
SECESSIONIST STRATEGIES: CASE STUDIES

- INSIGHTS FROM THE SCOTTISH INDEPENDENCE REFERENDUM
Nicola McEwen
- SECESSIONIST STRATEGIES: THE CASE OF FLANDERS
Bart Maddens
- THE TWO QUEBEC INDEPENDENCE REFERENDUMS:
POLITICAL STRATEGIES AND INTERNATIONAL
RELATIONS
André Lecours
- AUTONOMY IN DENMARK:
GREENLAND AND THE FAROE ISLANDS
Gestur Hovgaard & Maria Ackrén

INSIGHTS FROM THE SCOTTISH INDEPENDENCE REFERENDUM

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There are important and much discussed differences between the independence debate in Scotland and the UK and the crisis currently gripping Catalonia and Spain. The United Kingdom is sometimes reified in Catalan discussions on these matters, as if the recognition of democratic self-government were somehow part of its DNA. Certainly, the response of the UK government to the independence challenge from Scotland is a million miles from the response of the Spanish government in recent years. But one does not need to look too far into the history of the UK to find examples of when responses to nationalist challenges – whether within the context of a declining empire or on the island of Ireland – were less accommodating. This contribution offers a more nuanced view of the process that led to and legitimised the 2014 independence referendum. It also discusses some of the similarities between Scotland and Catalan nationalism, especially in the substance of type of polity the advocates of independence are seeking and the institutional barriers in the way of achieving these goals. Three themes are discussed in turn: (i) the process underpinning the independence referendum in Scotland; (ii) the meaning of independence and the territorial objectives largely shared by mainstream Scottish and Catalan nationalist leaders; and (iii) the role and response of the European Union.

Process

The most notable contrast between the Scottish and Catalan independence movements is in relation to the process, and the recognition of the right to decide. In 2011, the SNP surprised many by winning an overall majority of seats in the Scottish parliament. The SNP had a manifesto commitment to hold an independence referendum, but the election result should not be regarded as an expression of that desire. Support for independence had consistently been around 30% since devolution, and the SNP's popularity and electoral success rested much more on positive evaluations of leadership, competence in government and effectiveness in representing Scottish interests in the UK relative to its opponents

(Johns, et al., 2013). There was also debate about the legal authority of the Scottish parliament to legislate for an independence referendum. The Scotland Act 1998 – Scotland’s founding statute of autonomy – does not recognise the right to decide. The constitution, including the Union between Scotland and England, is a matter reserved in law to the UK parliament. The Scottish government never conceded that it could not hold a consultative referendum, but sought to negotiate an agreement with the UK government to put the issue of authority beyond legal doubt and legal challenge.

For its part, following the 2011 election, the UK government immediately recognised that the SNP government had a mandate to hold an independence referendum, in line with the party’s manifesto commitment. While insisting he would “campaign to keep our United Kingdom together with every single fibre I have”, the prime minister promised that he would not put any legal or political obstacles in the way of an independence referendum (The *Guardian*, May 6 2011). Over the course of the next 17 months, the UK and Scottish governments negotiated an intergovernmental agreement (‘the Edinburgh Agreement’), which paved the way for a temporary transfer of power. The resultant section 30 order exempted “a referendum on Scottish independence” from the list of reserved power in the Scotland Act, but only until the end of 2014. There were some conditions, but these were minimal: insistence on a single question with only two options; some rules on campaign finance; and oversight by the UK Electoral Commission (with the lead role taken by its Scottish office), according to the principles of the Political Parties, Elections and Referendums Act (2000). Once the power was transferred, the Scottish government and the Scottish parliament were in charge of the referendum process.

The Scottish independence referendum in 2014 was not legally binding. No referendum in the UK is legally binding. But the consent and the participation of the UK government gave the referendum legitimacy and it is likely that the result would have been politically binding. The Edinburgh Agreement committed both governments to respect the outcome of the referendum whatever that may be. There was no insistence on a qualified majority; the size of majority would doubtless have repercussions for the negotiations that followed, but under the terms of the agreement, a simple majority was all that was required to kick-start independence negotiations. This was underlined in a joint statement – the wording of which was the result of intergovernmental negotiations – sent to every household in advance of the referendum. It stated:

“If more people vote ‘Yes’ than vote ‘No’ in the referendum, Scotland would become an independent country. This would not happen straight away. There would need to be negotiations between people representing Scotland and people representing the UK.”

What, then, explains this degree of accommodation, which seems remarkable when contrasted with the vehement resistance of the Spanish government to the Catalan referendum? One can point to both strategic and philosophical explanations.

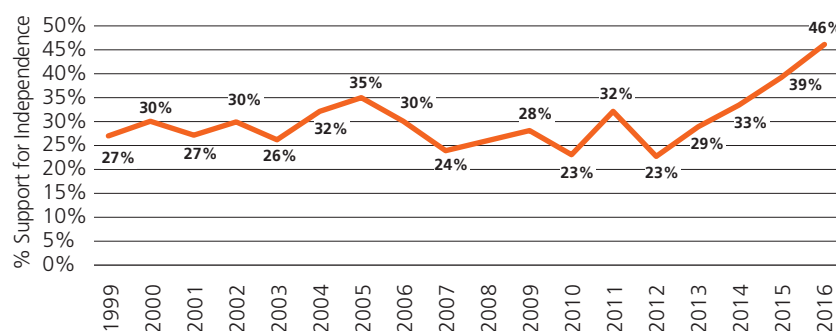
From the vantage point of May 2011, with surveys suggesting that support for independence rarely scored above a third of the Scottish electorate (see Figure 1), the costs of conceding a referendum seemed lower than the risks of fuelling a backlash were a referendum to be rejected. In most cases, demands for independence emerge as a result of dissatisfaction or grievance with the constitutional status quo, and a collective feeling that national identity isn't recognised and/or national interests aren't protected within the existing state structure. This was not the case in Scotland in 2011. On the contrary, support for Scottish devolution within the UK was high, and Scots appeared more content with the deal that Scotland secured from the Union, especially after the SNP was first elected to government in 2007 (Curtice and Ormston, 2012). The SNP strategy of building confidence in Scottish independence by making a success of a more limited form of self-government (while attempting to expose its constraints) contributed to increasing the level of satisfaction Scottish voters held for devolution. There was no grievance, no constitutional court had rejected powers for the Scottish parliament. In fact, the parliament's powers were just about to increase. Rejecting the right to decide might have created a grievance around which support for independence could be mobilised, and seemed too great a risk when the future of the Union seemed secure.

A referendum that seemed certain to result in a heavy defeat for independence also offered an attractive prospect for committed unionists. The threat of independence has long acted as political leverage for successive Scottish governments, and even at times for the Scottish Office before devolution, to enable Scottish representatives to lobby for policy, financial or constitutional concessions from the UK government. A resounding endorsement of the Union in a referendum would serve to weaken the effect of such territorial demands. Conceding a referendum therefore presented an opportunity to demonstrate what appeared to be a clear majority against independence which could fatally undermine the threat of independence for a generation. This was, of course, a miscalculation. At 55-45 against independence, the referendum vote produced a clear endorsement of the Union. However, it was also too close for comfort and helped to generate further constitutional change. What is more, it served to boost the SNP's electoral dominance of Scottish politics, and as Figure 1 reveals, support for independence – even when voters are confronted with a plurality of constitutional options – has remained historically much higher since the referendum than it was before it.

Philosophical explanations also help to account for the degree of territorial accommodation evident in the run-up to the 2014 vote. Although the UK was a relative latecomer to multi-level government – the system of devolved government in Scotland, Wales and its restoration in Northern Ireland dates only to 1999 – its plurinational character has long been recognised. Political union between Scotland and England never eroded the distinctive national identity of the component parts. Scotland's institutional distinctiveness was preserved in its churches, legal system, education system and local government. These institutions became carriers of national identity even as politics became increasingly centralised during the era of mass politics. Thus, in the UK, national boundaries overlap: the nation of Britain is made up of the nations of England, Scotland and Wales, and together

with Northern Ireland they form the UK, which is both nation and state. Famously, there is no adjective to describe the citizens of the United Kingdom as co-nationals; though “British” is often used, especially by one community in the divided territory of Northern Ireland, Britain technically excludes the territory of Northern Ireland. For much of the period of Union, these national identities have been broadly compatible. This was aided by the unwillingness on the part of successive UK governments, perhaps borne of a lack of interest or lack of perceived need, to suppress the plurinational character of the state. Recognition of nations within the state has never posed the kind of problem within the UK as it has posed periodically in Spain or Canada. This makes it easier philosophically to recognise the right to decide because, however unattractive independence may be politically, it doesn’t pose the same existential crisis in the UK as it often does for other states for whom the boundaries of nation and state are more aligned.

Figure 1: Support for Independence (%), 1999–2016



Source: Scottish Social Attitudes, 2017.

One must also acknowledge the personal contribution of the then prime minister, David Cameron. In this particular referendum (the same cannot be said of his role in relation to the Brexit referendum and its aftermath), Cameron demonstrated considerable leadership and a pragmatic attitude which facilitated intergovernmental negotiation and agreement. He was able to combine the recognition of the right to decide with a passionate defence of the Union. For an illustrative example, in a speech seven months before the referendum, in which he was appealing to British citizens across the UK to make their voices heard in the campaign, he said: “this is a decision that is squarely and solely for those in Scotland to make... I believe passionately that it is in their interests to stay in the United Kingdom... but it is their choice, their vote” (Cameron, 2014). Notwithstanding the degree of continuity within Conservative thinking – even Mrs Thatcher, while being deeply opposed to independence, acknowledged in her memoirs Scotland’s “undoubted right to national self-determination” – it can’t be assumed that other UK leaders would act in the same way.

Independence was defeated in 2014, but the result was much closer than the UK government had anticipated, and it’s not at all certain that another UK government and another leader would be quite so accommodating if another independence referendum was in sight.

Indeed, when the Scottish first minister formally requested a new section 30 order to transfer the power to hold another independence referendum in light of the material change in circumstances brought about by the UK's decision to leave the European Union (also a manifesto commitment), the current prime minister formally rejected the offer, with the carefully crafted response that "now is not the time". This translated into more forceful opposition to a new referendum by the SNP's political opponents in the UK general election in June 2017 with some success.

Independence, interdependence and secession

The subject of CIDOB's workshop was secession and counter-secession. But when discussing European cases, is secession the right terminology? It is not a term commonly used by independence movements and it arguably doesn't capture what they aspire to. The term "separatism", so liberally used by commentators in relation to the current crisis in Catalonia, is also inadequate. In Scotland, as in Catalonia, the independence movement is a broad coalition. Not everyone shares the same vision of what independence should entail. But within the SNP, which remains the dominant force within the Scottish independence movement, the stated goal of independence was framed in terms of a new relationship with the rest of the UK. As Nicola Sturgeon, then deputy first minister, noted, "far from marking a separation from our friends and relations across these islands, independence opens the door to a renewed partnership between us" (Sturgeon, 2013).

For example, the SNP government's White Paper on independence (Scottish Government, 2013) published in advance of the referendum included proposals to:

- set up a formal currency union with the rest of the UK, which would see Scotland's government effectively becoming a shareholder in the ownership and governance of the Bank of England;
- maintain the British Isles Common Travel Area (currently operational between the UK and the Republic of Ireland and formally recognised in the EU Amsterdam Treaty) to facilitate cross-border travel and avoid the need for internal border posts;
- develop a strategic energy partnership and an integrated energy market, as well as an integrated labour market;
- cooperate in a wide range of public bodies, including keeping the UK Research Councils and the Green Investment Bank;
- maintain common regulatory agencies, for example, in rail regulation and the Civil Aviation Authority.
- In defence and security, the emphasis was on new institutions in an independent Scotland working in partnership with the rest of the UK.

Independence, then, was presented by its protagonists not as separation or even secession but as a new form of partnership (Keating and McEwen, 2015). This new partnership was to be overseen by a new intergovernmental forum, modelled on the British Irish Council or the Nordic Council of Ministers, and – crucially – all within the context of the partners' continued EU membership.

This idea of independence as partnership is not unique to the Scottish experience. The 2014 White Paper of the Catalan Advisory Council on the National Transition likewise envisaged continued political, economic and institutional ties with the rest of Spain and the other Iberian states, including a treaty underpinning cooperation in: monetary and financial policy; industry and trade; agriculture and fisheries; customs and tax; health and education; environment, infrastructure, defence, law enforcement and migration. Even the Quebec offer in 1995 – while arguably the most radical of the three – included an offer of an economic and political partnership with the rest of Canada.

These objectives are motivated by a desire to avoid independence being viewed as a clean break, a rupture, a leap into the unknown. A vision of independence with some continuity is less frightening, less risky, and perhaps as a result, more palatable to voters. Such objectives are also motivated by pragmatism. Dismantling a 300-year old political union is a daunting task. Where services currently operating on a cross-border or centralised basis are non-contentious politically, the SNP judged that it made more sense to have continuity, freeing up space to focus on disentangling the more politically potent areas such as natural resources, the national debt or the armed forces. National *interdependence* alongside the goal of independence is not only recognised as a 21st century norm, but has also been regarded as desirable. In the global order, no state, big or small, exists in splendid isolation. For the mainstream of Europe's independence movements, the era of 20th century sovereign statehood is over.

Of course, not everyone sees independence this way, and especially not its opponents. Partnerships only make sense when there is a willing partner. And therein lies the problem. It is far from certain that the new offer of partnership made by the Scottish government would have been accepted by the UK government in the event of a yes vote. Less likely still that it would have led to the “partnership of equals” that the SNP had in mind, given the resource disparities – economic, bureaucratic, political, and reputational – between an independent Scotland and the rest of the UK. Moreover, a partnership of the kind envisaged in 2014 would be much more difficult within the context of Brexit, since it depended upon both Scotland and the rest of the UK being within the European Union.

Response of the international community and the EU

From the perspective of the international community, independence debates are domestic affairs. In a formal sense, this suggests that international institutions and the leaders of other sovereign states often refrain from taking a formal stance, but are passive observers of someone else's debate (or, where they choose to, they may ignore the issue entirely). In practice, this often means explicitly or implicitly siding with the national government's bid to maintain the territorial integrity of the existing state. This is at least in part motivated by rational self-interest. Maintaining the constitutional status quo is likely to be less disruptive to commercial and political interests, avoids the prospect of demonstration effects or spillover for their own territories, and may reflect the hope that they in turn would receive support from allies in the international community in pursuit of their own territorial objectives and the defence of their territorial integrity should it be threatened.

The position of the European Union merits closer scrutiny. With respect to the independence movements of Scotland and Catalonia, the EU is not an international observer. When territorial challenges take place within the EU's borders, they do not take place in its own backyard or on its doorstep. They take place inside the EU's house. And yet the EU has tried to act as if it were a dispassionate international observer, regarding these challenges as internal matters of member states to address in line with their own constitution and their own rules of law.

Certainly, the EU treaties do not provide much clarity or opportunity for intervention. Article 4 of the Lisbon Treaty underlines the Union's commitment to respecting the essential state functions of its members, "including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security". There are, however, other provisions within the treaty which could arguably be used to intervene to protect the European rule of law and the rights of EU citizens where these are jeopardised by a member state. In particular, article 2 of the treaty underlines the fundamental values of "respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities". While these were not undermined in the Scottish independence referendum, there is surely a case to make that they are being undermined in the political, governmental and judicial responses to the Catalan referendum process and its aftermath.

As was abundantly clear in the context of the Scottish independence referendum, while the treaty has provision for accession and exit from the EU, it is silent on the issue of internal enlargement. Intense debate and scrutiny among lawyers led to the broad conclusion that, had Scotland voted for independence, its membership of the EU would probably cease while the UK's membership would continue, but that accession as a member state could likely be negotiated in parallel with independence negotiations, especially if the latter were consensual. But the silence in the treaties left open the possibility that EU representatives, most notably the then Commission president, Jose Manuel Barroso, could make frankly ridiculous assertions that it would be "extremely difficult, if not impossible" for an independent Scotland to join the EU - despite having enjoyed incorporated membership as part of the UK for 40 years, having already adopted the *acquis* within domestic law, and already satisfying the terms of membership as a mature democracy with respect for fundamental rights.

Of course, strategic and philosophical explanations play their part here too. The self-interest that generally lends itself to a desire for constitutional stability and support for an ally among the international community more broadly is perhaps even more evident among EU member states. Their self-interest makes it unlikely that there will be a change in the European treaties to provide clarity on the appropriate response to secessionist challenges within the EU's borders, despite the fact that such a procedure could offer stability in the face of an escalating crisis. Among the EU institutions, meanwhile, there is an evident philosophical opposition to independence as somehow anathema to the project of European integration. This reflects a misunderstanding of the territorial goals of mainstream European independence movements, which have largely sought to realise their

self-government ambitions within the context of European integration. Indeed, they have – at least until now – been amongst the most committed supporters of the project of pooled and shared sovereignty that EU integration has represented. It is ironic that those speaking on behalf of the EU have been among the staunchest defenders of a vision of national sovereignty that many thought belonged to a bygone era largely as a result of EU integration. This disconnect between the EU's institutions and its most European-minded citizens risks undermining the legitimacy of the project of European integration itself.

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