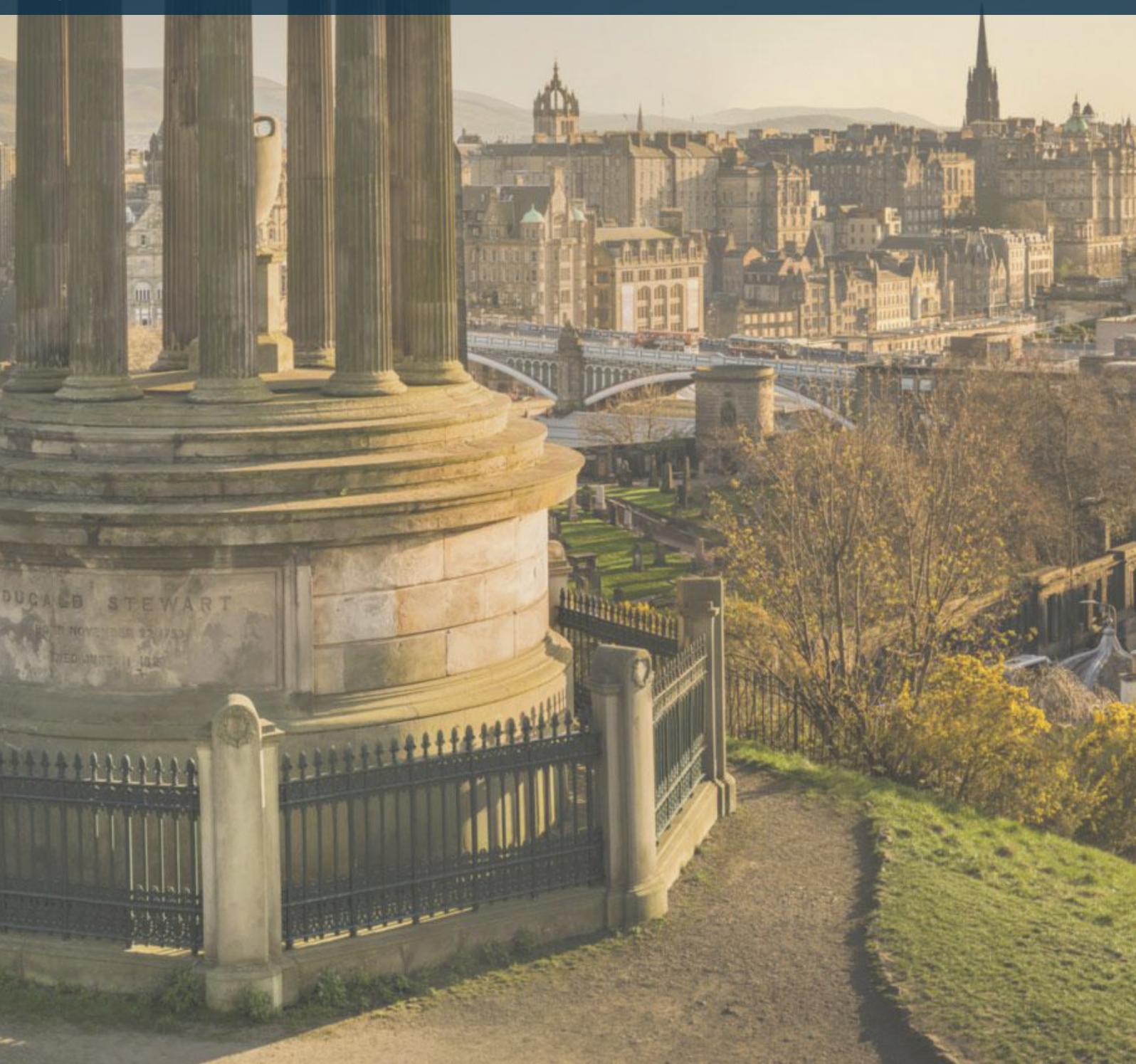


The Prospects of a second Scottish Independence Referendum

The process, politics and personalities

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Introduction

This note sets out the different scenarios in Scottish politics over the next few months. We have analysed a range of options which include the SNP's timeline for their referendum plans and the potential of the Scottish and UK governments confronting one another in the Supreme Court.

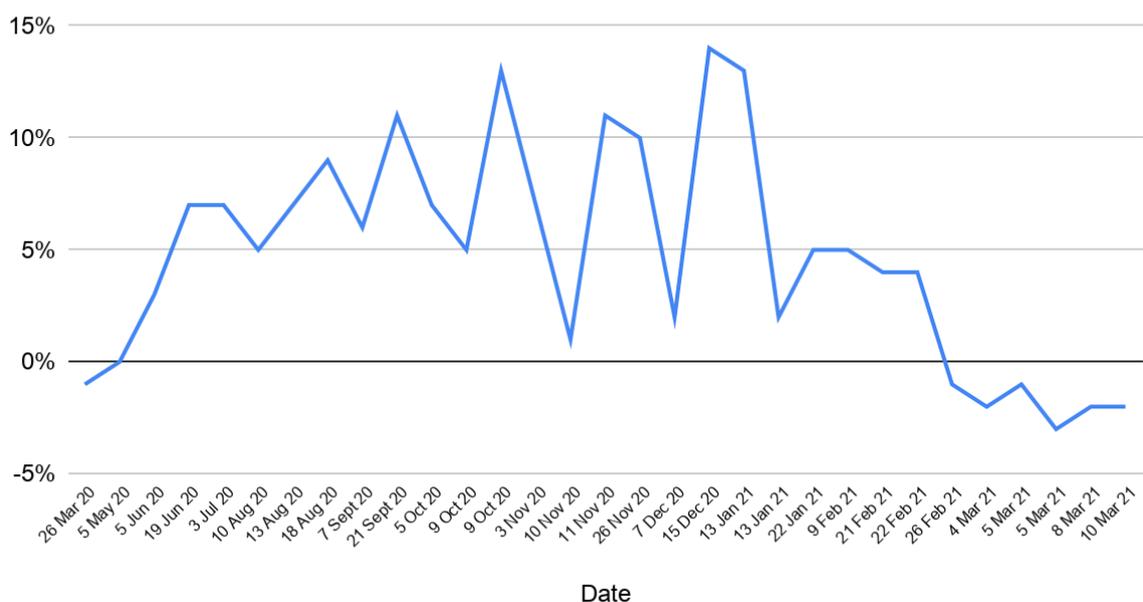
As we enter the Scottish election campaign the SNP's polling position remains robust although they have seen slippage in recent weeks. However, they still hold considerable leads. The focus is on how much the SNP will win the election by rather than on whether they will win the election. In light of the election of new leaders of both the Scottish Conservative and Scottish Labour parties there is likely to be a keenly contested and energetic race for second place. And the launch of Alex Salmond's new Alba Party the campaign will be anything but dull.

Polling suggests that it is still more likely than not that the SNP will have a majority in the 129 seat Parliament. However, if their support continues to trail off then they may fail to achieve the majority many had confidently expected. Before the launch of the Alba Party it was considered that the likely beneficiaries would be the Scottish Greens, a fellow nationalist party who sometimes appear to operate as an adjunct to the SNP.

The Alba Party is only standing on the list ballot and so hoping to pick up 'wasted' SNP second votes. The SNP pile up second votes on the list which, because they dominate the constituency vote, means they win very few list MSPs. It is here that Alba hopes to persuade SNP supporters to switch to them and build a so-called independence supermajority. For this to be successful the Alba Party is expected to need to poll at about 7% to gain a reasonable number of MSPs. In a country where 1 in 7 SNP supporters still have a positive view of Salmons that is possible.

At the time of writing, after a prolonged period where independence has led in the polls, it has fallen back to near 2014 levels.

Independence lead since March 2020



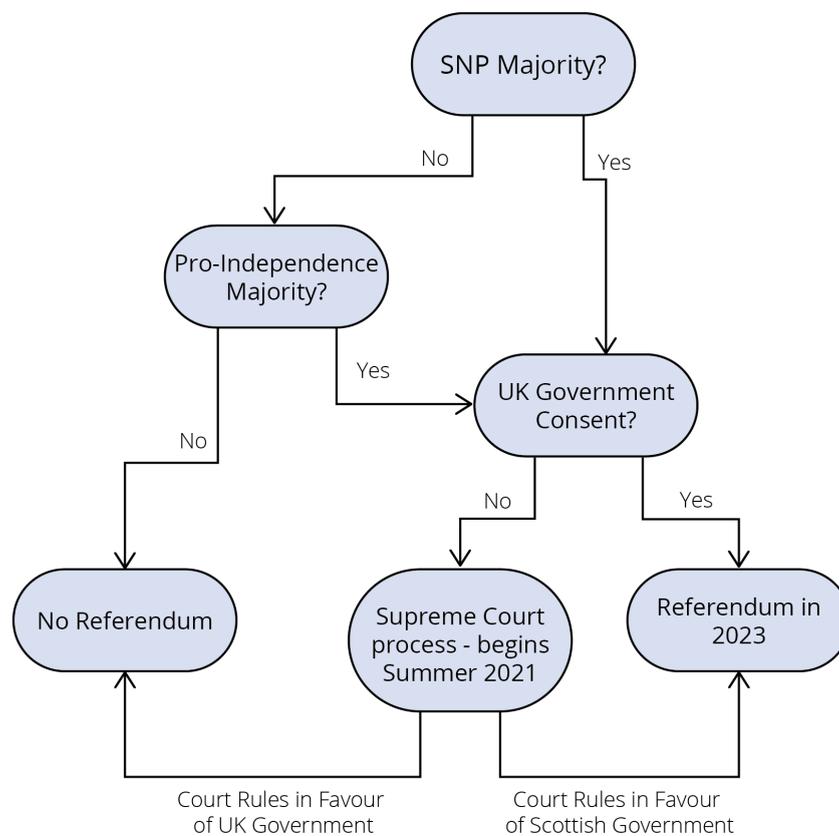
This note looks first at possible strategies for an SNP government in Holyrood and the Conservative government in Westminster. We then offer analysis of what the political parties may do next and what shape of any referendum campaign may look like.

PART ONE – THE PROCESS

Scenarios

We look at three possible scenarios:

1. SNP is the biggest party but fails to achieve a majority.
2. SNP wins a majority and agreement from the UK government for a second referendum.
3. SNP achieves a majority but doesn't secure permission from the UK government.



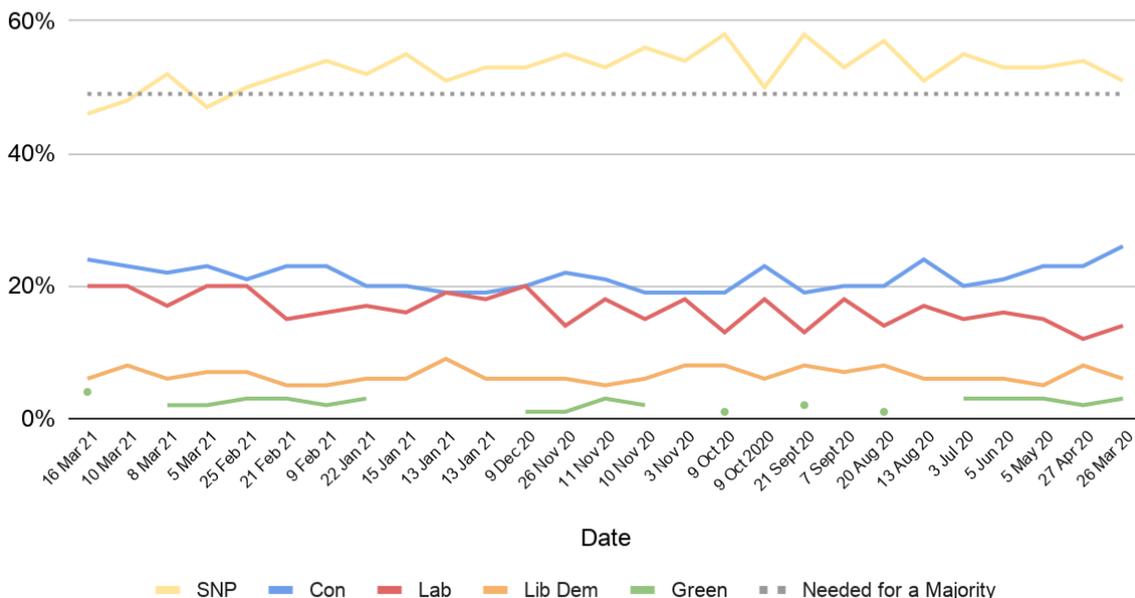
Scenario 1 - The SNP is the biggest party but fails to win a majority

In some ways this appears a straightforward scenario. With no mandate for a new referendum and potentially the nationalist cause being behind in the opinion polls again, the pro-Union side of the debate would seek to draw a line under the issue. This assumes that the non-nationalist parties can capitalise on the gradual decline of an SNP Government who will be in their fourth term of office.

However, if the Greens, Alba and SNP combined can win 65 seats or above then the parliament has a nationalist majority, albeit not an SNP one. The SNP will argue that if there is a majority in the Scottish Parliament for another referendum, made up of SNP, Green, Alba and independent MSPs

combined, then that constitutes a mandate. However, given the huge expectation that has been raised, and the possibly hubristic assumption by the SNP that they will win a majority on their own, any failure to do so will be seen as a setback for the SNP and nationalist movement, even if supporters of leaving the UK still control Holyrood.

Party Polling between March 2020 and March 2021



In this sense there is a degree of overlap between this scenario of a non-SNP nationalist majority scenario two.

Scenario 2 - The SNP wins a majority and agreement from the UK government for a second referendum

In this situation the Johnson government would grant what is known as a Section 30 Order, a type of Secondary Legislation which is made under the Scotland Act 1998. It can be used to increase or restrict – temporarily or permanently – the Scottish Parliament’s legislative authority. It does this by altering the list of ‘reserved powers’ set out in Schedule 5 of the Act. In this case, by transferring the power to hold a referendum on the Union for a designated period of time, and with certain conditions attached (for example there must only be two options on the ballot paper).

This process can be achieved fairly quickly. When a section 30 Order was granted in 2012 the subsequent timeline was rapid:

- The Edinburgh Agreement between the Scottish and UK Governments, agreeing the way forward for a referendum, was signed on 15th October 2012.
- The section 30 Order was laid before the House of Commons a week later.
- The Scottish Parliament passed the section 30 Order on the 5th December.
- By the 16th January it had passed both Houses of the UK Parliament.

After this the Scottish Parliament passed two Acts: one to determine the question and rules and another to extend the franchise to 16 and 17 year olds. This process was completed by 17th December 2013.

There is already legislation before the Scottish Parliament, as in 2013, to determine the question and rules of the SNP's proposed legislation. Assuming a nationalist majority, this could pass the Scottish Parliament by June 2021 and the SNP leadership have suggested there would then be a six month period before a referendum could be held – meaning a vote could in theory take place no earlier than December 2021. In reality nobody is likely to want to vote in the Scottish winter and the SNP recently announced that they would wait until Covid had dissipated before pushing for the plebiscite. For them this would mean a referendum in 2023.

Scenario 3 - The SNP achieves a majority but doesn't secure permission from the UK government

This is the scenario where Alex Salmond's brooding presence may be felt most as he pushes Nicola Sturgeon further and quicker on an unsanctioned referendum than she would wish to go. In March 2017 Nicola Sturgeon wrote to then Prime Minister Theresa May requesting discussions about a new section 30 Order. The request was refused, but in the Scottish First Minister's correspondence she made it clear her view was not 'if' a referendum would take place but 'when', whether the UK government agreed or not. Since then the question that has dogged Nicola Sturgeon within her own party is what her 'plan B' is if the UK Government does refuse a section 30 Order.

In 2019 Nicola Sturgeon told impatient party members at the SNP conference that:

"If we were to try to hold a referendum that wasn't recognised as legal and legitimate – or to claim a mandate for independence without having demonstrated majority support for it– it would not carry the legal, political and diplomatic weight that is needed. It simply wouldn't be accepted by the international community, including our EU friends and partners."

The increased support for independence since then has increased pressure on the First Minister, as has the internal party civil war over Alex Salmond, and so she had to offer an alternative route. In January 2021 a document by Cabinet Secretary for the Constitution Mike Russell MSP set out a new more confrontational approach. The Scottish Government would complete the passage of the referendum legislation and then seek to test in the courts whether the Scottish Parliament has competence to hold such a vote without the consent of the UK Government. Such a case may appear before the Supreme Court either through a request for clarification by the Scottish Law Officers or through a challenge from the UK Government.

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There is already a speculative case on legal competence, brought by a private individual, before the Supreme Court. The Court initially refused to rule describing the case as "hypothetical, academic and premature."

Any move might provoke legislation from the UK government to clarify that referendums on the Union are not within the remit of the Scottish Parliament. Something similar occurred over disagreements over the withdrawal from the European Union and the Internal Market Bill.

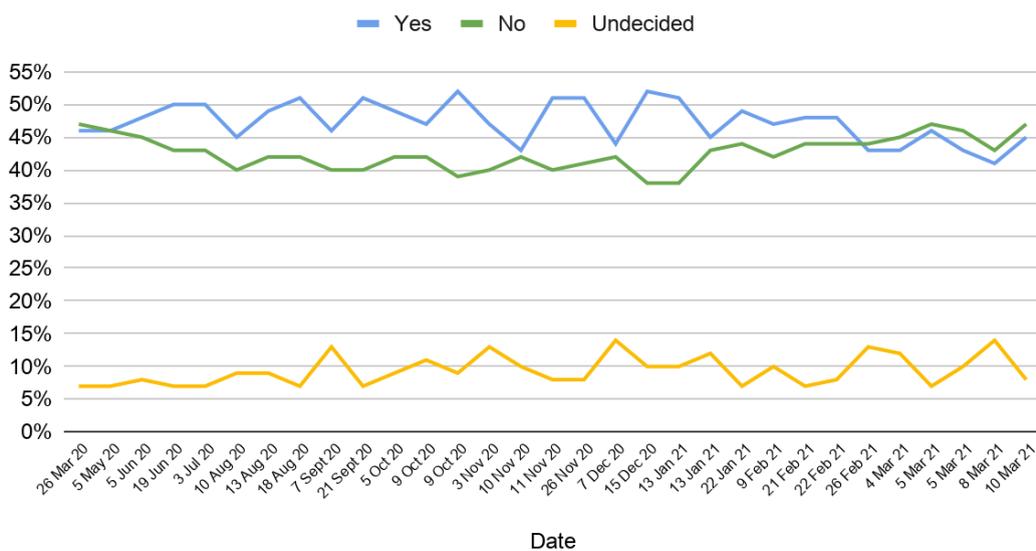
It is unclear what the timescale or outcome of such a legal challenge would be. It does seem clear that if such a challenge fails, the prospect of a referendum would be, for the time being, very unlikely. Any referendum without legal certainty is likely to deter voters due to the messy and risky nature of the process. Further, an illegal vote may also be boycotted by many on the unionist side. For example, the Conservative leader has made it clear his party would not take part in such a vote. The 2017 referendum in Catalonia illustrates why most undecided voters in Scotland are anxious about an illegal vote.

If the legal route fails it would be the beginning, rather than the end, of turmoil over Scottish Independence with political action (protests, wrecking actions in the House of Commons by SNP MPs, etc) likely to follow.

PART TWO: THE POLITICS

Analysing Scottish politics potential legal routes only offers a partial picture. The reality is that, for all the talk of democratic mandates being respected (either the vote of the Scottish people in 2014 or the election in 2021) both sides will be making hard-headed political calculations about which option(s) best suit their preferred political outcome.

Yes vs No on independence since March 2020



Both sides are weaker and stronger

It is Arden’s view that the nationalists are tactically stronger than they were in 2014. But their failure in recent years to address some of the reasons why they lost in 2014 means that they enter this period strategically weaker. Primary among those intellectual failures are a clear view on the currency question and why they would wish to leave an island union to join a continental one.

In contrast, we assess that the anti-independence forces are tactically in a far weaker position than in 2014; not least because the Scottish Labour Party remains in the relative doldrums and the appetite for a formal cross-party campaign has gone.

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Further, the international trend towards

'alternative facts' may reduce the effectiveness of the economics based pro-UK attacks on the SNP. However, supporters of the Union should be cheered by the sense that the economic arguments for independence are far weaker with oil below the SNP's target of \$113 a barrel and medium term oil revenues reduced in the carbon transition.

An argument without end suits both governing parties' interests

Even leaving aside the potential for years of argument over the legal competences, there is good reason to doubt whether a referendum is likely in the short term. The SNP are simply not ready, intellectually or organisationally, to fight another referendum. It also suits both the SNP and Conservative governments for a constitutional stalemate to continue. Of course, there's no doubt that the Conservative leadership wants to maintain the Union and the SNP want to leave it. Though both parties would deny it, they are in political symbiosis.

For Boris Johnson and the Conservatives, prolonging this fight over the constitution has a dual benefit. Firstly, it attracts some non-Tory unionists to vote tactically for them. But more importantly it hinders Labour's message of moving away from identity politics and delays Labour's recovery in Scotland; thus reducing Keir Starmer's hopes of winning a majority. The PM can then go into the next UK election saying to England that a vote for Labour is a vote for having the SNP in a Labour led government. For the SNP, playing identity politics bolsters their base and allows them to stay in power without the political risk of testing independence support which, for reasons discussed below, may be softer than some anticipate.

Challenges for the Nationalist camp

The most significant development for the nationalist politics since 2014 is the passage of time. All governments have a sell-by date, even those as dominant as the SNP have been. Events overtake ministers, parties get tired and complacent, promise is not met, voters become bored. On the backbenches the number of disappointed parliamentarians eventually outnumber those with hope of being promoted to ministerial office.

With open warfare between the Salmond Alba Party and Sturgeon's dominant SNP faction, the SNP no longer resembles the formidable and disciplined message machine they were in 2014. And while Alex Salmond seeks to make life as challenging for his protégé, the SNP is still likely to be led by one of the most skilled communicators in British politics. This time however she will have very noisy dissenting voices disrupting her strategic message.

For example, the issue of currency is felt by the SNP to be why they lost in 2014. The leadership, through the process that resulted in their Growth Commission Report attempted to win fiscal credibility by painting an austere picture of a decade of economic adjustment before finally moving to a new currency. This position has been overturned at successive SNP conferences but the leadership continue to claim that Scotland would use the pound informally for as long as a decade. The deep divisions on this issue, as well as the serious impacts of the leadership's position for financial services and other parts of the Scottish economy, means that their currency policy will not be the one that the party fights a future referendum on.

The currency issue touches on another important challenge. The nationalist offer to voters in 2014 was one which attempted to combine change with continuity: get rid of all the things you don't like

(the Conservatives, austerity, etc) but keep the things you do like (your currency, being part of a bigger economy through EU membership, etc). This is where Brexit, which has so far been a tactical gift for the nationalists, risks becoming a strategic trap. No longer can the SNP use the shared economic frameworks of the EU single market to shrug off the economic impact of disentangling from the more tightly-woven UK single market. While Brexit negotiations continued, SNP ministers offered a “wait and see” answer to the question of what their harder border with England will look like. It is a question that can no longer be avoided and one that cannot be answered without exposing a deep contradiction: how can building borders be both the problem and the solution for Scotland?

In 2014 the nationalist side were able to use independence as a catch-all solution for every problem tapping into a myriad of frustrations. Two developments make that more playbook more difficult today. The first is that the Scottish Parliament has significantly more tax and welfare powers to collect and redistribute money. You don’t need to leave the UK, for example, if Scots want to increase welfare spending.

The second is that the public spending argument has been turned on its head. In 2014, the nationalist campaign seized on an unusually good year’s set of Scottish public finance figures to argue that Scotland could choose more socially democratic choices. Today the oil revenues which created the statistical platform for that argument have evaporated.

The final change for the nationalist side has been the hubris that has grown as a result of recent opinion polling. As with many nationalist movements, there has always been a minority tendency in the SNP that was so convinced of the inevitability of their cause that they were unwilling to compromise with the electorate. In most recent polls support for leaving the UK is hovering just above the 45% they achieved in 2014. In truth, the nationalist side has been bolstered, not by the polls, but by a lack of confidence on the pro-Union side.

Challenges for the Pro-Union camp

On paper, the Union case is in many ways stronger than it was in 2014. The problem is that the parties and the wider movement lack leadership who can make their arguments.

The pro-UK parties, already battered by a landslide defeat at Holyrood in 2011 followed by an electoral earthquake at Westminster in 2015, have seen their confidence shattered by the victory of Brexit nationalism in 2016. Only now does the Labour party appear to be recovering, although it is likely to be too soon for their fluent new leader Anas Sarwar to make an impact before May.

The Conservatives appeared to have engineered a post-2014 recovery based on opposition to Scottish nationalism, but then Boris Johnson took control of their UK party, and their charismatic leader Ruth Davidson departed. The Prime Minister has so far lacked the political subtlety of David Cameron. Cameron stubbornly refused to step into traps set by Alex Salmond, stressing that the campaign to remain in the UK was being led from Scotland by Alistair Darling. The pro-UK side is still, on balance, more likely to win, but it would be in spite of Downing Street’s efforts rather than because of it.

The small group of undecided Scottish voters is sceptical about leaving unions, whether the EU or the UK. The pro-UK side should be able to use Brexit as a cautionary tale about the costs of erecting trade barriers and physical borders. However a

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UK government pursuing Brexit can hardly use Scotland's doubts about Brexit as the premise of their argument.

There is a practical need for a broad-based campaign in any referendum but the parties are unwilling to work together to fight against independence as they did in 2014. We are likely to see a non-partisan campaign this time, perhaps with politicians such as Gordon Brown and Ruth Davidson offering political leadership, but without the personality of a cross party campaign. It would be strengthened by being a looser, more insurgent campaign than that run in 2014.

The Pro-Union side this time will feel that, unlike in 2014, they may be able to portray a more tired and divided SNP as the status quo. That a narrative of the decline of a hegemonic nationalist movement may be just as interesting a story to tell as the end of the UK union.

Conclusion

In the history of devolution the SNP have never won a majority in the parliament while also gaining an explicit mandate for a referendum. They have been able to win a majority by making a traditional incumbent government argument of competence. But in this election their strategy is to try to win an election and a mandate. They have now sought permission from the Electoral Commission for the party's name to be listed on the ballot paper as 'Vote SNP for IndyRef2'. This may scare off some undecided voters who respect Nicola Sturgeon but who are opposed to independence.

In a contest where IndyRef2 is explicitly on the ballot the SNP will claim that a convincing parliamentary majority gives them the moral authority for another referendum. Recent movements in the polls suggest that an SNP majority may not be as certain a proposition as it seemed a few months ago. The irony facing Nicola Sturgeon is that the more the SNP stress their intention to hold a referendum in the near future, in part to placate their own membership, the less likely they are to win the mandate that would make that possible. And if the SNP were to win big it is currently more likely than not that the UK government will maintain its opposition to Indyref2. However a result which is seen by the Scottish and UK commentariat as a convincing endorsement of the SNP's demand will add to the discomfort of the UK government.

In the event of Indyref2, the pro-UK side can make a convincing case that leaving the UK entails more economic upheaval than it would have done in 2014. However, the shadow of Brexit will make it more difficult for many on the unionist side, especially Conservative ministers, to make that case.

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Nationalists aim to use the personality of Boris Johnson as an avatar for everything which many Scottish voters do not like about the UK.

However, while in 2014 the SNP were able to share a story which offered change alongside economic continuity. In the event of a new vote the need for a new currency, fiscal constraints and a harder border with England are significant challenges for nationalists that have yet to be exploited by supporters of the Union.

The most important feature that hasn't changed since 2014 is that the debate is still dominated by two vocal tribes, with opinions as firmly fixed as the flags on their social media profiles. If a second referendum were to take place, and it remains an 'if', then the campaign that wins is likely to be the one that is best able to have a respectful conversation with that small group in the centre ground.

