

Veto Player, Influencer or Bystander? Scotland's Brexit Dilemmas

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While Scotland voted decisively to remain in the European Union (62% to 38%), it now faces the prospect of leaving with the rest of the UK. In Scotland, arguments about any future relationship with the EU are also further complicated by the continuing debate about independence and by tricky discussions of how Brexit might affect the UK's territorial constitution.

To explore these issues, let's imagine Scotland has four ideal-type Brexit tribes:

1. Remain + UK (Scottish Conservatives, Labour, Liberal Democrats)	2. Remain + Independence (Scottish National Party, Green Party)
3. Brexit + Independence (some SNP)	4. Brexit + UK (UKIP, some Conservatives)

Scotland's Brexit tribes

Remain + UK

Consider first the Scots who wanted to remain in the UK and in the EU. If we follow the results of Scotland's two recent referendums (rejecting independence in 2014 and embracing EU membership in 2016), then this is the most democratically legitimate position. Unfortunately, it is no longer available. The members of the UK+EU camp therefore face a dilemma: prioritise UK membership and make peace with Brexit or consider joining the independence camp (the idea of stopping Brexit altogether is at present remote but not impossible).

This dilemma mirrors the position of the Conservative, Labour and Liberal Democrat parties in Scotland. Their optimum position has been removed and they have to reconsider their commitment to the UK. The Scottish Conservatives have felt this dilemma most acutely. Unlike at the UK level, Scottish Conservative elites campaigned almost uniformly for remain. Indeed, Ruth Davidson, the leader of the Scottish Conservatives, was one of the main faces of the Remain campaign for the whole of the UK. They must also consider party loyalty to the UK Conservatives in government. The Scottish Conservatives have therefore at various times since June 2016 been pro-remain, pro-soft Brexit, pro-hard Brexit, and now (it appears) pro-soft Brexit again. Scotland's 12 new Tory MPs certainly nudge Theresa May closer to a

majority, but it is not clear how far they will use this power to extract concessions about Brexit (one of their number, Ross Thomson, having campaigned to leave).

This pro-UK and EU tribe also have to decide their response to Brexit's impact on the territorial constitution. Should the new powers that return from Brussels over agriculture and fishing, for instance, automatically come to the Scottish Parliament or should there be a broader UK framework? Arguing for the latter might make public policy sense, but risks appearing like support for a Westminster 'power grab'.

Remain + Independence

Supporters of EU membership and Scottish independence have faced three major setbacks. First, they now have to reformulate the case for independence. The SNP's 2014 prospectus for an independent Scotland relied on EU membership to provide an external support and smooth transition issues. Scotland would retain access to both the UK and EU single market and would have a currency-sharing arrangement with the rest of the UK, another EU member state. Now an independent Scotland faces the prospect of its largest trading partner being outside the EU. It may have to trade with the rest of the UK on the same basis as other EU countries and will face the same border issues as Ireland is currently dealing with.

Second, the prospect of a second independence referendum has receded further into the distance. You might reasonably have supposed that the prospect of being taken out of the EU against its will would have caused an upsurge in support for independence in Scotland. Instead, support for independence has remained broadly stable. Moreover, the SNP's decision (along with the Greens) to pass an official resolution of the Scottish Parliament asking for the UK Government's permission to hold a second independence referendum now looks, at best, premature. The SNP lost 21 seats at the 2017 general election in Scotland and senior figures conceded afterwards that the prospect of a second referendum may have been a factor in their loss of support and, in particular, the success of the solidly pro-Union Scottish Conservatives (who gained 12 seats).

Third, the June 2016 referendum highlighted splits in the pro-independence coalition. Many of those who supported independence in 2014 also supported Brexit in 2016...

Brexit + Independence

According to one [poll](#) in January, 35 per cent of those who voted for independence in 2014 would vote to leave the EU if there were a second referendum on membership. These voters are not easily accommodated with the official position of the SNP, which is that EU membership is an important part of the architecture of independence.

However, they might console themselves with the fact that Scotland is leaving the EU along with the rest of the UK. Like UK Brexiteers, however, they may be concerned that the UK Government has not settled on a firm position and is preparing to hand over billions of pounds as part of an EU exit deal. This position contrasts with the rhetoric of the Leave campaign.

Brexit + UK

Scottish Brexiteer Unionists are perhaps the most contented of our four tribes, for now. The prospect of a second referendum has receded and therefore there is less

worry that Brexit might have weakened the Union. However, they would be well advised not to imagine that the independence question is off the table. There is still a majority in the Scottish Parliament for another referendum and plenty of issues to be resolved before March 2019.

Scottish impotence, influence or veto?

For a time, it appeared that the UK Government thought it could ignore the Sewell Convention, which states that it will not normally legislate in devolved areas or alter the Scottish Parliament's powers without its permission. Brexit potentially impinges on the Sewell Convention in two ways: first, the UK Government may wish to alter the powers of the Scottish Parliament, either to transfer more powers or take some away within a 'UK framework'; second, any number of clauses in the UK Government's Brexit-related legislation might affect areas of devolved competence and therefore, theoretically, trigger the need to ask the Scottish Parliament's permission.

However, since the 2017 election result, the UK Government appears to have softened its stance, stating that the Scottish Parliament's permission will indeed be required to pass Brexit-related legislation. This position suggests that potentially the Scottish Parliament could threaten to [withhold its consent](#) and therefore delay or disrupt the UK Government's Brexit plans. Should the Scottish Parliament decide to use the nuclear option of refusing legislative consent, then the UK Government risks a major political rupture if it unilaterally imposes its will. A fudge is possible, but that will require the UK Government to come to an accommodation with the Scottish Government, particularly on the status of powers returning from Brussels.

Waiting for a decision

The UK has yet to have a decisive 'Brexit moment' when the costs and consequences of the decision become clear. Scotland has potential avenues to influence the process, but, ultimately, like the rest of Europe, it is waiting for the UK Government to decide what Brexit means. However, one thing is clear: in Brexit Scotland, nobody is likely to get what they want.