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SCOTLAND AT THE CROSSROADS: FROM BREXIT TO NEVERRENDUM

ABSTRACT: This article aims to describe the possible variants of the course of events after Brexit, from a Scottish perspective. Three dimensions are taken into the account: future model of UK–EU relations, symmetry of Brexit inside the UK and possibility of the second independence referendum in the near future (less than five years). These dimension have allowed to distinguish three main variants of further development, that are in short named by the author as: passive variant, Scottish exception and another referendum. It seems at this point that the Scottish Government is bound to carry out the second referendum, especially if the British government chooses a variant of the so-called hard Brexit. The European argument, which is so often used by Sturgeon in political debate does not necessarily lead to an increase in support for the independence, especially when eventual membership in the European Union of an independent Scotland is burdened with so many question marks.

INTRODUCTION

This article aims to analyze the potential development of Scots' aspirations for independence in the context of Brexit and the intensifying process of European disintegration. The possible variants of the course of events, from a Scottish perspective, can be described in three dimensions. In the first place, the future model of UK–EU relations must be described

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in a bipolar way – as a soft or hard Brexit. The second dimension is an eventual asymmetry of Brexit inside the UK – whether from the perspective of the political system where any part of the UK would be able to enjoy a special position in relations with the EU. The last dimension is whether another independence referendum would be held in the near future (less than five years).

The thesis that the United Kingdom will not survive Brexit (Stephens, 2015) seems unjustified, or at least premature. In the present situation, from the Scottish perspective three main variants of further development, using the above mentioned criteria can be distinguished. They are in short named as: passive variant, Scottish exception and another referendum.

PASSIVE VARIANT

The first option would be defined by the passivity of the Scottish Government, which would not hold a second referendum on independence after an unambiguous decision during the Brexit procedure that there would not be any asymmetric solution acknowledging Scottish exceptions in relations with the EU. A Further fate of the demands for independence will depend to a large extent on the results of the elections in the years 2020–2021, which may create different systems of mutual relations (on the other hand, it is hard to imagine a better position of the SNP than the current one – the SNP's dominance in the Scottish Parliament and the Conservative Party's majority in the House of Commons). The situation is not simplified by the fact that the final effects of Brexit even then may not be fully known. The SNP surely would seek to retain particular institutions related to European integration, e.g. The European Arrest Warrant or the Erasmus student exchange programme. A lot will depend on whether the hard or soft variant of Brexit is selected. Effects of this decision, however, are difficult to estimate – a hard Brexit would politically reinforce demands based on the concept of a democracy deficit and not respecting the will of Scots, but on the other hand, the negative consequences of the independence and eventual membership in the EU will be greater for the Scottish economy also in the case of the hard Brexit. If the

UK (or England and Wales) had negotiated access to the European single market, however, that would remove this danger, allowing Scotland access to both markets and make independence easier (Keating, 2016b). Sturgeon's decision to avoid a referendum could also cause internal disputes and dissatisfaction of many party members, as well as other SNP's leading politicians. In the author's opinion this variant may be viewed as a realistic one only in the case of a soft Brexit.

THE SCOTTISH EXCEPTION

The second option would be limited to the search of intermediate forms – taking into account the distinctiveness of Scotland, ensuring its greater involvement in the European Union despite Brexit. It may also be associated with a structural reform, transforming the United Kingdom into federal formula. Key concerns relate to the institutional capabilities to carry out such an option, which requires a special adaptation of the European Union, but also the British government's unique good will for the Scottish expectations. On the one hand, it may be beneficial for the United Kingdom, as it would create a difficult choice for Scottish nationalists between the federalized UK within the Single Market and an independent Scotland still facing most of the challenges (Torrance, 2016). On the other hand, it must be noted that, in the opinion of many, the factor that allowed the Tory one-party majority in 2015 was that many English voters had feared the SNP's increased influence on British government (through a formal coalition or other forms of cooperation with the Labour Party). Research suggests that the SNP is negatively perceived by the voters of the Conservative Party and UKIP, and creating fear of the SNP was one of the guiding themes in the Tory campaign. In such a situation there are serious doubts whether it would have been electorally profitable for Theresa May's government to present such a lenient attitude. In the author's opinion, the above mentioned variant is currently the least likely one. Nevertheless, there are serious attempts to find solutions that will allow Scotland to remain part of both the EU and UK. One is known as the postulate of "reverse Greenland" (Douglas-Scott, 2016), which is based

on the case of Greenland's exit from the European Communities, although formally that is a territory forming part of a Member State – Denmark. The Faroe Islands, also part of Denmark, never went into the Union. In this case, although it sounds not entirely convincingly, that part of the territory of the United Kingdom (Scotland or Northern Ireland) would retain membership status, even though the state itself would have left the organization. Greenland has a different constitutional relationship to Denmark and right to veto any international treaties that affects its powers (Hepburn, 2016). Greenland is also a small part of the state, the larger part of which is an EU member, and its economy makes no difference to the EU as a whole (Hassan, 2016). Reverse Greenland would help Scotland and Northern Ireland, but would be very problematic for England and Wales – Greenlands case is of little guidance here (Gad, 2016). Others looked to Cyprus as providing some inspiration because the EU had recognised the de facto territorial border within Cyprus (Riddoch, 2016). The fact that the Scottish Government has created a special group chaired by Anton Muscatelli, that would look after political and constitutional instruments that would ensure Scotland's continuing "relationship with Europe" (Sanderson, 2016) may be viewed as proof that the Scottish Government considers such measures seriously. Moreover, the representatives of the Scottish Labour Party asked Lord Falconer to explore the possibility of a federal solution that would allow Scotland to remain a member of both unions (Moss, 2016). This process might be even described as "stumbling into a new constitutional, quasi-federal system" (Rifkind, 2016). It is common opinion that these special arrangements would only make sense, if the UK took the path of a soft Brexit (Gardham, 2016).

THE SECOND REFERENDUM

The third option, currently the most widely discussed one, is the second independence referendum. The key question, usually ignored in the post-referendum debate, however, concerns not only whether

a second referendum will be carried out, but if there was a break-through – a significant and permanent change in the preferences of citizens in the context of Scottish independence. Recognition of this fact will determine the choice of strategy of the Scottish Government and SNP in the coming months. Research in February 2016 showed that Brexit against the will of the Scots could increase support for independence by 5–6 pp (IPSOS MORI, 2016). The first polls after the referendum showed indeed a shift of approx. 5 pp in favor of supporters of independence, which transformed the small advantage of Unionists into a small advantage of the supporters of independence (Palmeri, 2016). This effect has been very fragile, since the first days after the referendum were characterized by high emotions of the dispute and the Scottish public space was dominated by statements about being "dragged out" of the EU. It may be questioned whether waiting for a second referendum on independence till the opinion polls improve is reasonable (McKillop, 2016). Statements of SNP's politicians that "many people who voted against independence in 2014 (…) to protect Scotland's EU status are now reconsidering their position" seem overly optimistic at the moment (Revive Yes campaign…). Sturgeon's cautiousness is probably a result of opinion polls' change being not as large as it was hoped (Harris, 2016). There is one argument that also undermines the strategy of prolonged waiting, as that treats opinions polls as a robust source of information and undervalues the influence of intensive campaigning that usually results in large shifts in opinion – in the case of the first referendum the support for independence rose for about 15–20 pp.

Brexit certainly changes one important condition in favor of the supporters of independence. The choice is no longer an alternative between the status quo and the uncertain consequences of a change, because Brexit has already ruled out keeping this status quo. Existing psychological barriers restraining against a vote for independence will be much weaker. What had been previously called a safe option – remaining in the UK, lately has looked more like an "embodiment of the chaos", and even become similarly risky (McAngus, 2016a). On the other hand, in the case of a potential repeated referendum the real

choice would be between the two unions – the United Kingdom and the European Union. It seems that the imposition of such a framework will be beneficial for the Unionists in the long-term, because, as mentioned, awareness of the EU's limitations is widespread in Scottish society. A lot would depend in this case on the eventual shape of the relationships between the EU and the United Kingdom (Renwick, 2016).

Key issues, which in the opinion of researchers resulted in the defeat of the supporters of independence during the first referendum, such as the unclear status of the currency of an independent Scotland, remain unresolved. You can even specify that certain circumstances during the past two years have deteriorated, for example, the price of oil – so important for the Scottish economy. "Hard" border between independent Scotland and the rest of the United Kingdom (rUK) may be inevitable and at the same time discouraging. 60% of Scottish exports are directed to other parts of the United Kingdom. If the UK were to get a Norway-style deal, Scotland would have a strong motive to go for independence (Keating, 2016a) and at the same time the costs of Scotland remaining part of the UK would be significantly reduced (McAngus, 2016a). Moreover, the profitable Barnett formula would be lost in the case of independence, with the strong possibility of an independent Scotland's net contributions to the EU's budget. The opposite opinion came from a surprising source – the former Permanent Secretary to the Treasury (also in Cameron's government) Nicolas Macpherson, who described Brexit as a "golden opportunity for proponents of Scottish independence to reappraise their economic prospectus. (…) membership of the EU (…) will enable Scotland to have access to the biggest market in the world without the uncertainties that are likely to face the rest of the UK for many years to come. It would also provide a historic opportunity for Edinburgh to develop further as a financial centre, as London-based institutions hedge their bets on the location of staff and activities" (2016).

As Cairney rightfully points out, campaigns are often about telling simple stories (2016a) and there maybe no one to tell "No" stories. The importance of leadership should not be underestimated in potential campaigns. The Scottish Labour Party is at least ambivalent about possible strategies in case of another referendum, and have not forgotten about the

disastrous effects of their previous alliance with the Conservative Party in 2014, not to mention a complete turmoil the party is currently in, under Corbyn's leadership. Internal divisions are present also at the Scottish level, where the leader Kezia Dugdale is conflicted with her pro-Corbyn deputy Alex Rowley (Moss, 2016). Liberal Democrats cannot be treated as a serious political force at the moment. Moreover, both main unionists' parties show support for Sturgeon's active stance after Brexit (McAngus, 2016a). All the responsibility for defending the Union would probably land in the hands of Ruth Davidson. She had previously ruled out blocking another referendum, if such a decision was made by the Scottish Government and Parliament (Torrance, 2016a). As good as the result was in the Scottish Parliament election in 2016, there was still only 23% of Scottish votes. Her situation may be especially difficult as she would be in a position to defend the UK after Brexit, which she has personally and strongly opposed. Not to mention that during the last referendum Unionists had 41 Scottish Labour MPs to strenghten a campaign, now only 1. On the other side, SNP possess a very professional organization, the very popular leader and a mass membership (over 120 000 at the moment) that would be a strong base for Indy campaigns (canvassing and social media).

The outline of an internal dispute in the SNP may be seen, where Nicola Sturgeon represents a more cautious and expectant attitude, and the former First Minister and long-time SNP leader Alex Salmond and especially Angus Robertson are more radical – they expect to start procedures for the next referendum immediately, whatever the circumstances. At this point, the risk of "Quebec" must be mentioned, which in this context means the finality of a second referendum decision. The history of the last decades has known cases of repeated referendums, including independence referendums – e.g. Quebec or Montenegro, but the unusual situation is a truly endless referendum, which is carried out more than twice despite clear earlier results. In deciding whether to recommence the referendum, special responsibility should be reckoned with – a failure would probably undermine the legitimacy of the postulate for Scottish independence for decades, and may also bring adverse effects for the support of the SNP in the tired electorate. A failed referendum would also probably result in Sturgeon's dismissal. At the moment there are declarations that every

option – from full independence to doing nothing – had been considered (Sanderson, 2016) by Sturgeon, but the second independence referendum is "highly likely". Still, she hasn't committed to a timescale which shows a lot of caution. At the same time there may be pressure from the ground – at the grassroots The yes movement is preparing to take the lead on independence not waiting for the SNP's decision (Gordon, 2016). Before the date of the eventual referendum will be decided, two things would have to be clarified: "1. The extent to which the UK can (and is willing to) negotiate a deal with the EU which satisfies the SNP and Scottish voters (…) 2. The timing of Brexit" (Cairney, 2016b).

The access to the single market and rights of free movement of people following Brexit are defined by Sturgeon as red lines in negotiations with the UK government (Sanderson 2016). Lately, Sturgeon has defined the five key interests of Scotland concerning the EU and Brexit: democratic interests – the need to make sure Scotland's voice is heard and wishes respected, economic interests – safeguarding the free movement of labour, access to a single market of 500 million people and the funding that farmers and universities depend on, social protection – ensuring the continued protection of workers' and wider human rights, solidarity – the ability of independent nations to come together for the common good of all Scottish citizens, to tackle crime and terrorism, and deal with global challenges like climate change, having influence – making sure that there is no abiding by the rules of the single market without having a say in shaping them (McIntosh, 2016).

Sturgeon creates an image of someone reluctantly proposing a second referendum because of the problems created by the UK Governments incompetence (Cairney, 2016a). She spotted a political opportunity in this 'defeat', using momentum to establish her authority on the European scene and putting Scottish problems on the political map of the EU (Soussi, 2016). She has strengthened the popular perception that she is one of the most talented politicians of her generation. After Brexit she has been behaving like a state leader – as though independence has already arrived (McIlvanney, 2016). It is the second time that the SNP benefited greatly in the period directly after the referendum. Nicola Sturgeon was the only political leader who looked in control of the situation and having any plan.

Judging from the perspective of the Union's interests it was very important and beneficial that the election in the Conservative Party and the selection of Theresa May came to a rapid conclusion. Turmoil related to the prolonged leadership campaign would allow Sturgeon to further establish a one-sided description of the situation, without an equal partner on the London side. The selection of other candidates – eg. Boris Johnson and Andrea Leadsome would be for many reasons also very beneficial for the SNP.

In the first days after the referendum, the press circulated information on the potential for a Brexit blocking procedure by the Scottish Parliament, although it seems doubtful, and experts and commentators are divided on this issue (House of Lords, 2016, p. 19). Under the revised Scotland Act, under section 28, "it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament ". Brexit will concern devolved matters such as agriculture and fisheries. Moreover Brexit would change competences of the Scottish Parliament by removing the obligation to implement EU law. The need for Scottish consent could be used instrumentally as a justification for a lack of the "full withdrawal" treaty at Westminster (Hepburn, 2016). At the same time, interpretation of the word "normally" may prove to be crucial.

The interpretation of the result of the referendum in terms of Scotland being taken out of the EU against its will is based on the assumptions discernible already in the 80s, when the Scots had government, according to the SNP, which they did not want and did not choose. Angus Robertson, SNP's leader in the House of Commons, stated that "If Scotland is a nation, and Scotland is a nation, it is not a normal situation for the state to totally disregard the wishes of the people, and this Government has a democratic deficit in Scotland" (Riley-Smith, Hughes, 2016) and warned "any incoming Tory PM who stood in the way of Scottish democracy" (Schofield, 2016). Robertson is appearing much more radical than Sturgeon (although she said that "the people of Scotland voted decisively to stay part of the European Union and their wishes must be respected") in the post-referendum period, but it may be a result of him taking part in the deputy leadership campaign. In this perspective, the people of Scotland have an

attribute of sovereignty and any decision concerning its needs must be separately accepted, regardless of the decision taken in the whole United Kingdom. Such an approach may be considered a manipulation for at least two reasons. First, it undermines the existence of the British state and creates inequality of citizens within the state – the weight of the voice of the citizens of Scotland would be far greater than the citizens of England. Secondly, such an interpretation ignores several electoral results from the last half of the century, when Scots decided the final outcome, as was the case during the elections to the House of Commons in 1964, and in autumn 1974, and partly also in 2010. English citizens constituting the overwhelming majority of the country's population could have raised the argument that they have received a government that they did not want and did not choose.

First indications about the attitude of the new Prime Minister Theresa May are ambiguous. In the past she visited Scotland many times – during the independence referendum and Westminster by-elections and explained her support for remain in EU by "threat to the Union between England and Scotland". She met with Sturgeon promptly after her nomination. There were declarations that there are no plans to change the Barnett formula, that ECHR would not be scrapped, so-called Austerity policies will be gone and that there would be mutual work on preparing the UK-wide position before formally starting the Brexit procedure. At the same time, she was direct in dismissing postulates of a second Independence referendum and as a previous supporter of Remain, she will be pressed to take a "hard Brexit" route. One of the key politicians in her government Philip Hammond denied that Scotland may have a different relationship than the rest of the UK with the EU (Brooks, 2016). Including Sturgeon in the procedure of working on the UK position may be viewed as a show of good will as there is no formal role for Scottish institutions in this case. But at the same time, it is difficult to imagine any deal for the UK that would satisfy Nicola Sturgeon (McEwen, 2016) and the SNP will not condemn the leader of the Conservative Party in the end (Torrance, 2016). On the side of the British government, even if there were to be a change of heart and acceptance for another referendum, it might be a much different event. Michael Moore, the Scottish Secretary at the time, capitulated

to all Scottish demands before the first referendum – repeating such an approach is far from certain in the case of May's government. It concerns also the issue of people allowed to vote – under the age of 18, EU nationals (Harris, 2016), verbiage of the question (yes/no or remain/leave) and even the possibility of a multi-option ballot. As it has been mentioned before, May's target electorate may appreciate a firm attitude towards Scottish demands. A referendum can be carried out unilaterally, but without doubt this would significantly degrade the relationship between Scotland and the United Kingdom (and the procedure for secession for the smooth implementation requires the cooperation of both sides). Moreover, it would raise more serious resistance from some Member States that themselves face the demands of secession, as e.g. Spain.

The biggest uncertainty concerns the above mentioned conditions of UK–EU separation, which would influence the possible setting up for Scottish membership. Probably there will be a period of several years of heated discussions with the EU, with an unknown ultimate destination, beyond the UK leaving (Hassan, 2016). The deal that the UK is able to secure with the EU will be crucial for the Scottish electorate, when it comes to making a cost-benefit analysis of what Brexit actually means (McAngus, 2016b). The key question, which may decide also on the outcome of another independence referendum is the procedure for the accession of Scotland – if representatives of the European institutions still argue that Scotland after the secession would have to undergo the procedure for accession, including a period of time outside the EU, it would make a referendum victory for supporters independence much harder. During the first days after the European referendum there were some sings that suggested a more favorable attitude of EU countries (e.g. from the German Christian Democrat Manfred Weber), but it seems that within the European institutions key decisions regarding further strategy have not yet been taken. Emotional expressions full of sympathy for Scotland (e.g. standing ovation in the European Parliament for Alyn Smith) do not overshadow the real assessment of the political and economic effects and probably will not translate into support. Scotland is not able to replace the United Kingdom in the EU, primarily because of the huge difference in demographic and economic potential. Centrifugal tendencies in many

Member States have been visible for many years and do not lose their intensity, which makes especially the voice of Spain in the European arena hostile to European ambitions and expectations towards the Scots. As Spain is arguably the member state with most to lose in case of Scottish accession "the prospect of a Spanish veto should therefore not be underestimated" (Anderson, 2016). The Spanish Prime Minister has already stated clearly that "Scotland does not have the competence to negotiate with the European Union" and the French President added that negotiations "will be conducted with the United Kingdom, not with a part of the United Kingdom." Even Jean-Claude Juncker declared that he did not want to "interfere in the British process" (Brown, 2016). In many ways, Ireland will be a very important ally for Scotland in this case, especially as there will be a lot of pressure to maintain the present status for the Irish border across the island and at UK seaports and airports (Parry, 2016), and it would make a useful precedence for Scotland. The Irish prime minister Enda Kenny is said to have already received May's support for maintaining the Common Travel Area (Ashtana, 2016).

Most probably, Scotland would have to apply as an independent state under Article 49 and fulfillment of accession criteria may not be enough to fast-track an application. Without the consent of all Member States, accession or the remaining of Scotland in the EU will not be possible, because such action requires changes in the Treaties of the European Union. One of the strongest arguments for a fast-track is that Scottish citizens have been members of the EU for 43 years and clearly have not decided to leave it. The political will is crucial in this case, as the EU many times showed that it is able to be pragmatic in applying its own rules (McEwen 2016). These negative signals do not discourage the Scottish Government as the SNP's Europe spokesman Stephen Gethins has been visiting European capitals trying to influence their stance – it was even dubbed the "love boat diplomacy" (Picken, 2016). However, there is much more sympathy than support in Europe at the moment and the EU has been noncommittal so far.

CONCLUSIONS

The fate of the eventual second independence referendum will be decided by factors influenced by actors on different political levels in Scotland, the United Kingdom and the European Union. None of the political actors has yet revealed their full intentions. It seems at this point that the Scottish Government is bound to carry out the second referendum, especially if the British government chooses a variant of the so-called hard Brexit. The result of such a referendum from the Scottish perspective is at best uncertain. The necessity of another referendum will also be a result of the internal pressure within the independence movement, although in this case a key strategic decision on the part of Sturgeon is the location of the referendum in time. The European argument, which is so often used by Sturgeon in political debate does not necessarily lead to an increase in support for the independence, especially when eventual membership in the European Union of an independent Scotland is burdened with so many question marks. Similarly, the expectations of the UK's political reform and asymmetrical participation of its individual parts in the European integration will not find support in the British government.

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