as it is inconceivable that a small economy could bail-out an economy nearly ten times its size”; and 4) the assumption that Scottish fiscal policy would become “increasingly misaligned” with rUK.<sup>16</sup> These arguments were refuted in a strongly worded report written by Professor Leslie Young for an independent think tank funded by the Scottish businessman and philanthropist Sir Tom Hunter.<sup>17</sup> There is little prospect of voters reading any of the detailed documents involved or indeed many of the journalists who have written on the subject. The extent to which arguments on such technical matters are believed is difficult to determine and the referendum has come to be seen as a matter of each side parading lists of experts and supporters for various perspectives, mediated through the print media which is overwhelmingly against independence and a broadcast media bound by duties of impartiality, leaving the electorate to make a judgment as to which is most credible.

Defence has emerged as an issue in which different policy positions exist between the two sides in the referendum. Supporters of independence argue for the abandonment of nuclear weapons. The UK’s Trident submarines, carrying nuclear warheads, are based on the Clyde River near Glasgow in Scotland. The official position of the Campaign for Nuclear Disarmament (CND) is to support independence as this is seen as the most likely way of getting rid of such weapons since there are no alternative locations available in the UK for such weaponry and submarines.<sup>18</sup> Supporters of the union favour the retention of nuclear weapons though there are some supporters of the union who would favour nuclear disarmament, including members of the Labour Party, but this has become an issue on which there is a clear positional difference.

Welfare has also become a divisive issue though its nature as a position or valence issue is less clear. For some supporters of the union, welfare will be protected by being part of a UK

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<sup>16</sup> N. MacPherson, “Scotland and a Currency union”, letter to the Chancellor of the Exchequer, 11 February 2014, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/279460/Sir\\_Nic\\_holas\\_Macpherson\\_-\\_Scotland\\_and\\_a\\_currency\\_union.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/279460/Sir_Nic_holas_Macpherson_-_Scotland_and_a_currency_union.pdf).

<sup>17</sup> L. Young, “Currency options for an independent Scotland”, *Scotland September 18*, March 2014, <http://scotlandseptember18.com/eminent-professor-questions-hm-treasury-advice-on-currency-union/>.

<sup>18</sup> Walker and Chalmers, *Uncharted Waters*.

welfare union. However, there are deep divisions across the parties supporting the union on the future of welfare. Indeed, welfare reform is one of the most controversial aspects of the UK government's programme. Labour's response is that it is not the union but the government that needs to be changed, while supporters of independence insist that threats to welfare come from being part of a union in which a party with little Scottish support can form a government.

This is by no means an exhaustive list of issues in the referendum, but offers a sense of the matters being debated by parties and campaign groups. The distinction between campaigning and governing mindsets has been noted in work on American politics.<sup>19</sup> What remains unclear for voters is the extent to which compromise will occur when campaigning stops and the Scottish and UK governments return to governing mindsets. Polls have consistently shown that support for the union exceeds support for independence. However, over a number of months there has been a trend in favour of independence.<sup>20</sup>

### **Scotland, the UK and Europe**

The European dimension has long been important to Scotland's quest for autonomy. In the early period following the UK's accession to the then European Communities in 1973, the SNP was sceptical about membership. It included a number of prominent figures who were hostile, but also others who were strong supporters. In the 1975 referendum called by the Labour government to decide whether the UK should remain a member or not, the SNP campaigned on the No side, managing to bridge divisions by arguing against membership "on anyone else's terms".<sup>21</sup> There were senior figures who hoped that Scotland would vote No while the rest of the UK would vote Yes to highlight differences in Scottish attitudes from those of the rest of the UK.<sup>22</sup> At the time of the first devolution referendum in 1979, the SNP's independence policy had very little public support, even among its own voters, and the party's hostility to 'Europe' was a contributing factor in the rejection of devolution.<sup>23</sup> From the early-mid 1980s, the party softened its attitudes to the European Communities, eventually moving in favour of membership and the adoption in 1988 of a policy of 'Independence in Europe'.<sup>24</sup> The policy would see Scotland seceding from the UK but

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<sup>19</sup> Guttman and Thompson, *The Spirit of Compromise*.

<sup>20</sup> Data are available from [www.whatscotlandthinks.org](http://www.whatscotlandthinks.org).

<sup>21</sup> Mitchell, "Member State or Euro-Region?".

<sup>22</sup> Lynch, *Minority Nationalism*, 33-35.

<sup>23</sup> Dardanelli, *Between Two Unions*, 62-81.

<sup>24</sup> Macartney, "Independence in Europe"; Lynch, *Minority Nationalism*, 37-44; Mitchell, "Member-State or Euro-Region?"; and Dardanelli, "Ideology and Rationality".

remaining within the EU as an additional member state, thus benefiting from the advantages of the single European market and direct access to EU decision-making. Doubts as to whether a seceding Scotland would be able to retain membership of the EU were already raised at the time,<sup>25</sup> but the party naturally played them down. The policy was electorally rewarding, but not as much as hoped, hence the SNP had to wait until a Scottish parliament was implemented by the Labour Party to be able to play a leading role in Scotland's constitutional politics. Its articulation of a pro-European integration position, however, contributed to altering the wider agenda on 'Europe' in Scottish politics, as well as attitudes to independence.

The broad features of the policy have since been maintained by the SNP, although it has abandoned certain elements and modified others. In particular, it has dropped its intention to adopt the euro and has committed itself to following the 'semi-detached' form of membership developed by the UK.<sup>26</sup> The SNP's assumption that an independent Scotland would be able to retain some of the opt-outs and derogations the UK has obtained, however, is seen by critics as optimistic, particularly if one takes into account the relatively short period of time the Scottish government envisages for the negotiations and the need to secure the unanimous agreement of the other member states.<sup>27</sup> Following the course charted by the UK also sits uneasily with the SNP's aim to place Scotland 'at the heart of Europe'.<sup>28</sup>

The adaptation of the SNP's policy has taken place in response to the evolution of public opinion. Although the party is keen to emphasise the supposed 'Europhilia' of Scotland in contrast to the Euroscepticism of England, Scottish public opinion is much less enthusiastic than the party's rhetoric would suggest and only mildly more positive than England's.<sup>29</sup> To some extent the SNP policy is motivated less by strong attachment to 'Europe', than by minimising the perception of disruption associated with secession so as to make it more widely acceptable.<sup>30</sup> However, as the goal of independence has drawn more likely, the SNP has had to define it with greater clarity and has acknowledged the degree of interdependence that exists in international, and especially European, politics. A range of other policies emphasising continuity – including retention of the monarchy and a currency

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<sup>25</sup> See Lane, "Scotland in Europe".

<sup>26</sup> The SNP's policy is outlined in the Scottish government's independence prospectus, *Scotland's Future*, 216-24.

<sup>27</sup> I. McLean, "Scotland: some known unknowns", PSA Blog, 3 February 2014, <http://www.psa.ac.uk/insight-plus/blog/scotland-some-known-unknowns>.

<sup>28</sup> Dardanelli, "An Independent Scotland".

<sup>29</sup> See for instance, SPICE, "Scotland in the European Union", 12.

<sup>30</sup> See also Tierney, "Legal Issues", 25.

union with rUK – are part of the same strategy and a response to the prospect of the realisation of independence.

Regarding the thorny question of whether a seceding Scotland would be able to become a member state of the EU upon acquiring independence, the SNP policy is to negotiate an amendment to the EU treaties on the basis of art. 48 of the Treaty on European Union (TEU). Such negotiations aim to be conducted on behalf of Scotland by the UK government and to be completed within the 18-month period the Scottish government has identified as the transition phase to independence, should Scots vote Yes in the 18 September referendum.<sup>31</sup> However, it is uncertain that all matters will be successfully negotiated within that time scale or whether sufficient agreement can be reached to be in a position for Scotland to be declared independent. The expectation is that all parties to negotiation would seek to create stable conditions.

The indication that art. 48 TEU would be the legal basis for the process, however, is far from uncontroversial. Some observers argue that Scotland would have to apply for membership under art. 49 TEU, which governs the entry of new members, implying that it would find itself, however temporarily, outside the EU upon independence. The legal analysis conducted by the UK government sees art. 49 as the only viable option, though the UK is in no sense an impartial actor in these matters.<sup>32</sup> The presidents of the European Council, Herman Van Rompuy, and of the European Commission, José Manuel Barroso, have also made public statements to the same effect.<sup>33</sup> Spain, widely suspected of being the most hostile to EU membership for an independent Scotland, has promised “not to interfere” in the process but signalled it would expect it to follow art. 49, possibly implying that it would not agree to using art. 48.<sup>34</sup> Effectively expelling Scotland upon independence, however, would be hugely problematic so warnings that Scotland would find itself outside the EU should be placed in the context of the campaign and seen as directed at swaying Scottish voters away from backing independence in the referendum.<sup>35</sup> As argued most authoritatively by the former European Court of Justice (ECJ) judge David Edward, if the situation does present itself, the most likely outcome would be a negotiated solution that would enable Scotland to remain within the EU, if it so wishes, but such negotiations would hinge, of course, on the

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<sup>31</sup> Scottish Government, *Scotland's Future*, 220-2.

<sup>32</sup> UK Government, *Scotland Analysis*, 62-3.

<sup>33</sup> UK Government, *Scotland Analysis*, 62; “Extremely difficult for Scotland to join EU-Barroso”, BBC, 16 February 2014, <http://www.bbc.co.uk/news/uk-politics-26215579>.

<sup>34</sup> See T. Buck and M. Dickie, “Spain promises non-interference on Scotland”, *Financial Times*, 2 February 2014.

<sup>35</sup> Scottish Parliament, *Report*, 46.

goodwill of the other member states as well as legal backing by the ECJ.<sup>36</sup> Given its many controversial aspects, it is not surprising that EU membership has emerged as a key issue amongst the elite in the campaign, though it is unclear the extent to which this resonates with the public.<sup>37</sup>

The evolution of the UK-wide debate on EU membership runs in parallel to, but also affects indirectly, the independence debate in Scotland. Under pressure from the more Eurosceptic faction within the Conservative Party, Prime Minister Cameron has promised to renegotiate the terms of UK membership and hold an 'in/out' referendum in 2017 if the Conservatives are returned to office in the 2015 general election. This is in the face of a rising UKIP, which won the 2014 EP election with 24 seats on a 27.5 percent share of the vote, and persistently strong support for withdrawal among the electorate.<sup>38</sup>

In preparation for the intended renegotiations of the country's terms of membership, the UK government is conducting a review of the balance of competences between the UK and the EU.<sup>39</sup> The sectoral reviews already completed, however, have found that such balance is broadly correct, thus failing to provide ammunition to those arguing for major changes.<sup>40</sup> Cameron's agenda for reform also appears to be primarily an exercise in window-dressing, long on rhetoric and short on concrete proposals for change.<sup>41</sup> Moreover, the UK has so far received little support for renegotiation from France and Germany. The French President, François Hollande, has made clear he does not want a treaty change prior to the 2017 presidential election, while Angela Merkel, the German Chancellor, has warned of the difficulties a renegotiation would face.<sup>42</sup> Therefore, the chances that the UK would be able to secure a meaningful enough change in the terms of its membership to be able to turn attitudes around are not very high. The Labour Party has committed itself to holding a

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<sup>36</sup> Edward, "EU Law" and "Scotland's Position"; see also Gounin, "Les dynamiques", and Tierney, "Legal Issues".

<sup>37</sup> "Scotland's Slow Road to Brussels", *Financial Times*, 18 February 2014.

<sup>38</sup> On the 2014 EP election results, see BBC, *Vote 2014*, <http://www.bbc.co.uk/news/events/vote2014/eu-uk-results>. On the evolution of public opinion towards EU membership, see Ipsos MORI, *European Union membership—trends*, <http://www.ipsos-mori.com/researchpublications/researcharchive/poll.aspx?oltemId=2435&view=wide>.

<sup>39</sup> UK Government, *Review of the Balance*.

<sup>40</sup> K Stacey and E. Rigby, "Brussels-London balance of powers seen broadly correct", *Financial Times*, 22 July 2013.

<sup>41</sup> D. Cameron, "David Cameron: the EU is not working and we will change it", *Sunday Telegraph*, 16 March 2014.

<sup>42</sup> G. Parker, "Warm beer and a bucket of cold water", *Financial Times*, 31 January 2014; "Angela Merkel: EU reform not 'piece of cake'", BBC, 27 February 2014, <http://www.bbc.co.uk/news/uk-politics-26362034>.

referendum only in case of ratification of a new treaty transferring more powers to the EU.<sup>43</sup> Although the Conservatives are currently the only party promising a referendum, there is a high probability that one will indeed be held in 2017, with a fairly high probability that voters might opt for exit.

If voters choose Yes in the 18 September referendum and negotiations go according to plan, Scotland would be an independent state by spring 2016. The 2017 referendum would then concern the rUK only from a legal point of view, but would also have enormous consequences for Scotland, both politically and economically. A decision by the rUK to leave the EU could even trigger a dynamic that would leave an independent Scotland surrounded by non-EU countries, were Denmark, Sweden, and possibly Ireland to follow the rUK.<sup>44</sup> On the other hand, if Scotland decides to stay in the UK this September and a UK-wide majority votes to leave the EU in the 2017 referendum, but the Scottish electorate votes to stay, such a result might be a significant factor leading Scotland to reconsider its decision to stay in the UK in a possible second referendum at some point in the future.

### **Scotland from a comparative perspective**

The rise of Scottish nationalism and its bid for independence is part of a wider movement affecting several Western democracies, particularly since the 1960s. The other prominent cases are those of Quebec in Canada, Catalonia and the Basque Country in Spain, and Flanders in Belgium.<sup>45</sup> In all these cases, a substantial proportion of the population think of themselves as being a 'stateless nation' and nationalist parties ultimately committed to independence are among the most voted parties in the region.<sup>46</sup> Quebec was the first to reach the stage of holding an independence referendum, but both of them – in 1980 and 1995 – produced a No result, the second one by the thinnest of margins.<sup>47</sup> Quebec distinguishes itself from the European cases in that it always had a large degree of autonomy as a province of the Canadian federation. In Europe, in contrast, such nationalist movements originated in unitary states and focussed initially on gaining greater autonomy through a constitutional restructuring of the state. Belgium is the paradigmatic example of such restructuring, where Flemish nationalism triggered a series of constitutional reforms

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<sup>43</sup> E. Miliband, "Europe needs reform but Britain belongs at its heart", *Financial Times*, 12 March 2014.

<sup>44</sup> Dardanelli, "An Independent Scotland", 6.

<sup>45</sup> There are many more secessionist movements active in today's world. For a recent analysis, see Sorens, *Secessionism*.

<sup>46</sup> The term 'region' is employed here to denote a territorial sub-division of the state and is not intended as a judgment on the validity of the region in question to be considered a stateless nation.

<sup>47</sup> See, among others, Pammett and LeDuc, "Sovereignty, Leadership and Voting".

transforming it into one of the most decentralised federal states in today's world. Although not going that far, Spain and, to a lesser extent, the UK have also experienced a similar process of constitutional change. The UK's particularity is that the process has been highly asymmetrical, that is, it has been confined to the non-English parts of the kingdom while England itself has remained highly centralised.

Once devolved institutions have been put into place, a clear shift in a secessionist direction has manifested itself, particularly in the more recent period. In Belgium, the nationalist New Flemish Alliance (N-VA) has become the largest party in Flanders and in the country.<sup>48</sup> In Catalonia, the two main nationalist parties, the left-wing Catalan Republican Left (ERC) and the conservative Convergence and Union (CiU) have formed an unprecedented coalition committed to holding a referendum on independence in November 2014, which the Spanish government has vowed to block.<sup>49</sup> In the Basque Country, after an abortive attempt to hold a referendum in 2008,<sup>50</sup> the two main nationalist parties won 64 percent of the seats in the regional parliament in the 2012 election.<sup>51</sup>

If the above might be seen as painting a picture of a secessionist wave sweeping Europe and beyond, it is important to bear in mind that secession is very rare in established democracies.<sup>52</sup> Even in the context of an integrated supranational system such as the EU, secessions are disruptive and shrouded in uncertainty, and secessionist parties face a difficult task in persuading the electorate that independence would be more advantageous than the status quo. Particularly where the economy is concerned, if it is now widely accepted that there is no reason to doubt that small countries can prosper in today's economic world in the mid- to long term, there is no denying that short-term transition costs are bound to be significant and potentially frightening to wavering voters. With the exception of Catalonia, where majority support for independence appears to be present,<sup>53</sup> the electorate's support for secession is significantly lower than the magnitude of the vote for nationalist parties might suggest.

When considered against the other European cases, Scotland presents a paradox. On the one hand, its bid for independence is the least problematic and controversial, both legally

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<sup>48</sup> De Standaard, *Verkiezingen*, 26 May 2014. <http://www.standaard.be/verkiezingen>.

<sup>49</sup> See, among others, B. Fox, "Catalonia urges EU leaders to endorse 'legal' referendum", *Financial Times*, 3 January 2014.

<sup>50</sup> "Estrasburgo no admite el recurso del PNV sobre la anulación de la consulta soberanista", *El País*, 23 February 2010.

<sup>51</sup> Gómez Fortes and Cabeza Pères, "Basque Regional Election".

<sup>52</sup> Dion, "Why is Secession Difficult".

<sup>53</sup> Serrano, "Just a Matter of Identity?".

and politically.<sup>54</sup> It is essentially up to the Scottish people to decide and all that is needed is a Yes vote in the 18 September referendum. This is in stark contrast to the situation in Spain, where both Catalonia and the Basque Country face almost insurmountable legal obstacles and fierce opposition from the rest of the country, or in Belgium, where a division of the country into two states would be deeply problematic, notably with regard to the status of Brussels. On the other hand, the gains from independence would arguably be smaller for Scotland than for the other stateless nations, from a cultural and economic point of view, as reflected in the doubts expressed by the business community referred to previously.<sup>55</sup>

The last point a comparative perspective suggests is that in all these cases the seceding region would like to keep close links with the state from which it is trying to separate, that is, a form of confederal arrangement between the two. Mirroring the SNP's policy outlined earlier, the proposal put to the referendum in Quebec was known as 'sovereignty-association', the so-called Ibarretxe Plan envisaged a 'free association' between the Basque Country and Spain, and the N-VA proposes a confederation between a Flemish and a Walloon state.<sup>56</sup> The Catalan government is planning a two-question referendum, the first asking whether Catalonia should be a state and the second whether such a state should be independent, implying that if the electorate votes Yes to the first question, but No to the second, Catalonia's preferred constitutional status would be as a state within some sort of Spanish confederation.<sup>57</sup> This indicates that stateless nations aspire primarily to acquire legal sovereignty and thus be able to decide by themselves how they should be governed, while at the same time recognising the highly interdependent nature of today's world and the multiple obstacles a secession would face. It also indicates that innovative confederal arrangements separating internal and external sovereignty might offer the constitutional framework able to satisfy the largest number of people in the regions concerned.

## Conclusions

The 18 September referendum marks a potentially decisive turning point in the 307-year history of Scotland's union with England. Although opinion surveys currently suggest that

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<sup>54</sup> See also Tierney, "Legal Issues".

<sup>55</sup> See, among others, A. Sharman, "Alliance Trust flags concerns over Scottish independence", *Financial Times*, 7 March 2014; for a scholarly analysis of the economics of independence, see McCrone, *Scottish Independence*.

<sup>56</sup> Pammett and LeDuc, "Sovereignty, Leadership and Voting"; L. Torres, "El Plan Ibarretxe", RTVE.es, 19 May 2008, <http://www.rtve.es/noticias/20080519/plan-ibarretxe/57950.shtml>; N-VA, *Nu durven veranderen*, manifesto for the 2010 election, <http://www.n-va.be/congresteksten/verkiezingsprogramma-juni-2010>.

<sup>57</sup> Generalitat de Catalunya, "Acord per a la consulta: data i pregunta", 12 December 2013, [http://www.govern.cat/pres\\_gov/AppJava/govern/monografics/monografic-236550.html](http://www.govern.cat/pres_gov/AppJava/govern/monografics/monografic-236550.html).

Scots will reject secession, this is far from being a foregone conclusion and the major surge in support for the SNP in the 2011 Scottish election stands as a reminder not to rely too much on polls. The fact that a referendum is held at all is remarkable and the Edinburgh agreement that made it possible could be seen as a model for other countries of how to deal with secessionist pressures. The legal and political uncertainty surrounding the question of EU membership both for an independent Scotland and the UK as a whole has become a key point of contention in the campaign and points to a severe challenge EU policymakers will have to deal with should Scots vote Yes in September. Regardless of its outcome, though, it is likely that Scotland will be granted more autonomy following the referendum, given that opinion polls consistently indicate this is the electorate's preferred option and that all three main UK-wide parties have promised as much if voters reject secession.<sup>58</sup> The referendum in Scotland takes place in the context of a broader trend that sees 'stateless nations' elsewhere also bid for independence. The Scottish experience is thus instructive in trying to understand more fully a challenging political development in today's Europe.

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<sup>58</sup> McLean *et al.*, *Scotland's Choices*.

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