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DEBUNKING THE MYTHS

Introduction

The Scottish Government's White Paper has attempted to lay out a clearer vision of what a 'Yes' vote would mean for an independent Scotland.ⁱ The extent to which it has achieved this has been predictably contested. One of the many issues to come under scrutiny is the relationship that a newly independent Scotland might have with the European Union (EU). Critics have attacked the Scottish Government's assertion that in the aftermath of a 'Yes' vote, Scotland's transition to full EU membership would be fluid and speedy. They insist instead that a 'Yes' vote will see Scotland expelled from the EU, thus requiring a re-application process in which the only guarantee is complexity and protraction.

In order to support their contentions, the critics have looked where they can for support. Much has been made of the Spanish Prime Minister Mariano Rajoy's comments in November. In a public statement timed to coincide with the release of the Scottish Government's White Paper, he asserted that 'a country that would obtain independence from the EU would remain out of the EU, and that is good for Scottish citizens to know and for all EU citizens to know.'ⁱⁱ

Rajoy's comments have been given predictably high levels of attention here in the UK, nourishing still further the narrative in which Spain is depicted as representing a certain obstacle to an independent Scotland's chances of continuing EU membership. Indeed, *The Guardian* responded to the Rajoy comments with the headline that, with the Rajoy intervention, Spain had 'blocked Alex Salmond's hopes for EU transition'.ⁱⁱⁱ

This bizarre observation was reflected, in various ways, across an array of media outlets and must have given many citizens the impression not only that Rajoy's take on things represents Spain's take on things, but also that his observations are accurate and definitive. In fact, the furore surrounding the latest comment from Madrid should not be accorded any great significance, for a variety of reasons.

Firstly, it is important to correct the way in which Rajoy has attempted to frame Scotland's independence referendum. Despite his inference, Scottish citizens will not be voting in the 2014 referendum to 'obtain independence from the EU'. In fact, Scotland's citizens are not being asked to vote in judgement of the EU at all but are being asked instead to make a judgement on what they think best suits Scotland within the context of its current relationship with the UK. Whatever the result of the 2014 referendum, there should be no attempt to extrapolate from that result Scots' views on the EU, or – by extension – how far they deserve to remain within it.

Secondly, the faith which appears to have been invested in Rajoy's comments in some quarters appears to overlook the rather obvious fact that strategic politicking lies behind those comments. Rajoy cares little, if anything, for Scotland's fate; his concern is that Catalonia's people take heart – or that its pro-independence

movement builds momentum – from the Scottish experience. Rajoy has his eye firmly set on Catalonia when he ‘speaks to Scotland’.

It might also be argued that a similarly calculating approach lies behind the attention that his comments have been given in media and political circles here in the UK. Opponents of Scottish independence do appear to see valuable mileage in the ‘Spain is the enemy of an independent Scotland’s EU hopes’ narrative, despite the myriad of fragilities and inconsistencies contained within this narrative.

Thirdly, we know also that high-ranking figures from within Rajoy’s own government have, in recent times, offered very different views on the issue of Scotland and the EU. For example, Spain’s Foreign Minister José Manuel García-Margallo, has publicly asserted that Spain would accept Scottish independence and would make no attempt to block an independent Scotland’s membership of the EU in that event. When asked last year to speculate on Scotland’s EU prospects in the aftermath of a ‘Yes’ vote, he declared publicly that Spain would ‘have nothing to say...if the two parts of the United Kingdom are in agreement that [Scottish independence] is in accord with their constitutional arrangement, written or unwritten’.^{iv}

In short, the recent furore over Scotland’s EU chances was entirely predictable but we should be extremely cautious in accepting the issues which have been highlighted and repeated in some quarters of the media. The shrewd observer of politics knows only too well that what is illuminated in any political debate depends very much where one shines the spotlight. Shining a light on the words of a rightist Spanish political leader will inevitably reveal one interpretation of Scotland’s future with the EU; shining the light in other directions may well reveal a very different range of perspectives.

This article seeks to shed a wider light and to illuminate an array of pertinent points which would be of relevance to Scotland’s EU status, should Scotland vote for independence. It begins by highlighting various critical weaknesses in the ‘Scotland expulsion thesis’ before going on to examine a variety of other issues which suggest that a far more optimistic view should be taken of an independent Scotland’s ‘EU chances’.

The main thrust of this piece revolves around the acknowledgement that there are no regulatory articles in the EU treaties which clearly legislate for a situation arising from Scotland’s democratic secession from the UK. Given that there is no irrefutable ‘truth’ to be found in EU legislation, our debates over an independent Scotland’s EU status might better focus upon considerations of the nature of the EU itself, the imperatives which drive the organisation, and what precedent tells us about how Brussels might act towards a newly independent Scotland.

Having approached the issues in this manner, the article concludes by pointing out that if one takes seriously the values so publicly espoused by the EU, and if that organisation’s demonstrable predisposition towards expansion is anything to go by, Scotland’s transition to full EU membership in the aftermath of a ‘Yes’ vote may well be fairly quick and seamless. Key to this happening would be mature, amicable and consensual relations between London and Edinburgh during the post-referendum transition period.

The 'successor state' question

Much has been made of the possibility of 'Scottish expulsion' from the EU in the aftermath of a 'Yes' vote. Is this a realistic outcome? There is in fact no mechanism in the EU treaties for expelling states which become independent from a current EU member state, something which has been confirmed by an array of authoritative commentators, including one of Germany's most prominent European economics scholars, Professor Roland Vaubel.^v

Even if such a mechanism did exist, it would be premature to accept that a vote for Scottish independence would bring about expulsion. Talk of Scotland's expulsion supposes that in the aftermath of a 'Yes' vote, the remainder of the UK (henceforth rUK) would assume 'sole successor state' status, a situation which would – so the thinking goes – remove the newly independent Scotland from the various niches that the UK currently occupies within the international architecture, including the EU.

However, we should make no assumption that a 'sole' successor state would emerge from post-referendum negotiations between Scotland and rUK. It would be beneficial to everyone concerned if Edinburgh and London could agree that, in the event of a 'Yes' vote, both states would share successor status. Professor David Scheffer is just one prominent legal scholar who sees agreement on 'joint successor status' as a logical and responsible arrangement, ahead of the referendum.^{vi} If Edinburgh and London could reach such an agreement, it would yield an array of benefits to both sides. Ahead of the referendum, it would:

- Allow everyone a firmer understanding of where a newly independent Scotland might stand in the world, *vis-à-vis* a wider array of relations with, and obligations to, the international community.
- Greatly reduce political frictions and market jitters over issues such as UK debt apportionment. Assenting to 'joint successor status' would effectively cement agreement that an independent Scotland would take on an agreed proportional share of the UK's debt, thus putting to bed a recurring bone of contention in the constitutional debate.

In the aftermath of the referendum, and if the result was a 'Yes' vote, agreement on sharing 'joint successor status' would:

- Facilitate Scotland's seamless transition to full EU membership, giving Scotland the same rights and opt-outs from the EU treaties that it currently enjoys as part of the UK.
- Assuage rUK concerns over how quickly its closest neighbour and second-largest trading partner might 'get up to full speed'. It is worth emphasising that London would have absolutely nothing to gain from seeing Scotland somehow idling in the aftermath of a 'Yes' vote. Ensuring that a newly independent Scotland 'hits the ground running' would be as much a priority for Downing Street as it would be for Bute House.

It should also be noted that agreeing to share 'joint successor status' would demonstrate a mature amicability on the part of Downing Street. This agreement would doubtless gain it substantial praise from an international community whose eyes will be fixed, laser-like, on how London is handling Scotland's model democratic journey.

Citizens' rights

We should not forget the significance of citizens' rights as we contemplate the veracity of the argument that a 'Yes' vote would prompt Scotland's expulsion from the EU. Again we might point to the absence of any mechanism by which EU citizens can be stripped of their EU citizenship, thereby depriving them of the various protections that that citizenship offers.

Those who consider it likely that the EU might see fit to expel a newly independent Scotland appear to greatly overlook the strong democratic culture which saturates and drives the EU as an organisation. Consider this excerpt from the EU's homepage:

'One of the EU's main goals is to promote human rights both internally and around the world. Human dignity, freedom, democracy, equality, the rule of law and respect for human rights: these are the core values of the EU.'^{vii}

Whilst we can often take official website declarations with a pinch of salt, those who know the ethos of the EU will know how seriously it takes 'the rule of law and respect for human rights', at least within its own locale. And if we acknowledge that the recognition and upholding of human rights is fundamental to how the EU defines itself, then we must acknowledge also the sheer unlikelihood that a newly independent Scotland would be expelled – against its wishes – from the EU. For the EU to demand this would signify its willingness to suddenly deprive Scottish EU citizens of the very human rights protections that it champions so vigorously in both its legislation and its public diplomacy.

Graham Avery – Senior Adviser at the European Policy Centre in Brussels, Honorary Director-General of the European Commission, and someone who worked for forty years as a senior official in Whitehall and Brussels and was involved in successive negotiations for EU enlargement – has endorsed this perspective in testimony before the House of Commons Foreign Affairs Committee. When asked to 'clarify the procedure by which, following a referendum in which the Scottish people vote in favour of independence, Scotland could become a member of the European Union', Avery asserted that Scotland's five million citizens have been members of the EU for forty years and thus have deeply entrenched rights as European citizens.^{viii} For both practical and political reasons, Avery concluded, those EU citizens could not be asked to leave the EU and apply for readmission.^{ix}

The EU – an instinctively expansive organisation

From what has been discussed thus far, it seems clear that in attempting to interrogate the EU prospects of a newly independent Scotland, we should not become too fixated upon legislative prescriptions. There are no articles which clearly

legislate for a situation which would arise from Scotland's democratic secession from the UK.

If we are forced to look beyond legislation, are there any other indicators as to how Brussels might act towards a newly independent Scotland? One such indicator might be the EU's proven willingness to expand its ties wherever it feasibly can. Evidence of this commitment can be seen in its recent efforts to strengthen relations with Ukraine.

Ukraine's recent last-minute step-back from a fuller relationship with the EU spurred a surly response from Brussels, with much of its ire being levelled at Moscow for what it termed 'interference' in the relationship that the EU had been nurturing with Kiev.^x Such was the vigour of Brussels' reaction that Russian President Vladimir Putin urged EU officials to refrain from their 'sharp words' on the issue.^{xi} Those watching Brussels' very public displeasure over this last-minute impediment to a more formal EU-Ukraine relationship might well have reflected with some incredulity upon the notion that the EU's first instinct would be to expel a newly independent Scotland from the EU family.

The EU's eagerness to forge new relations with Ukraine attests fully to its expansive instincts, and its willingness to engage even with states which might be seen to fall short across various socio-political indices. Ukraine is a state which is beset by a myriad of democratic, financial, infrastructural and political problems (this assertion is based upon the World Bank's assessment of Ukraine) and its democratic credentials might be called into question given that its political direction appears to ebb and flow in accordance with the amount of pressure that the Kremlin exerts upon Kiev.^{xii}

When we consider these issues, the notion that Scotland – with its deeply ingrained democratic tradition, its many economic competencies, and its proven track-record of having been in the EU since 1973 – would be regarded as an expulsion-candidate by Brussels is quite mystifying. If the EU is willing to expend considerable efforts in drawing a state such as Ukraine closer, can we really take seriously the suggestion that it would expend similar efforts in seeking to move Scotland out and away from it?

The view from Germany

Whilst the words of some Spanish politicians have been eagerly illuminated by the Scottish media in recent times, it could be argued that a lesser light has been shone elsewhere. For example, if we cast our eyes towards Berlin, it is possible to get a different sense of how a vote for Scottish independence might be regarded. Within the upper echelons of German political circles, there appears to be little sense that Scotland would be spurned by the EU.

Having called for 'more Europe' when he was inaugurated back in March 2012, the German President Joachim Gauck has continued to espouse a very public enthusiasm for consolidating and expanding the EU project. Last year – in what the German media described as 'the most important speech of his term in office thus far' – Gauck made a keynote speech in Berlin in which he called for greater European integration. He went on to warn that disillusionment with the European project posed

the greatest threat to the European Union. Towards the end of his speech he made a direct and calculated appeal:

'Dear people of England, Scotland, Wales and Northern Ireland, dear new British citizens! We would like you to stay with us! During the Second World War, your efforts helped to save our Europe – and it is also your Europe.... More Europe cannot mean a Europe without you!'^{xiii}

Gauck's comments – for which he was given a standing ovation as he left the stage; his message clearly went down well with his Berlin audience – offer a truer reflection of the modern European project, emphasising as they do that inclusivity is fundamental to the project's future strength. Having explicitly beseeched the various peoples of the United Kingdom not to undermine the EU by leaving it, it seems hugely unlikely that this entreaty would suddenly not apply to the 'dear people of Scotland' simply because they had democratically chosen to be Scottish – and not UK – EU citizens.

A speedy EU transition for a newly independent Scotland?

When the German Democratic Republic was unified with West Germany on 3rd October, 1990, the former East Germany was ensconced into the EU virtually overnight. This near-seamless transition was subject to little protraction or haggling over specific legislative articles. In the end, the challenge of 'what to do' about East Germany was addressed through a quite logical approach: the West German government simply argued vigorously for East German integration and worked to convince sceptical states that this outcome posed no economic risk to the wider European project.^{xiv}

The acceptance of the unified Germany into the EU was a triumph of common sense, can-do politics and it remains a striking reminder of the EU's capacity – and willingness – to 'find a way'. In the absence of regulatory articles which clearly legislate for a situation in which Scotland were to secede democratically from the UK, this precedent is something that we should reflect upon and take seriously. Graham Avery speculates that given the specialness of Scotland's case, the EU would most likely adopt 'a simplified procedure' for Scotland's negotiations and not the traditional – and far more protracted – procedure which is typically followed for the accession of non-member countries.^{xv} We might ask whether such a 'simplified procedure' would reflect something of the German example.

Scotland's transition to full EU membership would not likely occur with the full speed of the German example. Yet this example has set a precedent and it shows precisely what is possible. It remains a stark rejoinder to those who insist that difficult and lengthy negotiation is the only way in which important membership issues can be handled by the EU.

The German example also suggests strongly that if Scotland votes for independence, firm support from London would maximise the chances of Brussels agreeing to adopt the 'simplified procedure' that Avery has referred to. In contemplating the likelihood of London playing such a positive role in assisting Scotland's EU aspirations, one is perhaps prompted to think of current goings-on: of

pro-unionist politicians offering thinly-veiled threats that London won't play ball with an independent Scotland; of UK Government officials briefing against Scottish EU membership in meetings with other state representatives.

However, if Scotland votes 'Yes' next September, it is reasonable to assume that this uncooperative stance would cease. It is worth repeating that it would make no sense whatsoever for rUK to obstruct the most seamless EU transition possible for a newly independent Scotland. Firstly – as noted above – it would be very much in Downing Street's political, economic and security interests to see Scotland up and running as quickly as possible. Secondly, any obstructiveness on London's part would introduce an entirely unhelpful mood of resentment into the transition period. This would not only affect the dynamic between Edinburgh and London as they negotiated independence terms; it would also be viewed negatively by the international community. It bears repeating that the UK's credentials as a mature and responsible democratic actor will be under the spotlight in the aftermath of a 'Yes' vote and its reputation might be damaged if it were seen to be acting punitively towards its newly independent neighbour.

Looking beyond the current politicking, and reflecting upon realistic likely outcomes in the aftermath of a 'Yes' vote, it thus seems highly fanciful to suggest that the UK would not support a newly independent Scotland's EU-aspirations. Would the strength of cross-border relations, shared values and ties suddenly count for nothing if Scotland were to vote for its independence? Would Edinburgh really find itself unsupported by London as it approached transition negotiations with Brussels, regardless the uncertainty that this 'cold shoulder' might create for economic and security interests in London? It is extremely hard to imagine so.

Passing the 'Scotland test'

It is worth considering the point that rUK would not be alone in facing scrutiny for how it responded to a vote for Scottish independence. Much of the commentary on the outcome of a 'Yes' vote continues to allude to various 'tests' that a newly independent Scotland would face in its journey towards full and formal independence. There is no shortage of disapproving reference to how Scotland 'must act' during this transition period, or what it 'simply could not do' in its efforts to integrate successfully into the international architecture. The assumption appears to be thus: a newly independent Scotland would run the gauntlet of scrutiny and judgement, and it would have to prove itself if it were to succeed in its aspirations.

That is a fair enough observation. However it is also a partial one because if Scots do vote for independence, it would not just be Scotland which would face a 'test'. Scotland sits in the very centre of a transatlantic region whose states and inter-state institutions preach the language of democracy and who consistently remind the international community of how highly they esteem 'democratic values'. The authenticity of those claims will be put to the test if Scotland votes 'Yes' in September.

If Scotland gains its independence, it will have done so through one of the most peaceable democratic processes in modern times. It begs the question: to what

extent will Scotland's liberal democratic neighbours and erstwhile allies honour this process and the citizens' votes which facilitated it?

This question is highly relevant when we contemplate the factors which would be relevant to Scotland's full accession into institutions such as the EU. The Scottish Government has made clear its wish for a smooth, responsible and amiable post-Yes transition; it has stated also its aspiration that an independent Scotland would contribute meaningfully to those institutions. It can do no more than this. If Scots vote for independence in September, the enablers of those aspirations will be Scotland's liberal democratic EU neighbours. We would hope that the principles that those neighbours espouse so readily would evidence themselves in guidance and support for Scotland, at the end of its model democratic journey.

Conclusion

There is no irrefutable 'truth' to be reached in the debate over Scotland's future if it votes for independence. Those searching for it – those who demand 'clarity' with such strident insistence – should perhaps be more realistic in their expectations and focus instead upon more attainable understandings. In applying this logic to our considerations of what might happen between Scotland and the EU in the event of a 'Yes' vote next year, we should acknowledge that whilst there is no certainty of outcome, it is possible to highlight four observable truisms.

Firstly, the current Scottish Government has made it perfectly clear that a newly independent Scotland will want to remain within the EU. Alongside this stated willingness to continue to be a part of the European project, there is no doubt whatsoever that in terms of its democratic strength and its economic competencies, Scotland meets all of the 'membership requirements'.

Secondly, it is erroneous to depict the EU as an organisation whose default position will be to look coldly upon Scotland in the event that it votes for independence. In fact, if we take precedent as a guide, we can assert with confidence that the fundamental instinct of the EU would be to respond affirmatively to Scottish aspirations to remain within the EU.

Thirdly, we know that the EU defines itself as a champion of democracy and of legislatively-protected human rights. It thus seems highly improbable that Brussels would reject a newly independent Scotland at the end of what would surely be amongst the most pristine constitutional transition processes of the modern age. The EU's self-defined status as a banner-carrier for democratic values would lie – very publicly – in tatters if this is how it were to treat a state which had negotiated the often-perilous waters of major constitutional change in such a peaceable and measured way.

Fourthly – and most importantly – is that cordiality between London and Edinburgh (and strong support for a speedy Scottish EU transition on the part of the former) will maximise the chances of a seamless Scottish transition to full EU membership.

This final point acknowledges the great importance of seeing responsibility, intelligence and affability prevail between Edinburgh and London in the event of a

‘Yes’ vote. For all the challenges that both sides would undoubtedly face at such a point, managing to achieve this should not be one of them.

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SOURCES

ⁱ *Scotland’s Future. Your Guide to an Independent Scotland*. The Scottish Government, 2013.

ⁱⁱ Severin Carell and Ashifa Kassam, ‘Scottish independence: Spain blocks Alex Salmond’s hopes for EU transition’. *The Guardian*, 27th November 2013 at:

<http://www.theguardian.com/politics/2013/nov/27/scottish-independence-spain-alex-salmond-eu>

ⁱⁱⁱ Ibid.

^{iv} ‘Spanish Foreign Minister confirms that Spain would accept Scottish independence’. *Newsnet Scotland*, 26th February 2012 at: <http://www.newsnetScotland.com/index.php/scottish-politics/4428-spanish-foreign-minister-confirms-that-spain-would-accept-scottish-independence>

^v Vaubel is a Professor of Economics at the University of Mannheim and he also sits on the Advisory Council to the German Federal Ministry of Economics and Technology. For a relevant excerpt from this interview, see the *News Catalonia* website at: <http://www.newscatalonia.com/2013/09/roland-vaubel-merkel-advisor.html>

^{vi} ‘Lawyer backs EU Successor Argument’. *MSN News*, 20th January 2013 at:

<http://news.uk.msn.com/lawyer-backs-eu-successor-argument-1>

^{vii} See ‘How the EU Works’ on the EU website at: http://europa.eu/about-eu/index_en.htm

^{viii} For the text of Avery’s testimony to the House of Commons Select Foreign Affairs Committee, see the Westminster Parliament’s website, ‘HC 643; The foreign policy implications of and for an independent Scotland’. 24th September 2012, at:

<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmfaff/writev/643/mo5.htm>

^{ix} ‘Scottish independence: EU “could not ask Scots to leave”’. *BBC News Scotland*, 31st October 2012 at:

<http://www.bbc.co.uk/news/uk-scotland-20155813>

^x Neil Buckley, ‘EU scolds Russia for Ukraine interference’. *FT.com*, 29th November 2013, at:

<http://www.ft.com/cms/s/0/af998a4-5903-11e3-9798-00144feabdco.html#axzz2m9ansOX2>

^{xi} EU ‘refines its thinking’ on its Ukraine-Russia relations. *Euractiv.com*, 28th November at:

<http://www.euractiv.com/europes-east/eu-refines-thinking-eu-ukraine-r-news-531992>

^{xii} See the World Bank’s ‘country overview’ of Ukraine at:

<http://www.worldbank.org/en/country/ukraine/overview>

^{xiii} ‘“A Timeless Canon of Values”: German President Makes Plea for More Europe’. *Spiegel Online*, 22nd

February 2013 at: <http://www.spiegel.de/international/germany/german-president-gauck-calls-for-more-european-integration-in-speech-a-885047.html>

^{xiv} Bernd Riegert, ‘Who is where on the path to EU membership?’ *Deutsche Welle*, 17th April 2013 at:

<http://www.dw.de/who-is-where-on-the-path-to-eu-membership/a-16748597>

^{xv} Avery testimony to the House of Commons Select Foreign Affairs Committee, 24th September 2012 (see endnote 7).