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# Negotiating Secession: Brexit Lessons for Scottish Independence

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## Abstract

Brexit has contributed to increased discussion of a second independence referendum in Scotland, so-called IndyRef2. A successful Yes vote would require negotiations between Scotland and the rest of the UK to settle distributional questions and coordinate on cross-border policies, but there are few precedents for this and little scholarly discussion as a result. This article argues that the lessons from Brexit can help us understand what negotiating secession might look like, insofar as British withdrawal from the European Union illustrates the specific dynamics associated with exiting a pluri-national and institutionally dense union under conditions of asymmetric interdependence. Drawing on recent research on the politics of exit, this article suggests the period following a successful independence referendum will be characterised by efforts to reinterpret the referendum mandate, political change within and between parties and institutions, altered preferences in London, and a highly asymmetric bargaining environment. Understanding the lessons of Brexit can aid our understanding of the dynamics of independence and help policymakers prepare in advance for the eventuality of a Yes vote.

## Keywords

Brexit; Scotland; United Kingdom; secession; independence; negotiations.

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## Introduction

With the Scottish National Party (SNP) having called for a second referendum on independence prior to the recent elections to the Scottish Parliament (IndyRef2), a further challenge to the constitutional status quo in Scotland is increasingly expected. Were a successful independence vote to take place, the likely result would be a lengthy process of negotiations both internally and with the United Kingdom (UK) government over the terms of independence and the nature of the relationship between an independent Scotland and the rest of the UK (rUK). Though alluded to in most scholarly and policy texts on independence, there have been very few systematic attempts to understand what these negotiating dynamics would look like, and little scholarly discussion aside from listing the issues that would need to be sorted. Given the stakes involved, this is a serious intellectual lacuna.

Part of the reason is that it is difficult to find appropriate analogies for negotiating secession. Common comparators, including Catalonia and Quebec, are negative examples, insofar as secession has not successfully occurred. One recent event which does offer the prospect of understanding the dynamics of negotiating secession is the Brexit vote of 23 June 2016 and the associated process of withdrawal. Yet the Brexit analogy is difficult to deploy politically given the ways in which Brexit has itself challenged the devolved settlement and become as a result intertwined in Scottish politics. While Brexit has brought about little change in aggregate support for independence, it has collapsed formerly cross-cutting pro/anti-EU and pro/anti-independence cleavages, such that Brexit has become a helpful recruiting tool for nationalist politicians.

The collapse of these cleavages and the SNP's clear anti-Brexit position makes it difficult politically to analogise Brexit and independence, which is perhaps one reason why - despite hints of similarities in the literature - no systematic appraisal of the lessons from Brexit has been undertaken. Yet the political (dis)utility of analogies should not be a barrier to their exploration. For one thing, the politicisation of Brexit provides a good reason for scholars to pursue the analogy, since other actors are less likely to take on this task. The lessons of Brexit, moreover, are far from mere conjecture, but rather the product of several years of scholarly research on the topic. In any case, the political import of scholarly comparisons can be mitigated by acknowledging scope conditions and establishing appropriate space for political agency.

This article, then, claims the UK's experience of withdrawal from the European Union (EU) is analogous in many respects to the situation in which an independent Scotland finds itself negotiating withdrawal from the broader UK. Both are examples of economic nationalism aimed at withdrawing from a broader pluri-national union under conditions of complex and asymmetric interdependence, and both feature striking similarities in underlying political conditions, including the quest for a referendum mandate, the existence of a profound divide in constitutional preferences, and the role of insurgent political movements in placing a move away from the status quo on the political agenda. Accordingly, it argues, Brexit can tell us much about the dynamics of negotiating secession. Drawing on democratic theory, institutionalist accounts of political change, disintegration theory and bargaining theory, Brexit scholarship demonstrates how referendum mandates can be (re)interpreted, how evolving political dynamics shape demands, how secession alters the incentives of the broader union, and how bargaining dynamics play out under asymmetric conditions.

### **Brexit and the Devolved Settlement**

Repeated calls for a second referendum on Scottish independence (IndyRef2) within nationalist circles have reignited discussion of Scotland's place in the UK and the prospects and viability of independence, such that it has become more common to speak about 'when', rather than 'if' a further referendum will be held. First Minister Nicola Sturgeon called for a second referendum on independence prior to the 2019 general election (Clark 2020, 468) and the 2021 elections to the Scottish Parliament (Scottish National Party 2021) and nationalists have claimed that the SNP/Green 'independence majority' governing in Holyrood possesses a mandate for IndyRef2.

The increasing vocalness of the IndyRef2 campaign partly reflects longer-term processes of change unleashed by the process of devolution itself. Instead of dissipating support for independence, devolution afforded nationalist politicians a platform from which to further agitate for independence (Mullen 2019, 277) and established institutions which citizens conferred with a 'prime legitimacy' belied by their basis in the 1998 Scotland Act (McCrone and Keating 2021, 21; Keating 2022b, 8). Mainstream and unionist parties had little interest in challenging such popular understandings while in power, while citizens increasingly associated

positive developments with the Scottish Government and attributed policy failures to Westminster (McCrone and Keating 2021, 21). The September 2014 referendum, in which citizens voted by 55% against independence, also shifted the political climate towards further efforts to break with the status quo. The campaign offered nationalist parties a unique opportunity to convey their message on the constitutional questions to the wider electorate, and both the SNP and the Greens, the two pro-independence parties, received a significant boost in party membership in the aftermath of the campaign (Bennie et al. 2021, 1187). The unsuccessful result also motivated frustrated independence supporters to vote en masse for the SNP in the May 2015 general election (Curtice 2018, 41), with high turnout from Yes supporters (85% of whom plumped for the SNP) contributing to the party's sweep of Scottish seats (56/59) (Mitchell and Henderson 2020, 145; Mullen 2019, 288).

But the decision to leave the EU on 23 June 2016 would further shape Scottish politics in significant ways. Brexit exposed territorial differentiation in preferences on EU membership - with 62% of Scottish citizens opting for Remain (McHarg and Mitchell 2017, 513) - which the referendum was not designed to take into account (Henderson et al. 2021, 1502), producing a mismatch between what Scottish citizens had voted for and what the UK government claimed it had a mandate to deliver (Curtice 2020, 225; McEwen 2018, 66). Scottish designs on Brexit, including continued membership of the Single Market and the Customs Union (Scottish Government 2016), were compatible with May's refusal to countenance territorial differentiation in the final agreement (McEwen 2021, 1542-1543; Wincott et al. 2021, 1533). The government's centralised approach to Brexit (Allen 2018, 112; Russell 2021), its 'unitary' interpretation of the constitution (Keating 2022b) and its 'muscular unionism' (Kenny and Sheldon 2021) further undermined the influence of the devolved governments over the Brexit process, with Article 50 triggered prior to the agreement of a common approach (McEwen 2022, 8) and against the backdrop of *Miller* case having deferred judgement on the constitutionality of the Sewel Convention, denying the Scottish Government its claimed veto over the decision (Eeckhout 2018, 169). The subsequent EU (Withdrawal) Act 2018 and the EU (Withdrawal Agreement) Act 2020 were passed without the consent of the devolved governments (McEwen 2022, 7) and the Joint Ministerial Council for EU Negotiations (JMC EN) failed to convene at key moments in the negotiations (Henderson and Wincott 2020; McEwen 2021, 1543; Mullen 2019, 280).

Brexit also raised thorny questions of devolved competence, many aspects of which overlapped with EU law (McEwen 2021, 1538). The UK government's intention to repatriate EU law through the EU (Withdrawal) Bill therefore created political tensions, since the Scottish Government argued many of these competences should be returned to Holyrood, not Westminster (McEwen 2018, 74; 2021, 1538; Mitchell 2018, 580). In the end, a more collaborative, framework-based approach for returning devolved competences was adopted, which sought to allocate powers at the most appropriate level (McEwen 2022, 8). Brexit also forced a re-assessment of regulatory divergence, which until withdrawal had been mitigated by regulatory harmonization at the EU level (Keating 2022b, 7). Section 12 of the EU (Withdrawal) Bill sought powers for the UK government to constrain devolved legislation, the first time since the Millennium settlement that devolved competences would be weakened (Mullen 2019, 284), though concerted opposition in Parliament weakened the government's ability to constrain the devolved administrations (McEwen 2021, 1544). The issue re-emerged with the Johnson government's Internal Market Bill, which gives Westminster the ability to unilaterally define the UK's internal market, with the corresponding risk of English regulatory standards dominating and regional differentiation easily quashed by the UK government (Henderson and Wincott 2020; Keating 2022b, 11).

By bringing about serious challenges to Scottish 'voice' (McEwen and Murphy, forthcoming) in an area of major policy significance, Brexit helped undermine the devolved settlement established in the late 1990s (Keating 2022b, 9). It did so not only by exposing the ambiguities of the UK constitution with respect to territorial politics and the pre-eminence of parliamentary sovereignty (Eeckhout 2018; McEwen 2022, 8, Mitchell 2018) but also by destabilising existing arrangements for managing intergovernmental relations (Baldini et al., forthcoming; Mullen 2019, 277). The upshot of these difficulties arising out of the withdrawal process, on top of the dynamics unleashed by the 2014 referendum on independence, has led scholars to view Brexit as - in the words of one observer - a "severe constitutional shock to a territorial settlement that had already been destabilised by other political developments and unresolved issues" (Mullen 2019, 277).

## **Brexit and Political Change in Scotland**

And yet the impact of Brexit on public opinion has been more complex than the destabilisation of the devolved settlement might suggest. Although it came to dominate the political landscape, Brexit failed to bring about any immediate shift in public opinion towards independence (Keating 2022b, 9; Mitchell and Henderson 2020, 143) which has consistently hovered around the 45% mark, albeit with periodic fluctuation (Harvey 2020, 57). Beneath this relatively static figure, however, are significant changes between the different ‘tribes’ (McMillan and Henderson 2021, 38), with Remain supporters coming around to a pro-independence position and Leave supporters switching from the SNP to the Scottish Conservatives (Curtice 2020, 228). Because the traffic both ways has been of a similar volume, the overall effect has been marginal and the pattern of tactical voting suggests positions on independence remain the most significant drivers of voting behaviour, with fewer individuals moving away from positions in independence than Brexit (Johns 2021, 493, 495; McMillan and Henderson 2021, 37). That being said, movement in the opposite direction was sufficient to shift support for independence above the majority threshold for the first time during the course of 2019 (Keating 2022b, 9; McEwen and Murphy, forthcoming), aided by the greater number of Remain supporters (62%) relative to Leave supporters and clear evidence that those who saw Brexit as a negative economic shock were more likely to reassess their territorial preferences (Daniels and Kuo 2021, 202). In any case, even as Remain support for the SNP increases, the party still struggles to translate these new votes into support for independence itself (Harvey 2020, 57).

The shifting patterns of support brought about by the Brexit vote have played out in complex ways over time. The SNP lost 21 seats in the June 2017 general election, the first since the Brexit vote, obtaining 36.5% of the vote compared to 50% in 2015 (Agnew 2018, 6; McEwen 2021, 1544; Mitchell and Henderson 2020, 143). The party’s pro-Remain position alienating Leave supporters, over 40% of whom switched their vote (Curtice 2018, 42; Mitchell and Henderson 2020, 145), leading Sturgeon to announce a ‘reset’ of the proposed second referendum (Mullen 2019, 288). Yet the SNP fared better in the December 2019 general election, called amid the Brexit fiasco to shore up Johnson’s majority. Increasing support for independence among Remain supporters pushed aggregate support for independence over 45%, where it had rested since the 2014 referendum (Curtice 2020, 229) and the party increased its seat share in the general election from 35 to 48. The SNP campaigned on a ‘Stop Brexit’ platform alongside support for a second independence referendum, which appealed to voters keen to oppose the Brexit vote (Harvey 2020, 56). Two years later, in the May 2021 Scottish Parliament elections, the SNP stood on a similar pro-independence and anti-Brexit platform

(Scottish National Party 2021, 12, 45), which encouraged Remain supporting areas to switch to the SNP and Leave supporting areas to switch to the Conservatives (Johns 2021, 494), but which brought about little change in the overall seat share, with tactical voting and the Additional Member electoral system denying the party an overall majority (Johns 2021, 493-494). Nonetheless, talk of an ‘independence majority’ followed the subsequent Cooperation Agreement between the SNP and the Greens, precipitating a highly politicised discussion on whether a ‘mandate’ for independence was established by the vote (Johns et al. 2020, 29; 2021, 498).

Despite the fact Brexit has not significantly altered support for independence and the SNP’s electoral fortunes, it has had important effects on Scottish politics and on the independence debate, and these matter for how the relationship between these two concepts is understood. First, Brexit has increased the salience of the independence question, reigniting the debate on Scotland’s place within the UK constitution which, whilst not dormant after the 2014 referendum, at least had had its contours sketched out in familiar ways (Cetrà and Brown Swan 2021, 5; Curtice 2020, 225). Second, Brexit has provided ammunition for the mobilisation of nationalist sentiment which did not exist before, with nationalist political leaders deploying Brexit-related concerns as a recruiting device for their cause (McEwen 2022, 2). Thus has Brexit been used to portray a ‘crisis’ in intergovernmental relations (Wincott et al. 2021) and to disclaim the mandate from the 2014 independence referendum (Harvey 2020, 57), on the basis of “a significant and a material change of the circumstances in which Scotland voted against independence in 2014” (Scottish Government 2016). Third, post-Brexit political changes have transformed the pattern of political support on the two major constitutional issues (independence and Brexit), bringing the cross-cutting cleavages closer together (McCrone and Keating 2021, 15; Mitchell 2018, 578; Sobolewska and Ford 2020, 278). Data from Johns et al. (2020, 31) show that while 48% of the Scottish electorate fell into either the Yes/Remain and No/Leave camps in 2016, over 70% fell into these positions by 2019. Fourth, and related, there has been a polarising effect post-Brexit, as the “changed political supply of options” reflected in the EU referendum’s stark depictions of sovereignty have helped sort individuals into opposing political categories (McCrone and Keating 2021, 15). The availability of parties with clear positions on the Brexit and independence binaries, especially the SNP and Conservatives, has further helped entrench these positions (Mitchell and Henderson 2020, 144).



## **Independence *as* Brexit? The Politics of Analogies**

The increasing association of anti-Brexit and pro-EU positions makes it politically difficult to engage comparatively with the Brexit and independence movements, even though there are striking similarities between both forms of economic nationalism and their efforts to secede from broader political unions. Though scholars have noted some areas of overlap (e.g. Martin 2021; Mitchell 2018, 578) there have been no systematic efforts to develop the analogy further. Most of the existing scholarship has focused on the detrimental effect Brexit has had on the devolved administrations (McEwen 2018, 66; McHarg and Mitchell 2017, 518; Salamone 2020, 17) or on the distinctions between Brexit and independence, with talk of ‘irreconcilable sovereignties’ (McEwen 2022), ‘discordant goals’ (Kenny and Sheldon 2021, 966), divergent territorial preferences (Daniels and Kuo 2021; Henderson et al. 2021) and ‘rival economic nationalisms’ (Rioux 2020). The debate within the policy community has done little to rectify this gap, perhaps unsurprisingly, given the political difficulties of equating Brexit - a helpful recruiting tool for the independence cause - with Scottish nationalism.

The neglect of the Brexit/independence analogy is unfortunate, since there may be much that UK withdrawal can tell us about the specific challenges of negotiating secession under conditions of asymmetric interdependence. Analogies offer a helpful means of diagnosing possible outcomes based on the identification of similar antecedent conditions (Figueira and Martill 2021, 1874; Khong 1992). They are especially useful under conditions of uncertainty, such as those anticipated in the aftermath of referendums on significant constitutional issues, where one option entails a distinct shift away from the status quo. Scotland’s quest for independence is often compared with other regions across the world seeking sovereign statehood, like Catalonia or Quebec, given the similarity of underlying political conditions and unionist responses (Brown Swan and Cetrà 2020; Keating 1997). But these analogies cannot help us to understand what negotiating secession looks like, because they offer examples only of unattained secessionist demands. This article suggests that Brexit, though bound up with the recent politics of independence, also offers one of the few recent examples of successful secession from a broader transnational union that has been successfully (and painstakingly) achieved, and that we may learn from the experience of negotiating Brexit how to prepare for the challenges of negotiating secession from the UK.

What is the basis of the Brexit/independence analogy? At first glance it may seem absurd, given the antagonistic way in which the politics of Brexit and independence have played out, and the fact that the UK takes the role of both seceding ‘state’ and broader ‘union’ in the analogy. But developments in European integration over the decades since the UK accession in 1973 have endowed the EU with state-like attributes and brought about such high levels of interdependence that the similarities of secession and EU exit have not gone unnoticed. As Keating has observed, both “the UK and the EU are asymmetrical, quasi-federal unions in which demos, telos and ethos are continually contested and renegotiated and where the locus of sovereignty is disputed” (Keating 2022b, 7). Alongside these politico-normative properties, both the EU and UK are characterised by high levels of economic and societal independence between both sides, including high levels of cross-border transactions, open borders (in respect of commerce) and long-standing social and political ties (Martin 2021, 28). Moreover, the dynamics of exit are not dissimilar, involving the negotiation of the terms of withdrawal from a position of complex and asymmetric interdependence alongside efforts to ensure continued harmonisation, minimise negative externalities, and agree on the nature of cross-border coordination and the distribution of existing assets and liabilities (Martin 2021, 11, 29; Salamone 2020, 5, 12). There are also similarities in the underlying political movements, both of which were initially the product of insurgent movements outside of the political mainstream, each with their commitment to ‘take back control’ (Mitchell 2018, 578). Both movements are fundamentally examples of economic nationalism (Rioux 2020, 8) and both utilise a populist style of political communication in which out of touch elites in the broader union are thwarting the will of the British/Scottish people (e.g. Freedon 2017; Massetti 2018; Sobolewska and Ford 2020, 265).

This is not to ignore the significant differences. The EU, however dense its organisation has become, is not a state, unlike the UK. Scotland’s relationship to the UK is constitutionally and politically distinct from the UK’s membership of the EU and has a much longer history. And the movements differ. Scottish nationalism views itself as a more leftist, more cosmopolitan project than the broadly right-wing Brexit movement, with its embrace of ‘civic’ nationalism and EU membership (Harvey 2020, 56; Martin 2021, 23, 26; Salamone 2020, 17; Sobolewska and Ford 2020, 265, 275). If Scottish nationalism is populist, it is left populism, not the populism of the right, with clear implications for the connotation of this much abused term. Identities differ, too, with a higher proportion of Scottish citizens identifying as both Scottish and British than the proportion of individuals in the UK who identified as British and European

(McCrone and Keating 2021, 19; Sobolewska and Ford 2020, 269). And while Leave voters tended to be older, it is younger voters in Scotland who are more likely to support independence (McCrone and Keating 2021, 19). Such disanalogies do not undermine the value of looking for Brexit lessons where applicable, but are important to engage with so as to understand the limits of the particular analogy being drawn.

Unsurprisingly, analogies may be strongly contested politically and their usage can be rejected by political actors (Khong 1992), and this is certainly the case when it comes to analogising Brexit and independence, for the reasons outlined above. Of Scotland's four 'tribes', only Yes/Leave and No/Remain are likely to find the analogy meaningful, while Yes/Remain and No/Leave will have good reasons to reject it. The politics of analogies provides a challenge but is not reason enough to scupper the enterprise entirely. For one thing, the politics of analogical reasoning, as with other forms of scholarly argumentation, is ubiquitous. Yet, while it is never possible to escape the accusation that theories are themselves ideological, we can at least make clear where our claims are positions within these debates. Making clear the scope of argumentation, acknowledging that analogies are conditional and not universal, being aware of the other ways Brexit and independence are implicated, and retaining space for political agency - all of these help ensure the analogy remains analytical, and is not reified. Moreover, the politicisation of the Brexit/independence analogy provides even more reason to consider its utility, since it is only those outside the debate who are empowered to pursue this task. And, finally, it is not clear the analogy works against the nationalist cause. For one thing, the Brexit experience shows that significant shifts away from the constitutional status quo can occur, perhaps even with less damage than suggested at the time. And both sides in the debate have an incentive at mitigating some of the potential difficulties associated with negotiating secession, which are highlighted by the lessons of Brexit.

### **The Lessons of Brexit**

If negotiating Brexit is (partly) analogous to negotiating Scottish secession, then what dynamics do we expect from the process? Though Brexit touches on most areas of the social sciences in some way, recent scholarship on UK withdrawal has focused on four areas in particular: (1) Democratic theory and the referendum mandate (e.g. Bellamy 2019; Freedman 2017; Mihai, forthcoming Weale 2018); (2) Institutions and political change in the UK (e.g.

Allen 2018; Baldini et al. 2018; Heinkelmann-Wild et al. 2020; Quinn et al., forthcoming; Sobolewska and Ford 2020); (3) European disintegration and the dynamics of de-Europeanisation (e.g. Gstöhl and Phinnemore 2021; Laffan 2019; Rosamond 2019; Schimmelfennig 2018); and (4) Bargaining theory and the conduct of the UK-EU negotiations (e.g. James and Quaglia 2018, 563; Jones 2019; Larsén and Khorana 2020; Martill and Staiger 2021; Usherwood 2021). What unites these works from disparate traditions is their understanding that the process of exiting from the broader union is characterised by distinct and systematic dynamics which differ from day-to-day politics or from the conditions accompanying membership or accession. Though they do not deny the role of agency by any means, by highlighting the political dynamics associated with exit, these works allow us to understand the actions of figures like May and Johnson within the constraints of their situation, helping us to contextualise (if not altogether excuse) their actions. And by helping to explain the unpredictable aspects of Brexit they show the value-add of theoretical exposition as a corrective to received wisdom. In the remainder of this section the theoretical and empirical lessons for a successful ‘Yes’ vote in a second referendum on Scottish independence are considered.

### ***Mandate***

The range of outcomes resulting from exit are broad, not least because independent statehood raises questions of domestic policy choices, external alignment, and the relationship with the former union. Not all aspects can or should be covered by the mandate to withdraw, but equally many of the key decisions pertaining to the question of *why* exit has been sought will be traced by citizens back to the referendum decision. The mandate established by the 2016 Brexit referendum offered little guidance insofar as it was compatible with a range of outcomes - from the Norway model to the ‘no deal’ scenario - and therefore offered little guidance on how to proceed following the vote (Allen 2018, 113). Similar dynamics pertain to a mandate to negotiate independence from the UK, not least since the referendum question for IndyRef2 will likely be similar to, if not the same as, that asked in 2014, and thus cover only the principle of independence and not the detail of the process. While the Scottish Government did more in 2013 to set out their aims for independence (Mitchell 2018, 578; Scottish Government 2013), debate over the *true meaning* of independence may not be easily bound by such proposals.

Mandates are often subject to reinterpretation after the fact and can be shaped by political entrepreneurs. After the EU referendum, a small group in May's inner-circle interpreted the mandate (Seldon 2019, 59), leading to harder designs on Brexit (Figueira and Martill 2021; Heide and Worthy 2019; Meislová 2019). May's critics on the right would later claim the mandate was actually for 'no deal', and data show that by 2019 a majority of Leave supporters agreed (Kettell and Kerr 2020). And mandate for Scottish independence would be open to active shaping by political entrepreneurs, who will have incentives in a polarised environment to present their own visions of independence, which may differ from those of the campaign. Data on the 2014 referendum show that even though the official campaigns moderated their stances to, respectively, 'independence-lite' and 'devolution max', the votes of citizens did not reflect these more moderate positions (McCrone and Keating 2021, 15). Voices clamouring for a cleaner break or even no agreement may well become louder during contentious negotiations.

Decisions will also need to be taken at later stages in the withdrawal process, which requires clarification an understanding of who will make such decisions, and how. This proved highly contentious after Brexit, as the government and Leave challenged the remit of Parliament to decide on the direction of Brexit (Freedon 2017; Weale 2018, 32) and as the campaign for a 'second referendum' (of which various permutations existed) grew stronger throughout the course of the negotiations (Bellamy 2019). Once May's cherry picking had been rebuffed, no process existed for revisiting and reinterpreting the now undelivered initial mandate. Independence, too, will require subsequent decisions, including on the mandate for negotiations, whether to accept a negotiated deal, and potentially which direction to take should the process become stalemated. And there is every likelihood the same tensions between elected officials and the mandate established by IndyRef2 will emerge.

Success in any referendum involves campaigning strategically. Among (many) other drivers, Brexit observers have attributed the Leave campaign's unexpected victory to the division-of-labour between Vote Leave and Leave.EU (the former less moderate in its messaging) and the strategic ambiguity in declining to set out in detail designs on exit (Browning 2019, 231), as well as the propagation of selective messaging and misrepresentations of core EU policies (Mihai, forthcoming). In the aftermath of the successful Brexit vote, many of these materials were taken offline (Wired 2016). Similar dynamics applied in the 2014 referendum debate and will apply in a future IndyRef2. Winning the referendum requires a broad church of support which makes it more likely that divergent and potentially incompatible claims will be made,

and that citizens' expectations will be informed by the quest for victory, not simply by an assessment of the practicalities. Moreover, the broad ecology of campaigns on the Yes and No sides ensures a heterogeneity of claims will inform the mandate, outside the 'official' position of the Scottish Government.

Referendums on exit also come with the 'foreign policy problem', insofar as important decisions will need to be made by the former union over which the seceding territory does not have control, and this is difficult to reflect in any mandate. Brexit brought this problem into sharp relief, as successive Leave campaign materials offered voters outcomes the EU was unlikely to endorse, including continued membership of the single market in the absence of the oversight of the Court of Justice of the EU (Gstöhl and Phinnemore 2021). The proposed designs on the 2014 referendum comprised policy decisions over which an independence Scotland would have little control, or which had been formally precluded by Westminster, including currency and defence unions (Keating 2022b, 9). With Scotland now outside the EU and independence now linked more closely to membership, the claims deployed in IndyRef2 will offer forms of association potentially unavailable. In a way, this is normal politics, but it highlights an important tension: What is considered by many to be part of a mandate for independence may need to be negotiated and might not be on the table.

### ***Political Change***

Referendums on divisive constitutional questions can further polarise public opinion and contribute to the sorting of citizens into different camps. The Brexit referendum vastly increased the salience of a question - that of EU membership - that had been somewhat dormant in public priorities. Moreover, the divisive referendum campaign tapped into pre-existing political fault-lines in the way that partisan divides did not, producing new and more intractably opposed political identities (Sobolewska and Ford 2020, 237). That this is also the case in Scottish politics has been demonstrated by the impact of both the 2014 and 2016 referendums, which further polarised opinion on the independence question (Sobolewska and Ford 2020, 273), such that one would reasonably expect a second independence referendum to do the same. Polarisation makes it more challenging to effect a shift away from the constitutional status quo, but will also make it more difficult to articulate any compromise position in the eventuality of a successful Yes vote.

In the uncertain environment produced by a referendum commitment to significant constitutional change, political entrepreneurs will vie to shape this process. After Brexit, challengers on the political right sought to outflank May by articulating ever harder designs on Brexit, branding May's negotiations a capitulation and arguing 'no deal' was better than an unhappy compromise (Kettell and Kerr 2000, 605). The success of the Brexit Party in the May 2019 European Parliament elections showed the Conservatives remained vulnerable on the right even after having appropriated much of the UK Independence Party's pro-Brexit platform (Tournier-Sol 2021; Usherwood 2019). Similar political dynamics may be observed after a successful independence vote, depending on the strength of factionalism within the SNP, or the success of splinter groupings. While the rise of challengers may be difficult to foresee at present, it is worth noting that at present the nationalist strength is *behind* the SNP, and that this may cease to be so should the party shift into defending more moderate designs in the future. This is essentially the story of how Conservative leaders deployed - and were themselves deposed by - Euroscepticism (Martill, forthcoming).

Within polarised political systems, these dynamics can be exacerbated by institutional factors. The UK's majoritarian political system and the oppositional party system it produces made it difficult to cobble together a moderate centre-ground even where this theoretically existed (Quinn et al., forthcoming), with the fight over the direction of Brexit taking place between various factions on the right. Intra-party conflict, moreover, took the form of a politics of intransigence, with each faction holding out for their favoured option rather than compromising on May's negotiated agreement (Heinkelmann-Wild et al. 2020). To be sure, Scotland's electoral system differs from that of the UK in that it is designed to be proportional, but the SNP's dominance in this system presents similar dynamics to those observed within the Conservative party, and these are reinforced by the level of polarisation on the constitutional question. Any political fight over the direction of independence would likely take place within and between the nationalist parties, and not the opposition, with factions incentivised to withhold support from compromise positions.

Executive-legislative relations seldom remain static at times of upheaval. In the case of Brexit, the government's reluctance to engage legislators in the withdrawal process (Russell 2021) brought about a series of showdowns with Parliament that culminated in MPs obtaining a 'meaningful vote' on the Withdrawal Agreement (Baldini et al. 2018) that significantly altered

the government's calculations at the ratification stage, setting the stage for a harder Brexit after May's agreement failed (Martill 2021). It is by no means certain that the relationship between the legislature and the executive would be so fraught in the aftermath of a successful independence vote, but we probably can claim with certainty that the Scottish Parliament would wish to have a say over the terms of independence and the process through which it would be negotiated, and that this may bring it into conflict with the Scottish Government at times, as well as with the referendum mandate. Parliamentary ratification would help legitimate a process but would also introduce a fraught veto point into a contested process in a polarised environment, with potentially unpredictable results.

The process of bargaining - especially under conditions of asymmetry - can also induce political change. May's 'red lines' set high expectations at the domestic level that were impossible to meet, while the repeated claim that 'no deal is better than a bad deal' gave credibility to the former as a viable option (Kettell and Kerr 2020). Meanwhile, opposition to the Withdrawal Agreement and the Chequers Proposal motivated critics to reject May's deal partly as a demonstration of resolve, locking in a harder Brexit agenda through the defeat of the government and the ascendance of the Johnson government. Following a successful independence vote, the Scottish Government would begin negotiations with Westminster over the terms of withdrawal from the UK which would likely create similar conditions, including incentives for Westminster to be intransigent and unhelpful, difficult and complex issues to unpick, and negative visuals for the weaker party (the departing state). 'Red lines' or otherwise, the act of negotiating secession would be very likely to frustrate the nationalist base on which support for such an act rests.

### ***Union Response***

Withdrawal from a broader union alters patterns of identification and discourse. The shock of Brexit forced the EU to confront the risk of disintegration, the response to which was a concerted effort to demonstrate the benefits of membership, the UK taking the role of 'martyr' for the cause (Beaumont 2019, 16). Brexit also acted as a catalyst for EU reform in areas, like security and defence, which could show there was life yet in the integration project (Martill and Sus, forthcoming). The incentive for the rest of the UK, in the event of an exit vote, would be to highlight the benefits of membership to other territories in order to preclude the system's



deterioration, and this would include efforts to use Scottish independence as a means of demonstrating the follies of withdrawal. Discursively, the rUK will have an incentive to articulate a revised identity based around its continued success as a smaller unit, just as the UK and EU both sought to show they were thriving after Brexit.

Exit is also associated with increased in-group solidarity among the remaining members. This was reflected in the high levels of unity among the EU27 during the Brexit process (Jensen and Kelstrup 2019; Laffan 2019), high levels of trust among and between the EU institutions, and especially of the Commission and Taskforce 50 (Schuette 2021), and evidence of increasing identification with the EU among citizens (DeVries 2017). Brexit also led Eurosceptic populist parties to moderate their message on the value of exit (Van Kessel et al. 2020). Similar dynamics will characterise UK politics in the aftermath of a vote for independence, with the institutions of the British political system and the principal political actors seeking to respond collectively to the perceived threat to the integrity of the state. Whether or not existing divides on devolution or on Brexit will introduce fault-lines in the UK is an open question, although the lesson of Brexit was that highly significant divisions among member states were put aside in order to better manage British withdrawal and that the friends the UK had before were not keen to engage after the vote to leave.

That withdrawal takes place within the legal and constitutional framework of the broader union has a significant bearing on the process. The institutional structure crafted by the EU to oversee the Brexit process was designed both to ensure unity at the highest level through the European Council but also to draw on the expertise and political independence of the Commission (Schuette 2021). British representatives and party groupings in the Parliament sympathetic to Brexit were ostracised through this process (Bressanelli et al. 2019) and the UK exercised little ‘voice’ as a result (McEwen and Murphy, forthcoming). Scotland’s secession from the rUK will take place within a constitutional framework governed by the broader union from which it is departing and with which it must enter necessarily adversarial negotiations. This can make the process of leaving difficult, because it entails lower levels of voice than Scotland has previously had in the system at a time of heightened importance, and because it places control over the all-important rules of the game primarily in the hands of the rUK, which can craft these to its advantage.

Exit creates strong incentives to defend the integrity of institutions and policies, since it is in the interest of the departing state to ensure economic, strategic and political continuity by adjusting the status quo to suit external participation. In response to British requests for sectoral access to the single market and ‘associate’ membership of decision-making forums, the EU argued that the ‘four freedoms’ underpinning the single market were ‘indivisible’ and that the Union must maintain its decision-making autonomy (Gstöhl and Phinnemore 2021, 111; Walter 2021). In the event of a successful independence vote, Westminster is highly likely to shift towards a similarly defensive position vis-à-vis its existing institutions, such that the kind of selective participation in UK-wide policies and joint decision-making arrangements designed to ensure continuity in defence and monetary policy (Keating 2022b, 9) are redolent of the UK’s bespoke designs on Brexit and may be difficult to obtain under similar conditions.

Withdrawal negotiations also establish precedents to which citizens and their states are sensitive, creating incentives to avoid agreements that may bring about later challenges, even where distributional outcomes may be beneficial (Jurado et al., forthcoming). During the Brexit process, EU leaders made it clear that existing formats for external association were the only options on the table, keen as they were to avoid creating new and generous models for the UK (Schimmelfennig 2018). This logic even spilled over to areas like foreign and security policy, where an agreement with the UK would have been more advantageous for the EU (Martill and Sus, forthcoming). Negotiating independence would require these different kinds of interests on behalf of the rest of the UK to be accounted for. While pro-independence claims have to date spoken of Westminster’s interest in new models of association in distributional terms, there has been little discussion of the role of precedent, which is likely to compel the rest of the UK to avoid the kind of bespoke agreements (vis-à-vis Scotland *and* the EU) that could provide for an open border and forms of political and economic coordination close to the status quo.

### ***Negotiating Dynamics***

Negotiating secession from a broader union is likely to be characterised by an asymmetry in bargaining power, since the union’s share of capabilities and expertise is likely to be greater. The Brexit negotiations were characterised by this imbalance in power, with the UK market - though sizable - roughly one sixth of the EU total and a dearth of experience in trade

negotiations in London owing to the EU's exclusive competence in this area (Hix 2018; Schimmelfennig 2018; Usherwood 2021). This made the UK far more vulnerable to the no deal outcome than it did the EU, with clear implications for the balance of power in the negotiations. The same conditions of asymmetric interdependence will apply to Scotland and the rest of the UK, since the former represents 8% of the population and 8% of the economic output of the latter, making Scotland more vulnerable than the rUK to an uncooperative outcome. The Scottish Government would also need to build up from scratch negotiating capabilities which the UK has invested in more recently.

There is also a risk that sufficient domestic consensus for credible bargaining will be lacking. Because the referendum result was highly contentious, and because the May administration focused above all on maintaining the unity of the Conservative party, it proved almost impossible to build a domestic consensus around the UK's asks from the negotiations (Biermann and Jagdhuber 2022; James and Quaglia 2018, 563). This introduced all manner of difficulties, including the failure to spell out what the UK wanted, difficulties in making credible threats amidst domestic discord, and the failure of May's agreement at the ratification stage (Martill 2021). Polarisation and domestic discord would be the starting point in the eventuality of a successful independence vote, given the divisiveness of the constitutional question. This will make it similarly challenging, as with Brexit, to obtain a sufficient consensus domestically over the asks in the negotiations such that the Scottish Government can claim to represent the demands of the electorate and obtain domestic support for the negotiated outcome.

Inappropriate and ill-suited bargaining styles can emerge from biases and developments in domestic politics, especially at times of intense polarisation of opinion. Pressure from the Conservative right pushed May into a hard-line and uncooperative bargaining style that ill-suited the realities of negotiating Brexit (Schnapper 2021). This was reinforced by flawed assumptions regarding the nature of the bargaining situation, including the belief that EU unity would be low, ill-fitting lessons drawn from the UK's experience as an EU member, over-estimations of the UK's power relative to the EU, and the deliberate refusal to engage with EU experts who were viewed as Remain sympathisers (Figueira and Martill 2021). There is every risk such biases would creep into the articulation of a negotiating stance on independence. For one thing, those in the driving seat will by definition those who are more likely to over-estimate Scotland's power, and thus seek to drive a harder bargain with Westminster. Experiences from

negotiating with Westminster on devolved issues, under the more framework of the UK constitution - a more collaborative scenario than exit - may also influence the negotiations.

Decisions made with domestic audiences in mind can become problematic, since it is difficult to separate internal and external audiences. Many of the strategic errors attributed to May's conduct of the negotiations were designed around maintaining her position domestically. These included the infamous 'red lines' in the Lancaster House speech which introduced numerous inflexibilities (Schnapper 2021, 376), the decision to trigger Article 50 earlier than advised (Rogers 2019), and the acceptance of 'sequencing' prior to the negotiations. May's Eurosceptic rhetoric (Meislová 2019) and her efforts to 'divide-and-rule' undermined trust in the relationship and hindered progress in the talks (Martill and Staiger 2021, 263). It is by no means clear that strategic errors would be made by Holyrood in negotiations with the rUK. But incentives will surely come about to demonstrate, as the negotiations proceed, that independence is being successfully delivered, and with this comes the risk that inflexibilities will be introduced into the negotiations, that trust between both sides would be undermined, and that additional time pressure may be established.

Time pressure in negotiations can sometimes help force an agreement, but excess pressure may prove deleterious. Negotiating Brexit was made more difficult by the pressure on May to commit to withdrawal (by triggering Article 50) which locked in a restrictive two-year timeframe insufficient to cover all areas of the negotiations. The limited timeframe disadvantaged the UK, since it was in the weaker position and had not spelled out what it hoped to achieve from the talks, placing UK negotiators on the back foot and forcing them to agree to pre-prepared papers from the Commission (Jones 2019, 45). It also undermined prospects for parliamentary scrutiny of the agreement (Bressanelli et al. 2019). A successful independence vote would raise similar trade-offs between the desire to lock independence in to appease nationalist audiences (and prior to possible political change) and the need to take stock of Scotland's ask from the negotiations and offer adequate time for domestic scrutiny. Though Article 50 will not be ticking in the background, time pressure will still arise out of the need to be seen to action independence and the determinants of the electoral cycle in Holyrood and Westminster.

## **Conclusion**

Brexit may have done much to unsettle existing devolved arrangements, but as an act of secession from a broader pluri-national and institutionally dense union, it also offers lessons on how secession may be negotiated. Drawing on scholarship on the Brexit process, this article has suggested four categories of dynamics likely to emerge in the aftermath of a successful Yes vote in a further independence referendum. This scenario, it has argued, is likely to be characterised by mandate uncertainty and concerted efforts to reinterpret the meaning of the vote, party factionalism and political change, efforts on behalf of the broader union to avoid precedents, and incentives to engage in hard bargaining under inappropriate conditions. There is no guaranteeing these dynamics would emerge following a successful independence vote, but they do represent an informed guess regarding the effect of such a vote on Scottish politics and the task of negotiating secession. The aim is not to have the last word, but to bring about a debate on the politics of negotiating secession, mapping out more systematically dynamics that have received little attention in the literature (e.g. Martin 2021; Salamone 2020, 5, 12), which has focused rather on Brexit as an antagonising factor in Scottish politics, or prioritised other analogies.

The dynamics of Brexit suggest some immediate lessons for policymakers in the event of a successful Yes vote. A clear mandate and unambivalent mandate will be helpful, as will clarity on who will have responsibility for interpreting this, otherwise it is liable to be the subject of a fraught process of reinterpretation. Consensus between domestic actors will need to be signalled and constructed early on, partly for its own sake, but partly also as a buffer against more radical elements in the winning coalition. Negotiating with the rUK will be simpler with an underlying consensus on what the ask is, though it will still be a difficult affair. Distributional questions regarding the share of joint assets and oil revenue will likely be easier to sort out than questions relating to currency and defence unions and the provision of a frictionless border, since the latter create problems for the rUK when it comes to decision-making autonomy. Above all, performative ‘hard bargaining’ should be avoided at all costs, with hardball strategies deployed in a targeted fashion and linked to strength and areas of leverage.

Not all of this will be possible to spell out prior to a future referendum. The need to assemble a broad church to win the vote will dampen subtle messages, including discussion of practicalities, trade-offs, incompatible policy goals, or subsequent institutional developments.

This is to be expected, and merely represents the tension between politics and analysis which cannot be avoided. But it does not make the task of systematic comparison any less important. The lessons of Brexit are there for us to see, but they do not need to be repeated. Indeed, both sides on the constitutional question would benefit from heeding them.

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