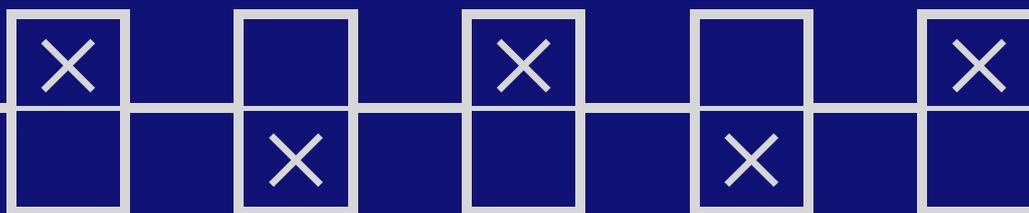
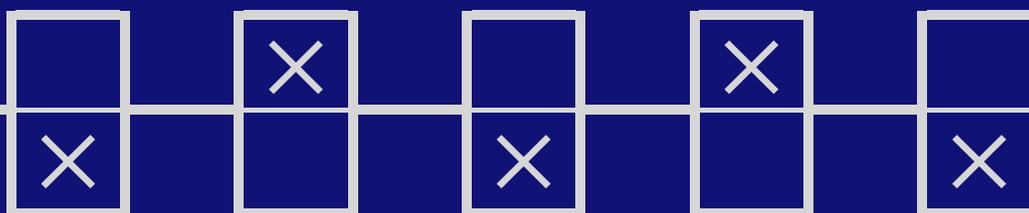


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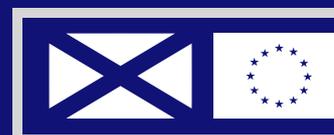
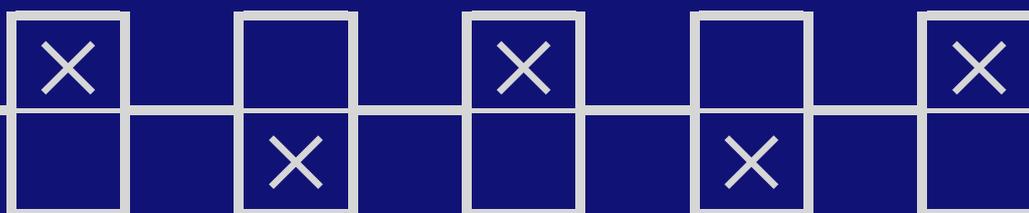
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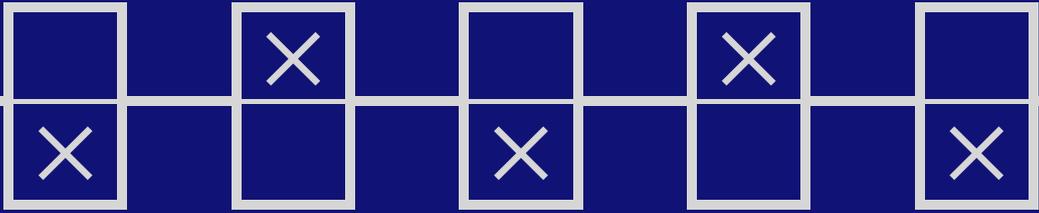


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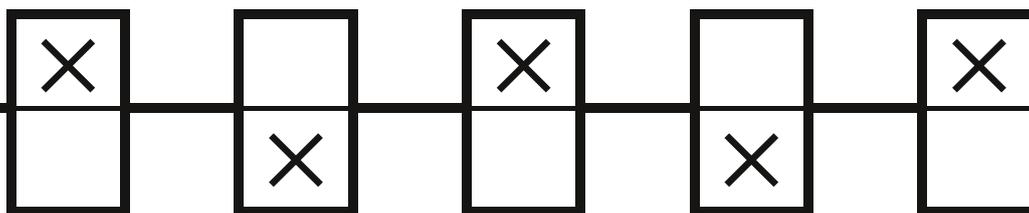
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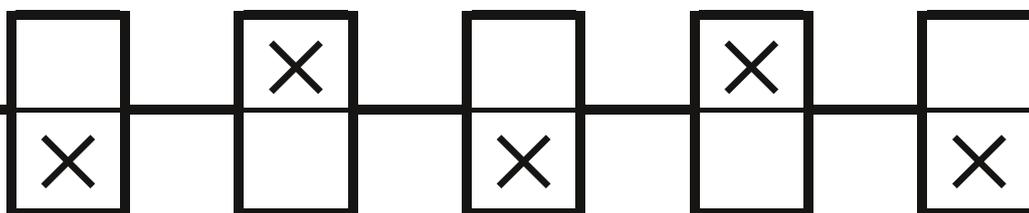


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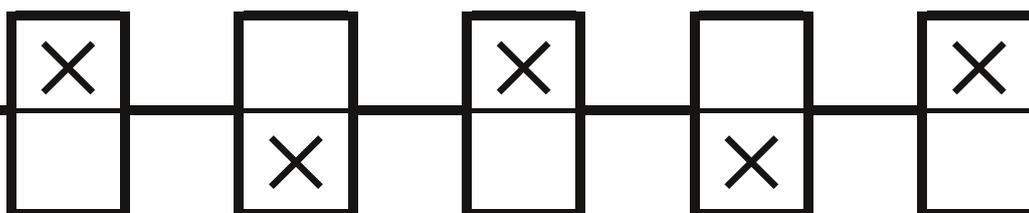
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## About Anthony Salamone

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Anthony Salamone is Founder and Managing Director of European Merchants, the Scottish political analysis firm in Edinburgh. He is one of Scotland's leading political analysts. A political scientist, he is equipped with over ten years of experience in European and Scottish affairs. His primary fields of expertise rest in EU politics and institutions, Scottish politics, British politics and international relations. Anthony is an authority on Scotland's European and external relations, Scottish paradiplomacy and soft power, and the politics of Scottish independence on Europe and international affairs. He has further expertise in US politics, US foreign policy, transatlantic relations, small states in Europe and modern soft power. Anthony has degrees from the University of Edinburgh and the London School of Economics and Political Science. Among his past positions, he was Founding Managing Editor of *European Futures*, the University of Edinburgh's academic blog on European affairs; Steering Group Member of the Edinburgh Europa Institute; Co-Convenor of the Edinburgh Europa Research Group; Founding President of the Edinburgh University European Union Society; Creator and Lead Educator of *Towards Brexit? The UK's EU Referendum*, the University of Edinburgh-FutureLearn Massive Open Online Course; and Assistant Editor of the *LSE European Politics and Policy* (EUROPP) blog. Anthony is a Member of the Edinburgh Europa Institute and President Emeritus of the Edinburgh University European Union Society. He has a strong commitment to public debate on European issues and he is a frequent public speaker and commentator.

## About European Merchants

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European Merchants is a Scottish political analysis firm based in Edinburgh. Our mission is to bring clarity and insight to Scottish, European and global politics. As *Purveyors of Political Insight*, we are dedicated to providing innovative analysis and bold ideas to the major questions facing Scotland and Europe. From our unique Scottish perspective, we decipher turbulent political currents to interpret the trends which shape our world. Thoroughly informed and connected, we are a foundry for political intelligence on Scottish, European and global affairs. We have particular expertise in European Union politics and institutions, Scotland's European and external relations, and Scottish debates on the constitution, devolution and independence. European Merchants is committed to furthering public debate and we freely offer our perspective through our own publications and external comment and analysis. We intend to make our contribution to understanding our times.

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# Executive Summary

Majority support for independence has shifted Scotland's constitutional debate into a new phase. The people of Scotland have the right to decide on independence.

The UK union is in a deteriorating condition. Brexit has been the catalyst, showcasing a dysfunctional UK state. The UK Government seemingly will not allow devolution to stand in the way of its aims. Scottish public opinion has probably moved beyond the point where UK reform would have a meaningful impact on the independence debate.

Scotland's popular sovereignty is established. The people have an unbounded right to decide their form of state and governance. The UK Government holds the executive powers of the state, but it has a responsibility to consider the views of the Scottish public through its representatives, not subjective interpretation of its interests.

A Scottish Parliament majority in favour of a referendum should represent a mandate for one to take place. The only viable pathway to independence is a referendum agreed between the Scottish and UK Governments. Should Scotland elect a pro-referendum majority next year, one must be delivered that would lead to effective independence.

Securing effective independence would require Scotland-rUK cooperation throughout the independence process: referendum, negotiations, recognition. Scotland's strategic interests would be served by a close relationship with rUK as an important dimension of its foreign policy and part of the long-term thinking of the state.

Scotland would need international recognition to gain independence. If rUK recognises the Scottish state, the states of the world should follow. The international community will not become involved in the independence debate. If the people vote for statehood, Scotland and rUK should work together to ensure Scotland's universal recognition.

Scotland's European relations should be developed through practical cooperation and contributions to major EU debates. The constitutional question must remain separate from official European relations. The EU will not engage on independence. Discussion on EU membership would benefit from becoming more informed and less hyperbolic.

Should the UK Government refuse to deliver a referendum after a Holyrood mandate, a united Scotland campaign should seek to secure one through persuasion, focused on London. The manner in which Scottish society advocates and obtains a referendum would showcase the kind of sovereign state which Scotland could be.

Building the substantive case is important, given increasing support for independence. The independence prospectus should be developed, offering considered reflection on the major themes. A Significant and Sustained Majority – support of 60% or more for three consecutive months – would be indicative of a consensus for independence.

Scotland could become a successful European state, if the people choose that option. If current trends continue, a new referendum could be the independence side's to lose.

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# Introduction

Scotland's constitutional debate is entering a new phase. Consistent majority support in favour of independence has begun to emerge, though this trend is in an initial stage. Such a majority will have to be sustained and arguably increased for independence to become the consensus position in Scotland.

The harbinger of renewed assessment of independence – Brexit – has become reality. Scotland and the wider UK regrettably left the European Union at the end of January. With the UK Government having refused an extension, driven by its populist ideology, the transition period will expire at the end of December and herald an uncertain future. Even if a new EU-UK relationship is agreed, the UK will still become the most distant country from the EU this side of the continent.<sup>1</sup> The Johnson government's pro-Brexit zeal is so dissonant with Scotland's pro-European sentiment.

Among the innumerable ways in which the coronavirus pandemic has altered regular life, it has served as an impetus for genuine reflection on how to structure our society. This reimagining integrates into the independence debate. Aspirations for social and economic renewal, even transformation, will foster consideration of whether Scotland could best achieve such change with the full powers of the state.

The constitutional question is presently divided into two parallel tracks: the procedural debate on whether a new referendum should take place and the substantive debate on whether Scotland should become an independent state. Given the ongoing impasse between the Scottish and UK Governments over holding a referendum, the former has progressively intensified, principally within the independence movement.

This procedural debate requires renewed focus. The path to prospective independence must be rooted in the realities of international relations and prerequisites for Scotland to achieve statehood. Recognition is needed of the imperative for cooperation between Scottish and UK institutions to deliver effective independence, should the people make such a decision, not least for public confidence in that option to be maintained.

This report offers a strategic assessment of Scotland's constitutional debate. It begins by outlining the state of the UK union, Scotland's popular sovereignty and the pathway to independence. The report then examines the realities of modern independence, the outlook for international recognition and relations with the European Union. It finishes by considering the process of securing a referendum and the development of the case for independence, concluding on the evolution of the independence conversation.

Increasing support for independence will bring greater demand for the prospectus on a Scottish state. European Merchants will continue to provide its analysis on the major points of debate as the Scottish election approaches. Scotland could certainly become a successful European state, if the people so choose. It is their right to decide.

**Anthony Salamone**

14 July 2020

# 1 | State of the UK Union

The United Kingdom is not a unitary nation. It is a multinational state comprised of the three nations of Scotland, England and Wales, and the territory of Northern Ireland. The precedent of Scotland's 2014 independence referendum demonstrated definitely that this union is entirely voluntary. Notions that the prospect of Scotland becoming an independent state would 'break up the UK' or 'threaten the union' therefore reflect a misinterpretation of constitutional reality. Scotland's political future is for it alone to determine. That choice is not defined by preferences elsewhere in the UK or overridden by sentimentality for 'the union'. In the Brexit era, recognition of these facts has waned.

The UK union is currently in a deteriorating condition. Brexit has been the catalyst for that deterioration, in four principal dimensions: (1) the fact of Brexit, (2) the process of Brexit, (3) the destination of Brexit and (4) the future of devolution. The UK's departure from the European Union had no democratic basis in Scotland. The Scottish electorate has never endorsed Brexit – not in the EU referendum, any subsequent election or even any opinion poll. On this major constitutional decision, the determination of the people of Scotland to remain in the EU was not honoured. An extraordinary democratic deficit within the UK has consequently been exposed. This divergence between Scotland and England will not dissipate – Scotland's European spirit will surely endure.<sup>2</sup>

The May and Johnson governments' approach to the process of Brexit has been closed and centralised. Scotland's political institutions have been consistently marginalised, with crucial decisions made unilaterally, intra-UK institutions insufficient and litanies of problems and errors raised. No discernible change in manner has materialised in the negotiations on the future relationship.<sup>3</sup> The UK Government could have forged a more constructive path. Instead, the Brexit saga has showcased a dysfunctional UK state. Its objectives for the new EU-UK partnership – a Free Trade Agreement and cooperation in other areas – are remarkably low, given its centrality to the UK's future prosperity.<sup>4</sup> An increasingly distant relationship with the EU will pale in comparison to membership, which the Scottish electorate voted to maintain, and damage Scotland's interests.

Devolution is intended to ensure more equitable distributions of power and autonomy for constituent parts of the UK. Throughout the Brexit period, those principles have been eroded and undermined. The UK Government has given the clear impression that it will not allow devolution to stand in the way of its aims, regardless of the democratic consequences. Among numerous developments, the passage of the EU Withdrawal Act 2018,<sup>5</sup> despite the Scottish Parliament's refusal of legislative consent, was particularly serious. All four dimensions of Brexit raise profound questions of democracy, trust and accountability within the UK state which have been left completely unresolved.

These vital issues are not sufficiently recognised or appreciated in London, and the UK Government apparently finds no need to address them in a meaningful way. To the contrary, its suggested intentions to bypass the Scottish Government, spend more in Scotland and change the Whitehall machinery would be tactical responses to serve its own interests, ignoring problems which it created and further weakening devolution.<sup>6</sup>

The prospect of reforming the institutions of the UK state to promote democracy and give better representation to its constituent parts has been raised over years. Various options have included a written constitution, a federal system, more radical devolution and renewed intergovernmental structures. The primary obstacle to reform has been the lack of political will and interest in Westminster.<sup>7</sup> Despite the monumental change caused by leaving the EU, no such will has materialised. Even if it were to now appear, Scottish public opinion has probably moved beyond the point where reform of the UK would have any meaningful impact on the independence debate. People will assess the UK for what it is, particularly in view of Brexit, not what it could be in distant theory.

The Brexit era does not give a favourable record for the UK union. Having withdrawn from the EU, the UK remains on course for either a minimal partnership with the EU or no partnership at the end of December. However much populist rhetoric the Johnson government produces, the UK will still face continued reckonings in the world as its voluntary geopolitical downsizing from Brexit takes full effect.<sup>8</sup> Amidst the current and future tumult, independence has emerged as a pathway to stability for Scotland. A new Scottish state could join the EU, removing itself from the political, economic and social damage of a disconnected relationship with the rest of Europe. As a member of the EU, Scotland could seek to be a progressive and innovative European state. Proponents of the UK union can no longer pretend that the independence debate will pass. Instead, they must give consideration to the case for Scotland remaining part of the UK. Recent events are unlikely to yield readily winning arguments.

## 2 | Scotland's Popular Sovereignty

Popular sovereignty – the principle that authority derives from the people, who endow their institutions of the state and their representatives with power – is the foundational idea of modern liberal democracy.<sup>9</sup> While the United Kingdom is certainly a democracy, its constitutional logic holds that the Crown-in-Parliament (comprising the Monarch, House of Commons and House of Lords) is instead sovereign.<sup>10</sup> In any case, the popular sovereignty of the people of Scotland is well established. The Scottish public directly chose its national form of government by voting to reconvene the Scottish Parliament in the 1997 devolution referendum.<sup>11</sup> The electorate also provided a view on its political status in the 2014 independence referendum.<sup>12</sup> Scotland is manifestly a nation, with a well-defined territory and a distinct demos.

In the exercise of this popular sovereignty, the people of Scotland have an unbounded right to decide their form of state and governance. Scotland can become independent if the people so decide. The UK state endorsed this reasoning in creating the precedent of the 2014 referendum. In that process, the UK Government recognised that Scotland could become independent; accepted that the people of Scotland alone would decide; agreed that such a choice should be made in a referendum; and affirmed that it would give effect to such a decision. These positions were codified, among other sources, in the Edinburgh Agreement<sup>13</sup> between the Scottish and UK Governments and the Order in Council<sup>14</sup> providing a UK basis for that referendum. The Smith Commission report,<sup>15</sup> engaging all political parties then represented in the Scottish Parliament, restated the understanding that Scotland could become independent in future. This consensus was therefore manifest even in the immediate aftermath the 2014 referendum.

Given this clear and reasoned precedent, the UK Government's decisions to reject the Scottish Government's requests in March 2017<sup>16</sup> and December 2019<sup>17</sup> for powers to hold a recognised referendum, following such mandates from the Scottish Parliament, represent a reversal of its commitment to respect Scotland's popular sovereignty. The one-page letter from the Prime Minister in response to the First Minister's new request was cursory and insufficient.<sup>18</sup> Moreover, it implies that the UK Government considers itself empowered to decide whether a referendum should be held *and* to choose what measures it applies to make that decision.<sup>19</sup> Yet the premise that the UK state can make such determinations at its own discretion reflects a false interpretation of the locus of democratic authority. Power over Scottish affairs derives from the people of Scotland.

While the UK Government holds the executive powers of the state, it does not have an unrestricted ability to set how those powers should be exercised. They are subject to popular consent. The Scottish electorate express itself through its representatives: the Members of the Scottish Parliament and Members of the House of Commons from constituencies in Scotland. Regardless of whether any matter is reserved or devolved, the UK Government has a responsibility to consider the views of the Scottish public, as given by its nominated representatives – not through its own subjective interpretation of Scotland's interests. The latter approach fails any test of democratic respectability.

### 3 | Pathway to Independence

Given their popular sovereignty, the people of Scotland have the right to consider their form of governance, including whether Scotland should become an independent state, as often as they might desire, without external limitations. The 2014 referendum was a specific enactment of the ability to decide, not a singular opportunity afforded by the UK state. Public opinion can always change in a democracy, and the UK's withdrawal from the EU has manifestly altered the constitutional settlement. Irrespective of the length of time since a previous referendum or even the development of circumstances, should the people resolve to activate their right to decide, it must be realised.

The democratic means for the Scottish public to make such an activation is the election of its representatives. As the national legislature, the Scottish Parliament is the logical and purposeful venue for such determinations. Accordingly, the return of a majority to the Parliament in favour of commencing a process of consideration on independence should represent a mandate for one to take place. This standard directly reflects the expressed position of the Scottish electorate. Moreover, it was accepted as the basis for the 2014 independence referendum.<sup>20</sup>

Such a process of consideration must be capable of leading to effective independence, should the people make that choice – that is, the establishment of a sovereign Scottish state with full powers and widespread (if not universal) international recognition. Given the defining constitutional nature of the question, any process must afford the Scottish electorate the option to give their opinion specifically on independence. A referendum is the most optimal means of making a decision on independence. The 2014 precedent provides a model which can be replicated: an agreement between the Scottish and UK Governments on the general parameters of the referendum (including implementation of the outcome) and UK legislation confirming the authority of the Scottish Parliament to hold the referendum and determine its arrangements. From its 2017 request to the UK Government, the Scottish Government has consistently sought to secure this same process. Its most recent written case for a referendum makes the same argument.<sup>21</sup>

The procedural debate on independence has heightened over recent months. This shift has arisen from the impasse created by the UK Government's refusal to endorse a new referendum or discuss the matter with the Scottish Government. Resulting frustration has fostered growing discussion within the independence movement of alternatives to a referendum agreed by the two governments to determine whether Scotland should become independent. However, no proposal raised provides a means to independence. The election of a pro-independence majority to the Scottish Parliament is insufficient to seek to become independent directly, through negotiation with the UK Government or otherwise. A consultative referendum – a non-binding vote – would not attract the participation of a significant number of voters and some political parties, and thus not constitute a true assessment of Scottish public opinion. The First Minister has stated the importance of following 'a credible path that can deliver independence'.<sup>22</sup> Only a referendum with an agreed legal basis can serve as a pathway to independence.

The procedural dispute between the Scottish and UK Governments must be resolved. A pro-independence majority already exists in the Scottish Parliament, which should constitute a mandate for an independence referendum. The Parliament confirmed its position in a motion supporting a new referendum on 29 January 2020.<sup>23</sup> It must be recognised however that an impasse exists and, in present circumstances, no potential for compromise is evident. The matter must be returned to the people, who should give their determination on how to proceed. Elections to the Scottish Parliament are their means of national democratic expression. The subject of an independence referendum should therefore form part of the election scheduled for next year.

Should the people return a majority to the Scottish Parliament supporting the holding of an independence referendum – for instance, within that parliamentary term – then all relevant parties will have a political and moral obligation to deliver that outcome. The composition of the government – whether a single-party majority government, a multiple-party coalition government or a single-party minority government with other party support – would have no impact on the mandate from the people. In response to such a mandate, the Scottish and UK Governments must deliver a referendum which is legal, endorsed and effective. Regardless of its own preferences, the UK Government must meaningfully engage with the Scottish Government on question of a referendum and deploy its executive powers of the state to implement the decision of the Scottish electorate to activate its right to decide. Were the UK Government instead to claim that it had the power to determine the political destiny of the people of Scotland, such a course of action would be democratically unsustainable. The next Holyrood election must result in a definitive resolution of the procedural debate. Public conversation can then turn to the substantive debate on whether Scotland should become independent.

## 4 | Realities of Modern Independence

While sovereignty rests with the people of Scotland, power and authority are currently divided between Scottish political institutions (Scottish Parliament and Government) and UK political institutions (UK Parliament and Government). As a constituent part of the United Kingdom, Scotland presently functions within the UK state. Any process of independence would begin from this initial position and be significantly shaped by it. Having progressively intensified, the procedural debate on Scottish independence now requires renewed strategic focus, rooted in the realities of international relations and prerequisites for Scotland to achieve statehood.

For Scotland to become independent in today's world, the Scottish and UK institutions currently exercising its sovereignty would have to cooperate throughout the process leading to the establishment of a Scottish state. The only viable path to independence is by a referendum whose outcome the Scottish and UK Governments agree is binding on them both. The procedural debate must reflect this reality. It has to be said outright – proposals raised within the independence movement to simply declare Scotland's independence by whatever means, without regard to its relations with the UK state, do not stand up to scrutiny and would not result in independence. Given that a consistent majority in favour of statehood is emerging, it would be particularly ironic to entertain any such proposals. Instead, the independence movement should maintain its focus on the actual means of creating an independent Scottish state.

The pathway to independence for Scotland would consist of three principal stages: (1) a referendum; should the vote be in favour, (2) the transition and negotiations between Scotland and the residual UK (rUK); and (3) independence and recognition. Effective independence would only be possible through cooperation between Scottish and (r)UK institutions at all three stages.

On the referendum, the relevant determinant is that the Scottish and UK Governments agree to accept and implement the outcome. Argument over which legislature has authority to underwrite a referendum is less consequential. It would be difficult to suggest that a free and fair democratic vote is not valid *per se*. The real question is whether such a vote is operative. With the Edinburgh Agreement, both governments endorsed the 2014 referendum. Scottish legislation set the logistics of the referendum and UK legislation confirmed the state's acceptance of that process. To have an operative result, a future referendum would require such joint acceptance. A bilateral accord between the Scottish and UK Governments would be the foundation. A UK-level basis could be delivered through secondary legislation (Order in Council) or primary legislation (Act of Parliament).<sup>24</sup> While it is conceivable that UK legislation may not be required, provided bilateral agreement exists, the resulting legal certainty would be valuable in such an important constitutional decision.

Should the people vote for independence in a future referendum, their decision would be a definitive mandate for Scotland to become a state. That choice would not however negate the importance of continued cooperation between Scotland and rUK. Scotland

would remain part of the United Kingdom until the point of formal independence. The transition to independence would require active partnership between the Scottish and rUK Governments. The two would need to negotiate the arrangements for Scotland's separation from rUK. In that regard, the objective must be to secure the establishment of a highly functional Scottish state, not simply facilitate a procedural separation. As proposed in Scotland's EU Blueprint,<sup>25</sup> following a result endorsing independence, the Scottish and UK Governments should conclude a Scotland-UK Framework Agreement, governing the negotiations and preparations for independence, Scotland's European and international engagement during the transition, and other relevant matters. The transition to independence would then proceed on the basis of this agreement, rather than individual and evolving arrangements. Much more work should be undertaken to consider the modalities of the transition to independence.

Following the completion of the transition to independence, and at the point of formal independence, Scotland will become a state. It will simultaneously seek recognition of its statehood from the states of the world. It would be imperative for rUK to recognise Scotland. Recognition is the sovereign prerogative of the recognising state. Even if the Scottish Parliament does have the competence to legislate for a binding referendum on independence, the more relevant question is on whom it would be binding. While the Scottish Parliament can direct the Scottish Government, it cannot direct the UK Government or Parliament. Such a scenario is not foreseeable under devolution, and it would be impossible if Scotland and rUK were separate states. Scotland could never oblige rUK to recognise it as a state – the decision would be rUK's alone. Cooperation between both sides would therefore be vital at all stages towards independence.

International relations are now highly codified. The rules-based international system is embodied by multilateral institutions and sustained by international law. Although strained in recent years, the system remains the frame of reference for global politics. The reality is that the UK, as represented by the UK Government, is the existing state. Its interpretation of matters related to Scotland and potential independence will hold the greatest weight in the consideration of other states. As a result, secondary debates within the independence movement have limited relevance. For instance, it has been suggested that the Treaty of Union remains operative and, were Scotland to abrogate the treaty, it would result in the dissolution of the United Kingdom and Scotland would automatically become a state. This logic suggests that Scotland and rUK (as a whole or in its distinct constituents) would be continuing states. The UK Government has by contrast previously stated its view that, were Scotland to become independent, rUK would be the continuing state and Scotland would be a new state.<sup>26</sup> The international community would be highly likely to adopt the interpretation of the UK Government, making it accepted fact in practice. Moreover, precedents of other countries becoming independent in different eras or contexts are not relevant to Scotland.

The independence debate is complex and multifaceted. However, one outcome can be predicted with a high degree of confidence. Were Scottish institutions ever to proceed with a process of independence without the agreement of the UK, whether through a Unilateral Declaration of Independence or other unilateral action, it would not result in

effective independence. In such a case, Scotland would land somewhere on a spectrum between Catalonia and Taiwan. No recourse to a higher international authority would be available. The international community would accept the UK Government's view that Scotland was still part of the UK and, as far as it was concerned, the matter would be closed. Were such a course to be contemplated, it would undoubtedly reduce public support for independence, given its complete lack of certainty or feasibility. Since the risks are so predictable and the outcome foreknown, it would be eminently advisable to avoid any unilateral route and instead pursue a viable pathway to independence.

Independence would bring permanent redefinition to Scotland's relationships with the rest of the UK. Establishing a Scottish state would require seriousness, purposefulness and consideration of the long term. It would be in Scotland's strategic interests to have a comprehensive and functional relationship with rUK on a continuing basis. Scotland would set its own course, but independence would not change geography. Cooperation bilaterally with rUK, and trilaterally with Ireland and rUK, would be essential to manage shared issues and common challenges. Even Northern Ireland relations aside, Ireland remains highly interested in the UK's politics, society and culture. Ireland is singularly the EU Member State most affected by Brexit. However, as an independent state and EU member, Scotland would in fact occupy that position – in economic terms at least. Moreover, it would be in Scotland's interests for rUK to be as stable and connected to the EU as possible. Relations with rUK would constitute an important part of Scotland's foreign policy and would have to factor in the long-term thinking of the state.

## 5 | International Recognition

Independence is not only about the power to make the laws and decisions of a state. It equally requires the recognition of a state's existence and sovereignty by other states. Recognition is within the prerogative of every state. It is not automatic, guaranteed or necessarily indefinite. In the modern world, international recognition is a definitional component of effective independence. Beyond assuming the full powers of the state, Scotland would therefore need international recognition of its statehood to gain real independence. The prospects of recognition for a Scottish state would be intrinsically related to the process by which Scotland would intend to become independent and its relationship with rUK throughout the entirety of that process.

The response of the international community to Scotland's prospective independence would be based upon evaluation of the circumstances by individual states, shaped by the conventions and realities of international relations. The most influential factor in that analysis will be the approach of the rUK Government. States will take their lead from London in deciding whether or when to recognise Scotland as a state. It would therefore be essential that rUK recognise the Scottish state and the new Government of Scotland immediately and unquestionably on the date of independence. Should rUK respond in that way, the strong expectation would be that the states of the world would follow and recognise Scotland.

This approach would not reflect a particular loyalty towards the UK, or imply a lack of goodwill towards Scotland. To the contrary, Scotland arguably has significant goodwill upon which to capitalise, not least in the United States and within the European Union. Instead, it would derive from the fact that international relations are founded on the rules-based international system. It is a fundamental principle that states should not engage in the constitutional affairs of another state in the absence of surpassing a very high threshold of justification for interest. That threshold is of conflict and oppression. While the condition and inequities of the UK state can be debated, by any international standard Scotland is not oppressed. It would be an affront to those who are genuinely oppressed in the world to suggest that the people of Scotland were so. Consequently, the international community will not become involved in the Scottish independence debate, and states will follow the UK's approach to the matter. It would be misguided to attempt to internationalise Scotland's constitutional debate.

The significant majority of states adheres to the principles of the international system. They reinforce the sovereignty of smaller and less powerful states and limit the actions of larger and more powerful states. Were Scotland to become a state, the system would be essential to ensuring its sovereignty and independence. In that regard, consistency would be required to maintain credibility. Scotland could hardly invite others to act against the tenets of the system in their responses to Scottish independence, and then subsequently embrace it. An independent Scottish state should declare itself a strong supporter of multilateralism and the rules-based international system. It would have to uphold those values all of the time – not just when convenient.

States sustain multilateralism through participation in international organisations, the most important of which is the United Nations and wider UN system. UN membership is the defining international standard of a state's independence and recognition in the world. Becoming a Member State requires the recommendation of the Security Council and a successful vote in the General Assembly.<sup>27</sup> In the Security Council, 9 of the 15 Members (60%) must support an application, which must not be blocked by any of the Permanent Members – the US, China, Russia, France and the UK. Should the Security Council give a position recommendation, a two-thirds majority of voting members in the General Assembly is required. If all current 193 Member States voted, at least 129 Members would need to support Scotland's application for it to join the UN. It follows that a Scottish state would need the recognition of the Permanent Members of the UN Security Council and the minimum number of states to become a UN member.

Were Scottish institutions to pursue a unilateral process of independence, without the UK's agreement or recognition of a Scottish state, it would be highly improbable that a single state in the world would recognise Scotland as an independent state. Goodwill towards Scotland could quickly evaporate. As a Permanent Member of the UN Security Council, the UK would undoubtedly veto Scotland's application to join the UN, as it would hardly support the candidacy of a state it did not recognise. Even if the UK did recognise Scotland as a state, it would continue to have the right to veto Scotland's application to the UN for any reason. Moreover, the UK is a member of almost every other organisation, except the EU, which Scotland might intend to join – including the Council of Europe and NATO. Accordingly, it becomes even more evident that Scotland would require a functional and cooperative relationship with rUK. If Scotland were not recognised as a state by every EU Member State, it would not be able to apply to join the European Union. A unilateral process of independence would therefore result in no international recognition, no UN membership and no EU membership. Such a scenario would manifestly not lead to effective independence and any such proposal would be a false prospectus to the people of Scotland.

All intentions should remain focused on pursuing a viable pathway to independence and avoiding a situation where Scotland's status and sovereignty are contested. Partial or no international recognition would bring great uncertainty and must be prevented. Instead, should the people of Scotland vote for independence, Scotland and rUK should proceed with an agreed process to establish a Scottish state with rUK recognition. This course would facilitate universal international recognition and effective independence at the point of Scotland's independence.

## 6 | The European Union

Scotland's relationship with the EU is essential to its current and future prosperity. The Union will always have a significant impact on Scottish society. It is clear that any new EU-UK partnership will be distant, and increasing divergence from the EU will make it more difficult for Scotland to sustain its European connections. Scotland's mainstream Europeanism, founded on the pro-European consensus in Scottish public opinion, will stand it in good stead – but it must be activated and deployed.<sup>28</sup>

The Scottish Government's strategy of differentiation on Brexit has been successful, and its support for European integration is well recognised within the EU.<sup>29</sup> Now in the Brexit era, the question must be how to take forward Scotland's European relations.<sup>30</sup> They should be developed through two principal avenues: (1) practical cooperation on areas of mutual interest – such climate change, renewable energy and wellbeing, and (2) contributions to debates on the future of Europe.<sup>31</sup> Scope exists to build Scotland's distinct identity in the rest of Europe, and the Scottish Government and wider Scotland must proactively pursue EU relationships. Consideration should be given to Scotland's contributions to the forthcoming Conference on the Future of Europe.<sup>32</sup> Honesty will equally be required on the challenges of engaging in the EU as a third country.<sup>33</sup>

Every effort must be made to avoid bringing Scotland's constitutional debate into its official European relations. The more independence is raised, the more likely it is that substantive bilateral relations will be curtailed. Such a scenario would adversely affect Scotland's ability to form and maintain effective partnerships with European actors in the years ahead. The European Union – whether the EU institutions or Member States – will not engage on the Scottish independence debate. The fact that the UK is a third country will not alter that position. It would be highly irregular for the EU to give a view on Scotland's constitutional status. Occasional expressions of support from particular MEPs are not indicative of official opinion. Any attempts at EU legal action related to a process of independence would not be useful and should be avoided. Even if Scotland were still in the EU, the constitutional affairs of Member States are specifically not part of EU law, as stated in Article 4(2) TEU.<sup>34</sup> The independence movement should not seek to involve or implicate the EU in Scotland's independence debate, which should remain focused on the people of Scotland.

Given Scotland's pro-European consensus, it would seem probable that, if the people were to vote for independence, they would also support Scotland joining the European Union. Becoming an EU Member State would shape the constitutional order of the new Scottish state and herald its return to a united Europe. While Brexit has changed the context, Scotland would have to make its own choice, based on its values and interests. Of any aspect of the independence debate, the conversation on EU membership would benefit from becoming more informed and less hyperbolic. In response, Scotland's EU Blueprint (*The EU Blueprint: Pathway for Scotland's Accession to the European Union under Independence*) provides a comprehensive and realistic assessment of Scottish EU accession and membership under independence.<sup>35</sup>

As the EU Blueprint sets out, an independent Scotland must consider EU membership a question of values, not just interests. The European Union is a community of values, principal among them that European integration and cooperation are the best means of securing peace and prosperity in Europe and beyond. In becoming a Member State, Scotland should seek to make its contribution to the common European future. The Blueprint recommends establishing State Principles for European Relations to define Scotland's aspirations for the EU. To sustain positive EU membership, Scottish society would need to build a national story on how being in the EU supports Scotland's values and its interests. The fundamental failing of the UK debate on the EU was its relentless focus only on economic and trade interests. Combined with insufficient internalisation of the EU into UK politics and rampant misunderstanding of the EU's functioning, this approach ultimately fostered a Eurosceptic mentality hostile to European integration. The EU is not simply a market – it is a union of states and peoples. Scotland's rationale for EU membership must not be reduced to arguments which are only interests-based. While interests are important, it is only through building a case for the EU with values that high public confidence in EU membership can be maintained.

Various elements of the independence and EU membership debate would benefit from clarity. In applying to join the EU, Scotland would have to follow the normal process. No special accession procedure exists and the EU would not create one for Scotland. European Commission President Ursula von der Leyen confirmed this point in reply to a European Parliament written question, stating that: 'The conditions and procedures for accession also apply to a State which was part of a former Member State.'<sup>36</sup> We must be equally clear that Scotland would be one of the most well-qualified countries ever to apply to join the EU. It would be well placed to satisfy the Copenhagen Criteria and its path would be much faster than previous applicants. The EU Blueprint calls for a Target to EU Accession of four years, from the point of application to accession. Four years to EU membership would be remarkably fast and demonstrate that Scotland was extremely well prepared. Portraying this scenario as 'Scotland facing a four-year wait to join the EU' would reflect a serious lack of understanding of the EU and international relations. It is time to move beyond simplistic notions and consider the actual choices, challenges and opportunities of EU membership under independence.

We must be frank that Scotland's European debate is underdeveloped, particularly for a country which may seek to become a member of the EU. Focus must be not only on joining the EU, but how Scotland could be a successful and influential Member State. It should resolve to be positive and constructive, fully subscribed to the EU's values and purpose, and actively support the building of a united Europe. On the euro, debate reflects economic and monetary dimensions, but gives no regard to the implications of remaining outside the Eurozone, including absence from the core and lack of influence on political integration.<sup>37</sup> To foster Scotland's EU links, European affairs should feature regularly in public discourse.<sup>38</sup> Scottish politics and wider society should become fully integrated into the EU's major debates. The Scottish Government should develop a full European strategy, building on its EU Strategic Agenda document.<sup>39</sup> Where it takes forward these measures, Scotland will be well placed to sustain and build its European connections and be in a favourable position to join the EU under independence.

## 7 | Securing a Referendum

Having established that a referendum with Scotland-UK cooperation is the only viable pathway to independence, the question turns to resolving the impasse between the Scottish and UK Governments. Should the next Holyrood election produce a majority in favour of an independence referendum, the UK Government will have a democratic obligation to accept that outcome. The Scottish and UK Governments, along with the Scottish and UK Parliaments, should then deliver that referendum. Given the context, it is probable that Scotland's political institutions would intend to hold the referendum on a faster timescale than the 2014 vote. The timing of an independence referendum with respect to the Brexit transition period is not particularly important. While future divergence and the length of time outside the EU are serious matters, the process of applying for EU membership could only begin after Scotland became independent.<sup>40</sup>

Should the UK Government instead refuse to cooperate on holding a referendum, the Scottish Government and wider Scotland should respond in a constructive, measured and purposeful way. Scottish society should unite in the view that a referendum must take place, regardless of opinions on independence. The sole objective should be to secure a referendum through dialogue and persuasion, based on its strong democratic, political and moral case. While an electoral mandate from the people for a referendum should be implemented without the need for such persuasion, if a campaign becomes necessary, its aim should be to realise an operative referendum providing the people with the option of effective independence, not symbolic independence.

A united Scotland campaign for an independence referendum should focus its efforts on politicians, media and civil society in London. Given the purpose to persuade the UK Government on a referendum, engagement must be concentrated in its environment. Beyond the fundamental that the people of Scotland must decide their own future, the campaign should also seek to demystify the idea of Scotland becoming independent. The creation of a Scottish state would not pose a risk to rUK or be inherently negative. Independence for Scotland would mean political autonomy, not cultural rupture. While it would chart a different course, Scotland would continue to share deep economic, social and cultural links with rUK, and it would be a constructive partner and friend. The Scottish Government should maintain its regular contact with the UK Government. Scottish MPs should continue to exercise their roles until prospective independence. Good relationships between Scottish and rUK politicians, particularly on a personal level between individuals, would support post-referendum independence negotiations and benefit bilateral relations after independence.

In response to a united Scotland campaign, the UK Government must surely accept the democratic decision of the people of Scotland to hold an independence referendum. Moreover, the manner in which Scottish society advocates and secures a referendum would showcase to itself, the rest of Europe and the world the kind of sovereign state which Scotland could be, should the people subsequently vote for independence. We should have confidence that in such circumstance Scottish democracy would succeed.

## 8 | Case for Independence

The substantive case for independence – the values, priorities and orientations of the prospective Scottish state – has always been essential to the overall debate. Given that public opinion appears to support a referendum and it seems possible that a majority of people may indeed vote for independence,<sup>41</sup> the prospectus for independence has only gained in importance. Moreover, the meaning of independence has changed from that available in the 2014 referendum. Previous proposals of Scotland sharing certain institutions with rUK would no longer be feasible, due to different relationships with the EU and the evolution of politics on this island.

Should the people vote for independence in a referendum, a clear and decisive majority would be the best result, as it would deliver a conclusive outcome and provide a solid foundation for the new Scottish state. In advance of a referendum, a Significant and Sustained Majority – support for independence of 60% or more for three consecutive months in opinion polling – would be indicative of a consensus for statehood. To reach that level of public support, the independence prospectus would have to be developed. Substantive vision should provide detailed thinking and good ideas on the state which Scotland could become. For instance, an independent Scotland could aspire to become a progressive European republic, which is a leading and influential member of the EU.<sup>42</sup> It is not necessary, or indeed possible, to provide definitive answers to every question. The objective should instead be to offer considered reflection on the major themes.

Building a Scottish state would be a monumental undertaking. A credible proposal for independence cannot pretend that the process would be simple or easy. Such promises would bring disillusionment when inevitable difficulties began to emerge. Instead, any plan should recognise the challenges and present robust reasoning of how they can be successfully met. We must completely reject the logic that substantive issues should not be debated until after a referendum to somehow preserve unity. In truth, the only means of building public confidence in prospective independence is full debate. Many of those who have recently decided to support independence or who might consider it are looking for reassurance that independence is feasible, backed by good preparation.

Principal themes are well known: among others, the transition to independence; the constitution (including republic or monarchy); EU membership; future rUK relations (including the border); currency and monetary policy; and economic and social policies. The Scottish Government will have an important role in providing its official proposals. Thinking and analysis should however come from a wide range of sources. The First Minister announced that the Government would publish a New Scotland paper series. The paper on EU membership should set out its views on: Scotland's EU values and interests; application and accession timeline; pre-accession relationship; process for approving membership (including a referendum); bilateral relations with the Member States and EU institutions; links with establishing the department for European and external relations and diplomatic service; and approach to the future of Europe. Such work will promote an informed debate for an eventual independence referendum.

# Conclusions

Should the people of Scotland elect to exercise their right to decide, an independence referendum must take place. The impasse between the Scottish and UK Governments on this issue must be resolved. If the upcoming Holyrood election produces a majority for a referendum, the UK Government must recognise this mandate and the two sides should reach an agreement to deliver an operative and binding referendum. With the procedure determined, debate can turn to the substance of whether Scotland should become an independent state.

The procedural impasse must not divert the debate from the only viable pathway to independence – a referendum agreed between Scotland and the UK. Unilateral action would not result in statehood. The focus must remain on effective independence, not symbolic independence. The EU and the international community will not become involved in Scotland’s constitutional debate. It is a matter for the people of Scotland.

With the Brexit transition period ending and the new EU-UK relationship beginning (with an agreement or otherwise) at the start of next year, bilateral relations between the Scottish and UK Governments could further deteriorate. However, they will remain essential. Should the Scottish public vote for independence, the two sides will have to work together on the transition to independence and the establishment of the Scottish state. The long-term bilateral relationship would be important to Scotland. Continued cooperation would be needed to manage common issues on this shared island. These realities must become internalised as part of the maturing of the conversation.

Increasing majority support and the real prospect of Scotland deciding to become a state will require growing seriousness in the independence debate. The prospectus for a Scottish state must now be developed further, with detailed thinking on the principal issues. Debate should be full and informed. Proponents of independence should target a Significant and Sustained Majority for statehood. Opponents of independence should consider what case to argue, given the dysfunctional condition of the UK state.

Next year’s election to the Scottish Parliament should prove a defining moment for deciding a new independence referendum. While the path to statehood would require hard work, important decisions and an evolution of mindsets, Scotland could certainly become a successful independent European state. The question is instead whether the people of Scotland will choose that option in a future referendum. Should the current majority support for independence be maintained and yet increased, combined with a deteriorating UK union and a strong substantive prospectus for independence, a new referendum could increasingly become the independence side’s to lose.

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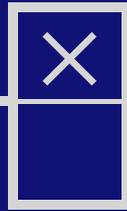
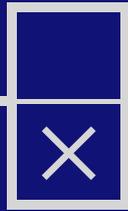
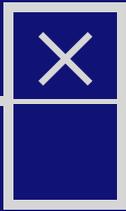
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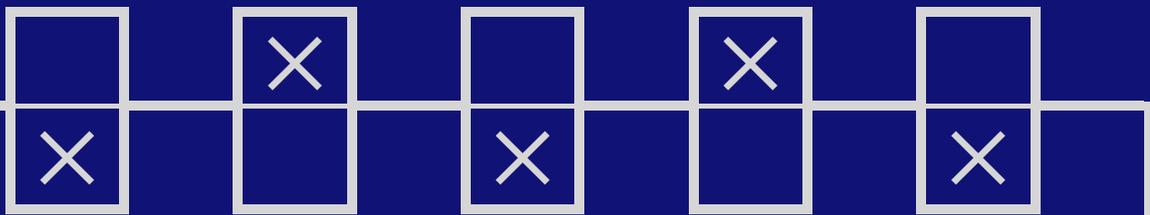
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