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A voluntary union? The aftermath of the 2014 vote and the establishement of a clear pathway for second Scottish Indipendence Referendum

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A VOLUNTARY UNION? THE AFTERMATH OF THE 2014 VOTE AND THE ESTABLISHMENT OF A CLEAR PATHWAY FOR SECOND SCOTTISH INDEPENDENCE REFERENDUM*

di ELISENDA CASANAS ADAM**

ABSTRACT (ITA): Il referendum indipendentista celebrato in Scozia nel 2014, se considerato nella sua qualità di modello negoziale, deliberativo e attuativo inerente a una questione di pregnante connotazione costituzionale, è stato salutato come un'espressione di democrazia che ha consegnato una risposta paradigmatica, prodotta da una democrazia liberale, nei confronti di un'impegnativa richiesta di autogoverno proveniente da una singola area substatale. Se considerato sotto diversi profili, questo modo di procedere è stato il riflesso del peculiare assetto costituzionale del Regno Unito e del suo stesso sistema politico dove storicamente la configurazione unitaria della statualità e il pluralismo delle nazionalità sono generalmente riconosciuti e accettati. Comunque, principale conseguenza del referendum del 2014 è avere radicalmente trasformato l'approccio del Governo britannico alla tematica emersa dal voto scozzese, giungendo fino al punto di rifiutare, nonostante l'emersione di una forte maggioranza indipendentista nel Parlamento di Holyrood, qualunque concessione all'eventualità di un secondo referendum.
In tale nuovo contesto, al Governo scozzese è stata sottratta la capacità di cogliere qualsiasi opportunità che, nella mancanza di ogni orientamento concreto, possa aprire il passaggio verso una soluzione indipendentista favorita dal verificarsi di nuove circostanze politiche o agevolata dall'aprirsi di un diverso percorso costituzionale. Con queste riflessioni sul tema *"The Independence Referendum: A missed opportunity for Scottish Separatism?"*, l'articolo pone in rilievo l'unicità del sistema costituzionale del Regno Unito che nel 2014 ha agevolato l'indizione del referendum, ma al contempo ha prodotto l'attuale stallo. Infine, suo scopo è analizzare a quali condizioni si possa aprire un percorso più coerente che nel futuro renda possibile in Scozia un secondo referendum.

ABSTRACT (ENG): The Scottish Independence referendum of 2014 was hailed as a model exercise of democratic negotiation, deliberation and decision-making and is comparatively considered a paradigmatic example of a response by a liberal democratic state to a sub-state request for independence. In many ways, this process was a reflection of the UK's unique constitutional framework and political context, where historically both the union nature of the state and its multinational reality were generally openly recognised and accepted. However, the aftermath of the 2014 referendum led to a shift in the approach of the UK Government to these questions, and it has therefore refused to follow its previous practice or engage with requests for a second referendum, despite the consistent pro-independence majority in the Scottish Parliament. This new context has left the Scottish Government with no available options to pursue and no clarity regarding what circumstances or procedure may enable such a referendum to go ahead in the future. As part of this set of reflections on "The Independence Referendum: A missed opportunity for Scottish Separatism?", this article considers the uniqueness of the UK's constitutional framework, which both facilitated the 2014 vote but at the same time has led to the current stalemate, and analyses how it can facilitate the establishment of a clear pathway to a second Scottish referendum in the future.

PAROLE CHIAVE: Indipendenza, referendum, devoluzione, stato unitario, stato plurinazionale.

KEYWORDS: Independence, referendum, devolution, union state, multinational state.

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1. Introduction.

The Scottish Independence referendum of 2014 was hailed as a model exercise of democratic negotiation, deliberation and decision-making and is comparatively considered a paradigmatic example of a response by a liberal democratic state to a sub-state request for independence[1]. In many ways, this process was a reflection of the UK's unique constitutional and political context, where historically both the union nature of the state and its multinational reality were generally openly recognised and accepted. Yet eight years later, a request for a second referendum by the Scottish institutions, including the drafting of a "Referendum Bill" received little acknowledgment from the UK Government or the UK Supreme Court, in a decision that left the Scottish institutions with few options to enable the referendum to go ahead. These developments were largely the result of a shift in attitude by the UK Government regarding the issue of Scottish independence after the 2014 vote, but as interpreted in this new context, the constitutional framework did not provide the mechanisms to effectively overcome the resulting impasse. Despite the UK being understood as a voluntary union, there is currently a lack of legal certainty regarding both the circumstances or requirements which could lead to a second referendum being held, even in the case of sustained democratic support for a second vote, and it appears that the decision is left to the discretion of the UK Government.

As part of this set of reflections on "The Independence Referendum: A missed opportunity for Scottish Separatism?", this article considers the uniqueness of the UK's constitutional framework, which both facilitated the 2014 vote but at the same time has led to the current stalemate, and analyses how it can facilitate the establishment of a clear pathway to a second Scottish referendum in the future. For this, it begins by setting out the most distinctive aspects of the UK's constitutional framework, and how it facilitated the process leading up to the Edinburgh Agreement and Scotland's 2014 independence referendum, which has been internationally recognised as a model of best practice. It then considers the UK Government's shift in its approach to these questions following the 2014 vote, and how this determined both the Scottish Government's strategy in aiming to hold a second independence referendum, and the responses of the UK Government itself and the courts. The final section analyses the consequences of this new approach and how best to establish a legal pathway for a second independence referendum in Scotland.

[1] F. PALERMO, *Towards a Comparative Constitutional Law of Secession*, in G. DELLEDONNE, G. MARTINICO (eds), *The Canadian Contribution to a Comparative Law of Secession: Legacies of the Quebec Secession Reference*, Palgrave, 2019 and S. TIERNEY, *The Scottish Independence Referendum: A Model of Good Practice in Direct Democracy?*, in A. MCHARG, T. MULLEN, A. PAGE and N. WALKER (eds) *The Scottish Independence Referendum: Constitutional and Political Implications*, OUP, 2016.

2. The UK's unique constitutional and political context.

The UK constitutional framework presents a series of distinctive features that have conditioned both the approaches to, and responses of, both the Scottish and UK institutions in the context of successive requests for Scotland to be able to decide its own future[2]. These features considered will be the multinational union state, the voluntary union, the political constitution and Parliamentary Sovereignty, and the 1998 devolution settlement and the Scotland Act 1998.

The United Kingdom is a multinational state with four distinct territorial units: Scotland, England, Northern Ireland and Wales. When considering the territorial organisation of the state, the UK is at the same time viewed as a unitary state, a union state, since devolution in 1998 a quasi-federal state, or more generally as a *«State of unions»*[3]. This reflects both different understandings of the development of the UK's unique constitutional history and of the articulation of the current framework which holds togethers its four distinct constituent territories. In this sense, Scotland, Wales and Northern Ireland all have a different relationship with the larger English centre, which is a result of their own distinct historical process of integration into the wider UK State. In the case of Scotland, this was based on the political Union of the historical Parliaments of Scotland and England in 1707, and therefore not on conquest or assimilation, which was formalised in a Treaty of Union[4]. Specifically, this treaty was designed to provide for the protection and continuation of certain Scottish institutions and laws, when joining the larger English entity. Among these, most notably, were Scotland's independent legal system, including its courts and judges, and certain parts of its laws, which have remained as such to this date[5].

In the Scottish context, therefore, the idea of a multinational union was at the centre of the UK constitutional framework that predated the devolution settlement in 1998, and provides a broader set of constitutional principles that can inform the interpretation of its provisions, and contribute to the resolution of conflicts arising in relation to its content, extension and limits. In this sense, and as will be explained below, devolution to Scotland was designed to provide an institutional recognition to this broader multinational Union framework, creating a new Scottish Parliament to give a distinct voice to the Scottish people, and to enable Scotland to create and develop its own laws and institutions.

While not specifically recognised in the constitutional framework, the understanding that Scotland voluntarily entered into a Union with England and the rest of the UK ("voluntary

[2] On the UK and Scottish Constitutions more generally, see N. BARBER, *The United Kingdom Constitution*, Oxford, OUP, 2021 and C. HIMSWORTH, C. O'NEILL, *Scotland's Constitution: Law and Practice,* Edinburgh, Bloomsbury, 4th Ed, 2021.

[3] S. TIERNEY, *Constitutional Law and National* Pluralism, Oxford, OUP, 2005 and M. KEATING, *State and Union in the United Kingdom: The Fractured Union,* Oxford, OUP, 2021.

[4] This Treaty was in turn ratified via legislation by both sovereign parliaments in the Act of Union with England 1707 and Act of Union with Scotland 1707, respectively. See C.A. WHATLEY, *The Scots and the Union,* Edinburgh, Edinburgh University Press, 2006. On the consensual nature of the Union from a Scottish perspective, see also ID, *Bought and Sold for English Gold?: Explaining the Union of 1707*, Edinburgh, Tuckwell Press, 2001.

[5] Treaty of Union between England and Scotland 1707, Art. 19.

Union") also entailed the idea that Scotland could decide to leave the Union and become independent if a majority of the Scottish People decided to do so. As Torrance notes, there developed a consensus that Scottish independence should take place if a majority of Scottish MPs committed to independence were returned in a UK general election[6]. For example, this appeared to be accepted by successive Conservative UK Prime Ministers, with Margaret Thatcher stating specifically in her memoirs that «*as a nation, the [the Scots] have a right to self-determination; thus far they have exercised that right by joining and remaining in the Union. Should they determine on independence no English party or politician would stand in their way* [...]»[7]. This recognition and acceptance was a reflection of the Union / multinational constitutional framework considered above, but was also fundamental to it in the context of a political constitution, where these principles were not enshrined or protected in an overarching constitutional document.

This understanding of the UK's plural constitutional framework is also reflected at the Scottish level in the process that led to the devolution settlements and the to the creation of a Scottish Parliament. In this sense, it can be seen in the growing electoral success of the Scottish National Party in the 1960s, arguing that the Sottish People were sovereign and could exercise self-determination to achieve independence, and in the "Claim of Right for Scotland" in 1988, which advocated for the establishment of a constitutional convention to provide for a scheme of devolution.[8] While the recognition of the *«sovereign right of the Scottish people»* did not appear in the document itself, it did features in a declaration signed at the first meeting of the Convention, which was signed by most Labour and Liberal Democrat MPS in Scotland.[9] It is generally recognised that this was a political rather than a justiciable claim to the sovereignty of the Scottish people, yet is still reflects the general understanding of the overall framework.

A second unique aspect of the UK constitution is that it is in many dimensions a political constitution, based on the central principle of the Sovereignty of the Westminster Parliament[10]. There is therefore no written constitutional text that has primacy over other norms and is binding on all institutions of government, but rather, the constitution is made up of a series of historical documents, legal principles, conventions or practices, and laws, which, in principle, can all be amended by an Act of the UK Parliament. For the questions considered in this article, there are no general constitutional provisions that could be argued prohibit or impede the holding of a sub-state referendum or a sub-state secession process in the UK and, analogously, these are not matters that could be brought before a court to ensure compliance with the overarching constitution. In this way, the focus is very much on the Westminster Parliament. When coupled with the recognition of the Union State and

[6] D. TORRANCE, *Scottish Independence Referendum: Legal Issues, Commons Library Research Briefing*, 18 September 2024.
[7] D. TORRANCE, *op. cit.*, p. 14.
[8] M. THATCHER, *The Downing Street Years*, London, HarperCollins, 1993, p. 624.
[9] Commons Library research briefing, Claim of Right for Scotland, 8 July 2018.
[10] N. BARBER, *op. cit.* and M. ELLIOTT, R. THOMAS, *Public Law,* Oxford, Oxford University Press, 2020, 4th Edition.

the idea of the voluntary Union, the flexibility provided by the unwritten constitution and the principle of parliamentary sovereignty has facilitated both the discussion of, and avenues for, an independence referendum.

The third distinctive feature of the UK constitutional is the process of devolution in Scotland, Wales and Northern Ireland in 1998, leading to the enactment of the Scotland Act 1998, the Government of Wales Act 1998, and the Northern Ireland Act 1998, ratified by the corresponding electorates in each territory via referendum[11]. Each of the three devolution settlements created a devolved parliament or assembly with a distinct scope of powers. The flexibility of the UK's unwritten constitutional framework allowed for the creation of asymmetrical devolved systems, where each devolved settlement was distinct in response to the perceived demands or preferences of the citizens of each territory. In the case of Scotland, the Scotland Act 1998 created a democratically elected devolved parliament with ample legislative competences, that extended to all matters not reserved to the Westminster Parliament in the Act itself[12]. This flexibility has also allowed for the different devolution settlements to be subsequently reformed, leading to the amendment of key aspects of each settlement and to the transfer of further competences to the devolved parliaments[13].

In contrast to the broader political constitution, however, each of the devolution Acts establishes a binding written legal framework which sets limits to the competences of the devolved parliaments and which can be policed by the courts. In the case of Scotland, the Scotland Act 1998 provides specifically that Acts outwith the competence of the Scottish Parliament are *«not law»*, and can be challenged and struck out by the courts via the *«devolution issues procedure»*[14]. Notably, and in order to ensure compliance with the overarching principle of parliamentary sovereignty, the Scotland Act 1998 also provides that the devolution settlement does not affect the power of Westminster to legislate for Scotland in devolved areas[15]. As a result, Westminster can still legislate in these areas and this cannot be challenged before the courts by the Scottish institutions. Their only protection is the Sewel Convention, which provides that the UK Parliament will not normally legislate in devolved matters without the consent of the Scottish Parliament. In this way, the Scottish Parliament is in a much more restricted position within the broader constitutional framework than that of Westminster.

Interestingly, the Scotland Act 1998 itself is specifically silent on the question of whether the Scottish Parliament has the competence to legislate for a Scottish independence referendum. While the competence over referendums is not reserved, it was a series of

[11] On devolution, see M. ELLIOTT, R. THOMAS, *op. cit.*, pp. 313-355 and a. MCHARG, *Unity and Diversity in the United Kingdom's Territorial Constitution*, in M. ELLIOTT, J. VARUHAS and S. WILSON STARK (eds.), *The Unity of Public Law? Doctrinal, Theoretical and Comparative Perspectives*, Hart Publishing, 2018, pp. 279-300.
[12] Scotland Act 1998, ss. 1, 28 and 29.
[13] For example, the Scotland Act 1998 has been amended in 2012 and 2016, providing further powers and safeguards for the devolved institutions.
[14] Scotland Act 1998, ss 29, 98 and Schedule 6.
[15] Scotland Act 1998, s 28(3).

reservations regarding the UK Constitution, namely *«the Union»* and *«the Parliament of the UK»*, that generated a degree uncertainty in the years leading up to the 2014 referendum[16]. Overall, there was largely an agreement the break-up of the Union would require legislation by the UK Parliament, but there remained a debate regarding whether the Scottish Parliament could legislate for a consultative referendum on Scottish independence, and on how the reserved provisions should be interpreted in this context[17]. This uncertainty in the Scottish devolution settlement stood out in contrast with the Northern Irish settlement, where the Northern Ireland Act 1998 includes a specific process for a referendum on Irish unification. In the Northern Irish case, the Northern Ireland Act 1998 compels the Secretary of State to hold such a vote should it appear likely that a majority of its electors would support such a proposition, and also confers on them the power to hold such a referendum at any time[18]. Yet, despite the silence of the Scotland Act 1998 and the rigid, binding devolution framework, these matters were not a significant concern at the time as the practice had developed of resolving competence disagreements between the UK and Scottish Governments via political means, rather than through legal challenges in the courts[19]. This initial collaborative functioning of the devolution settlement further contributed to its flexibility and to a development of the system that further reflected the particularities and preferences of its different nations.

The UK constitutional framework therefore stands in stark contrast to that of other multinational states where, while there might be some constitutional recognition of their internal national diversity, this does not entail an acceptance of the right of their minority nations to decide to break away from the state, if this is the preference of the majority of their citizens[20]. Quite the contrary, in many of these cases this national diversity is subject to constitutional provisions regarding state-wide national sovereignty and unity, which are presented as unbreachable limits for any independence claim put forward by a national minority or sub-state unit. Furthermore, the constitutional frameworks of many multinational states tend to be notably rigid, and therefore not only to provide no or very limited avenues for a sub-state independence referendum, but also to include unsurmountable barriers to any reform in this sense at the request of a minority nation, leaving them with no real effective avenues to pursue.

[16] Scotland Act 1998, Schedule 5, Reserved Matters, Part I, "The Constitution" which includes (b) the Union of the Kingdoms of Scotland and England and (b) the Parliament of the United Kingdom.
[17] Scotland Act 1998, S 29(3) provides that *«the question whether a provision of an Act of the Scottish Parliament relates to a reserved matter is to be determined, […] by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances».*
[18] Northern Ireland Act 1998, s. 1.
[19] E. CASANAS ADAM, *Brexit and the mechanisms for the resolution of conflicts in the context of devolution: Do we need a new model?* in O. DOYLE, A. MCHARG and J. MURKENS (eds) *The Brexit Challenge for Ireland and the United Kingdom: Constitutions under Pressure*, Cambridge, CUP, pp. 43-63.
[20] For example, on the case of Spain, see E. CASANAS ADAM, *Constitutional Law and Secession in Spain*, in R. GRIFFITHS, A. PAVKOVIK and P. RADAN (eds) *The Routledge Handbook of Self-Determination and Secession*, Routledge, 2023, pp. 604-616.

3. The Edinburgh Agreement and the 2014 Referendum.

The questions regarding Scotland's place in the Union and the Scottish Parliament's competence to legislate for an independence referendum came to the forefront of political and academic debates in 2011, when the SNP won and overall majority in the Scottish Parliament elections with a manifesto that included holding a referendum. This was a particularly notable achievement, as the electoral system had been specifically designed to avoid majority governments and favour collaboration between parties. The newly elected Scottish Government therefore argued that it had mandate to hold an independence referendum, and that the Scottish Parliament had the competence to legislate for it. In response, the UK Government accepted the significance of the result and the Scottish Government's mandate to hold a referendum. However, it did not accept that it was within the competence of the Scottish Parliament to legislate for the referendum. According to the UK Government, this could only be done by Westminster legislation, thus aiming to retain some control over the design and conditions of the referendum process. Interestingly, despite their disagreement on the competence question, both governments agreed that this was preferably a political matter that should be resolved through the political branches of government, thus avoiding it being brought before and decided by the courts. After a period of negotiations on these questions, the United Kingdom and Scottish Governments signed the Edinburgh Agreement on the 15 October 2012, which stated that they had agreed *«to work together to ensure that a referendum on Scottish independence can take place»*[21]. The Agreement also included some specific details regarding the holding of the referendum, and a mechanism to enable the Scottish Parliament to legislate for it.

The legal instrument selected to materialise the Edinburgh Agreement was also designed to insulate the resulting referendum from any competence challenges in the courts and enable the democratically negotiated process to proceed. It is worth highlighting here that a distinctive feature of the devolution issues procedure provided in the Scotland Act 1998 to ensure that the legislation of the Scottish Parliament was within its competences is that challenges may also be brought by individuals[22]. Therefore, despite the agreement between the UK and Scottish Governments to enable the Scottish Parliament to legislate for the referendum, the legislation could have still been challenged by one or various individual claimants. In order to avoid this, the Edinburgh Agreement provided for the drafting of a s 30 Order, which specifically transferred the competence to hold an independence referendum to the Scottish Parliament[23]. While this served to insulate the 2014 referendum from any future challenges on this basis, it was not a recognition on the part of the Scottish Government that the holding of an independence referendum was outwith the Scottish Parliament's competence, and this question remained unresolved.

[21]Agreement between the United Kingdom Government and the Scottish Government on a referendum on independence for Scotland, Edinburgh, 15 October 2012, par.1.
[22] Scotland Act 1998, Schedule 6.
[23] Scotland Act 1998, s. 30.

Overall, the negotiated and consensual nature of the Edinburgh agreement led to a referendum campaign and process that was seen both internally and comparatively as a model process of citizen engagement and deliberation, leading to an outcome that was closer than initially expected, due to a significant rise in the yes vote (55.3% (no) / 44.7% (yes)).[24] In response to this increase in support for independence during the final stages of the campaigning, a last minute promise or *«Vow»* from representatives of the three main unionist parties committed them to significantly amending the devolution settlement for Scotland if it voted to remain in the UK[25]. The outcome was then not a vote for the status quo, but one for further devolution.

It is clear from the above considerations that the unique features of the UK's constitutional framework were fundamental to the 2014 referendum process and its success. The broader union framework, and the understanding of the Scotland's being integrated into the UK via a voluntary union, led to the UK Government's initial response to, and acceptance of the referendum, which was then endorsed by the Westminster Parliament. Furthermore, the inherent flexibility of the political constitution enabled the Scottish and UK Governments to design a specific procedure under the devolution settlement that enabled the Scottish Parliament to legislate for the referendum, at the same time avoiding any potential future legal challenges. The result, as is well known, was a largely uncontested referendum process, where the deliberation could focus on the arguments in favour and against independence itself, and with a clear commitment on both sides to accept the outcome of the vote.

4. The Aftermath of the 2014 Referendum and the Shift in the UK Government's Approach.

The change in tone in the Prime Minister, David Cameron's, speech after the referendum results were made public is clearly perceptible, highlighting the shift in the UK Government's approach to the referendum question that would come to determine its responses to any requests for a second vote. After announcing how delighted he was, Cameron declared that *«it is time for our United Kingdom to come together, and to move forward. A vital part of that will be a balanced settlement – fair to people in Scotland and importantly to everyone in England, Wales and Northern Ireland as well»*[26]. While he stated clearly that the promises made to Scotland would be fulfilled, he also seemed to tie this process to the enactment of wider reforms across the UK: *«It is absolutely right that a new and fair settlement for Scotland should be accompanied by a new and fair settlement that applies to all parts of our United Kingdom»*[27]. His speech paid special attention to England, which is generally considered to be the key concern in relation to the wider devolution framework, and can be seen as a response to a hardening

[24] See 1, supra.
[25] These were incorporated into what became the Scotland Act 2016.
[26] PRIME MINISTER'S OFFICE, *Scottish Independence Referendum: Statement by the Prime Minister,* 2014.
[27] PRIME MINISTER'S OFFICE, *op. cit.*

in public opinion in England in relation to Scotland, sparked by the referendum and by the belief that too many concessions had been made[28].

A series of constitutional and quasi-constitutional reforms followed the referendum. On the one hand, the establishment of the Smith Commission led to the initiation of a cross-party process directed at rapidly reaching an agreement and enacting draft legislation, which became the Scotland Act 2016[29]. This Act amended the Scottish devolution settlement, providing new competence and safeguards for the Scottish Parliament. On the other, the Conservative government brought forward proposals for English votes for English laws (EVEL) in Westminster and, as an alternative to an English parliament or regional English parliaments, the Cities and Local Government Devolution Act 2016 provided for "devolution deals" to be made between the UK Government and local authorities. A new Wales Bill was also presented, which became the Wales Act 2017, bringing the structure of devolution in Wales closer to that in Scotland. As had been promised by David Cameron, therefore, the reforms that followed the 2014 independence referendum went further than simply amending the devolution settlement for Scotland. These reforms were also aimed at addressing concerns that too many concessions had been made to Scotland, to the detriment of the UK's other nations.

More generally, the referendum and developments that followed sparked concerns about the overall development of the model of territorial organization and the need for stronger safeguards for the Union. A report prepared by the House of Lords Select Committee on the Constitution on The Union and Devolution argued that the *«haphazard approach to the UK's constitution in which power has been devolved without any counterbalancing steps to protect the Union, recently culminated in an existential threat in the form of a referendum on Scottish independence. […] Should any proposals for further devolution arise in the future, they should be considered within the appropriate framework of the constitutional principles that safeguard the integrity of the Union»*[30]. The report also called for the regulation or further limitation of the possibility of Scotland (or another nation) holding another independence referendum, highlighting that *«provision for any future referendum on an issue as fundamental to the Union as the secession of one of its four nations should be set out in primary legislation by the UK Parliament»*[31]. Similar calls also came from the academic sphere.[32] These concerns no doubt also contributed the shift in the UK Government's approach. As a result, an unexpected consequence of the 2014 independence referendum

[28] M. KEATING, *The Scottish independence referendum and after*, in *Revista d'Estudis Federals i Autonomics* n. 21, 2014, pp. 73-98.

[29] S. TIERNEY, *And the winner is….the Referendum: Scottish Independence and he Deliberative Participation of Citizens,* Int'l J. Const. L. Blog, 2014; J. CURTICE, *Scotland "One year On": the Legacy of the Independence Referendum*, Discussion Paper, International Public Policy Institute, University of Strathclyde, 2015; A. MCHARG, *A Powerhouse Parliament? An Enduring Settlement? The Scotland Act 2016*, in *Edinburgh Law Review*, vol. 20, n. 3, 2016, pp. 360–361.

[30] HOUSE OF LORDS SELECT COMMITTEE ON THE CONSTITUTION, *The Union and Devolution. 10th Report of the Session 2015-16*, 2015, par. 3.

[31] HOUSE OF LORDS SELECT COMMITTEE ON THE CONSTITUTION, *op. cit.*, par. 4.

[32] N. BARBER, *After the vote: Regulating future independence referendums*, in *UK Constitutional Law Association Blog*, 2015; G. COWIE, *Scotland and a Second Independence Referendum – The Obstacles and Challenges and the Comparative Solutions*, in *UK Constitutional Law Association Blog*, 2016.

is that it would be more difficult for Scotland or one of the other devolved nations to hold another referendum or to secure additional constitutional reforms in the future.

A further factor that contributed to the shift in the UK Government's position was the sustained support for independence in Scotland after the referendum took place. As Noon and Dugdale note in their recent report on "Scotland and the Constitution", the 2014 referendum was not seen as posing any real threat to the UK, and the UK Government was more concerned with the risks associated with rejecting it or being seen to block it[33]. However, since then, the balance of risk has shifted for the UK Government, given substantially higher levels of support for an independent Scotland in the post-referendum period. This further reinforced the shift in its approach to the question of Scottish independence or of holding a second referendum, as can be seen in its responses to the Scottish Government's requests below.

5. The Scottish Government's Strategy post 2014 and the 2021 Referendum Bill.

The question of Scottish independence appeared to have been successfully resolved until the holding of the Brexit referendum by the UK Government in 2016. Indeed, from the Scottish perspective, EU membership and of Scotland remaining part of the EU had been central to the deliberations and vote in the independence referendum[34]. After a polarized and controversial campaign, the overall outcome of the Brexit referendum vote differed significantly across the UK (and in different parts of the UK): 51.9% (Leave) / 48.1% (Remain) and in Scotland 38% (Leave) / 62% (Remain). Yet, this territorial divergence in the outcome was not taken into consideration when deciding the result and its consequences, and therefore Scotland was forced to leave the EU, as part of the broader UK exit process, against its will. This was then seen as a significant change in circumstances in relation to the 2014 vote regarding independence, and as a justification for a second independence referendum to determine whether the people of Scotland still wanted to remain in the UK in the new circumstances.

In its manifesto for the 2016 Scottish Parliament elections, the SNP stated that: *«the Scottish Parliament should have the right to hold another referendum if there is clear and sustained evidence that independence has become the preferred option of a majority of the Scottish people – or if there is a significant and material change in the circumstances that prevailed in 2014, such as Scotland being taken out of the EU against our will»*[35]. The 2016 election again resulted in a pro-independence majority of MSP's, despite the SNP losing their overall majority, as the Green Party also supported independence. Therefore, after the outcome of the Brexit referendum, the First Minister confirmed that a second independence referendum was *«highly likely»*, considering the

[33] K. DUGDALE, S. NOON, *Scotland and the Constitution: Agreeing a way forward,* Centre of Public Policy, University of Glasgow, 2024.

[34] E. CASANAS ADAM, *The Scottish Independence Referendum: Lessons learned for the future,* in A. LOPEZ BASAGUREN, L. SAN-EPIFANEO (eds.) *Claims for Secession and Federalism: A Comparative Study with a Special Focus on Spain*, Springer, 2019, pp. 183-202.

[35] SNP, *Re-Elect, Manifesto 2016,* Manifesto for the 2016 Scottish Parliament Elections, 2016.

election result provided them with a mandate to do so.[36] However, whereas in 2011 the UK Government had accepted that the Holyrood election result provided the SNP with such a mandate, it did not take a similar view in 2016, confirming the shift in its approach to the question of Scottish independence that had followed the 2014 vote.

At this initial stage, the Scottish Government's strategy was to repeat the process that had led to the successful referendum in 2014. Therefore, following the steps that had been taken in 2012, the First Minister, Nicola Sturgeon, requested a s30 Order for the transfer of the competence to legislate for a second independence referendum. This happened first in 2017, when the Prime Minister was Teresa May, and again in 2019, when it was Boris Johnson. While Teresa May did not officially respond and shortly after the request called a snap general election, Boris Johnson's reply refused the First Minister's request, stating that: *«the 2014 referendum was a once in a generation vote»* and that *«the UK Government will continue to uphold the democratic decision of the Scottish People»*[37]. This refusal to consider a s30 Order continued even after the SNP and the Greens gained a new pro-independence majority in the 2021 Scottish Parliament elections, and was reiterated by different UK Government ministers. Notably, the Secretary of State for Scotland, Douglas Jack, stated that a second referendum was possible, but regarding when they might agree for it to take place, cited the *«duck test…[I]f it looks like a duck and it waddles like a duck, it's probably a duck»*, with little further explanation.[38] In this way, the UK Government have put forward no clear views on the circumstances of requirements that could lead them to agree to a second independence referendum, and transfer the necessary competence accordingly.

The continuous refusal by the UK Government to acknowledge the SNP's requests and to transfer the competence to the Scottish Parliament for the holding of a second referendum also led to proposals for alternative options within the independence movement such as the organisation of an "unofficial" referendum on Scottish independence. Yet the First Minister was consistently opposed to this avenue, stating clearly that: *«if we were to try and hold a referendum that wasn't recognised as legal and legitimate […] it would not carry the legal and political and diplomatic weight needed. It simply wouldn't be accepted by the international community, including our EU friends and partners»*[39]. This position was no doubt influenced and largely reinforced by developments in Catalonia, where the Catalan independence referendum was not legally recognised by the state authorities and received very little support or recognition from the EU or the international sphere, even despite the Spanish state's significantly hardline response. Yet it can also be understood within the UK's own unique constitutional framework and circumstances, which are notably different to those of Spain. While the Spanish Government's position in Spain was that a Catalan referendum was incompatible

[36] *Brexit: Nicola Sturgeon says second Scottish independence vote "highly likely"*, *BBC News online*, 24 June 2016.
[37] Letter from PM Boris Johnson to Scottish First Minister Nicola Sturgeon, 10 Downing Street, 14 January 2020.
[38] C. McCorkindale, *Constitutional Pathways to a second independence referendum - who ordered the duck?,* Centre for Constitutional Change Blog, 2022.
[39] N. Sturgeon, *The case for Scottish independence has never been more compelling,* SNP, 2019.

with the Constitution, in the UK, the 2014 referendum process served as a precedent that the UK Government could not ignore. There was therefore, in principle, no need for the Scottish Government to pursue unofficial pathways, when a clearly legal and legitimate pathway existed and had been successfully used a few years earlier.

However, in practice, and without the agreement of the UK Government, the UK constitutional framework provided very few avenues for the Scottish Government to pursue its *«legal and legitimate»* independence referendum.[40] Indeed, and as can be seen from its change of strategy, the Scottish Government was left with no other option but to proceed unilaterally, aiming firstly, to pressurise the UK Government into granting a s30 Order, and if not, to entrust the matter to the courts to decide, as the question of whether the Scottish Parliament had the competence to legislate for a consultative, non-binding independence referendum had been left unresolved.[41] Indeed, a distinctive feature of the process leading up to the 2014 referendum was the agreement between both governments to keep the referendum in the political sphere and out of the courts, due to the uncertainty over what the courts would say on the issue of an independence. This uncertainty remained after 2014, and thus the UK Government would need to decide between agreeing to a s30 Order and retaining some control over the process, or risking the courts' deciding that the referendum was indeed with the competence of the Scottish Parliament. For this, the Scottish Government had to draft a referendum Bill and introduce it into the Scottish Parliament for consideration, as it was understood that this was the way to bring the matter before the Supreme Court.

The Scottish Parliament started preparing for a second referendum by enacting the Referendums (Scotland) Act 2020, which provided a general framework for holding referendums on devolved matters, and the Scottish Elections (Franchise & Representation) Act 2020, which among other issues, extended the franchise to foreign nationals with residence in Scotland. The Scottish Government then finally published its Draft Independence Referendum Bill on 22 March 2021. It was quite a short Bill, covering only a few key points: firstly, the timing of the referendum, stating should be a matter for the Scottish Parliament to decide, in order to ensure that it would be held take place once the Covid public health crisis was over; secondly, it established that the question should be the same one used during the 2014 referendum, and that it would be tested by the Electoral Commission; and thirdly, it provided that voting eligibility would be extended to match the franchise at Scottish Parliament and local government elections, thus include foreign nationals with leave to remain in Scotland (or who do not require such leave). The Bill thus showed a significant degree of continuity with the 2014 vote and was clearly designed to pass quickly and easily through the Scottish Parliament, thus increasing the pressure on Whitehall[42]. However, and as will be seen below, this strategy did not result in a new

[40] C. McCorkindale, A. McHarg, *Constitutional Pathways to a Second Independence Referendum* in E. Hepburn, M. Keating, and N. McEwen (eds.) *Scotland's New Choice: Independence After Brexit*, Centre on Constitutional Change, 2021.
[41] M.Russel, *The Road to a referendum that is beyond legal challenge,* SNP, 2021.
[42] C. McCorkindale, A. McHarg, *op. cit.*

agreement or a s30 Order, and the matter ultimately was brough before the courts. This is a further example of the UK Government's significant shift in its approach to Scottish independence after the 2014 vote and of its impact on the referendum question.
The above considerations confirm that, without the agreement of the UK Government, the Scottish Government had no legal avenues to proceed with a second referendum process that mirrored the one in 2014, and that its various attempts to pursue this via political avenues, either through negotiation or pressure, were also unsuccessful. Due to the lack of specific legal recognition that Scotland could leave the Union if a majority of its citizens decided to do so or of an established procedure that provided for a referendum process that was recognised and accepted at both levels, they had no way to constrain the UK Government to accept their claims. Despite the broader Union framework and the generally accepted narrative of the voluntary union, the UK Government's change of approach served to highlight the significant asymmetry between both levels of government, and most notably, the constitutional weakness of the position of Scottish Government and Parliament in this new context.

6. The Referendum Question in the Courts.

Interestingly, while the general expectation was that the competence question would reach the courts via a Scottish Parliament Bill being referred to the Supreme Court by the UK law officers, it was actually raised via different avenues in two high profile cases. The first, *Keating v the Advocate General*, was a crowdfunded case, therefore funded by the donations of interested citizens and organisations, and brought also by an interested citizen (Mr Keatings) with no connection to the Scottish institutions of self-government.[43] Mr Keatings brought a case to before the Outer House Scottish Court of Session in 2021, seeking two declarators: first, that the Scottish Parliament had the competence to hold and independence referendum under the Scotland Act 1998 without the consent of the UK Parliament; and second, that the draft Bill being prepared by the Scottish Government was compatible with the Scotland Act 1998. While the court agreed to hear the case, it ruled that, at that stage, the competence question was *«hypothetical, academic and premature»*[44]. Keatings then appealed to the Inner House, and by that time the Scottish Government had already published their referendum Bill. He therefore argued that the court should reach a decision on the competence question before the Scottish Parliament election on 6 May 2021. However, three judges, including the Lord President, again refused to issue a declaration in this sense.[45] Notably, the Lord President concluded that:
«At present, there is no Bill before the Parliament, although there is a draft Bill. A draft Bill has no legal status. The result of the election is not yet known. A Bill may or may not be introduced, depending upon the Government formed as a consequence of the election […] If the Bill were passed without such [a s30] Order, it is highly probable that the UK Government's law officers would refer the Bill for scrutiny by the UK

[43] Keatings v Advocate General for Scotland [2021] CSOH 16.
[44] Ibid, par. 139.
[45] Keatings v Advocate General for Scotland [2021] CSIH 25.

Supreme Court. All of these eventualities render the current remedies sought premature, hypothetical and academic. A decision by this court on the matters litigated would serve no practical purpose»[46].

These conclusions by the Lord President appeared to confirm that the Scottish Government's strategy was correct, and that they would need to introduce their Bill into the Scottish Parliament in order for the competence question to be decided on the basis of a challenge from the UK level. However, and in what was describes as a "clever move", the competence question was brought before the Supreme Court at the initiative of the Scottish Government itself, and by its legal advisor, the Lord Advocate, while the Bill was still in draft form. A distinctive feature of the Scottish devolution settlement is that it requires a minister responsible for a government Bill submitted to Parliament to make a statement in favour of it being within its competence, and under the Scottish Ministerial Code, this statement must be cleared with the Lord Advocate[47]. Using a mechanism in the Scotland Act that had not yet been used in Scotland, and which enables references to be made on *«any devolution issue which is not the subject of proceedings»*, the Lord Advocate argued that she was posing the question before the court as she was unsure of the outcome and could therefore not advise the Scottish Government on the competence of the referendum Bill[48]. The Advocate General, acting as respondent for the UK Government, argued that this mechanism could not be used in these circumstances, and if that were not the case, that the proposed Bill related to reserved matters.

After hearing both sides, the Supreme Court went on to accept the Lord Advocate's argument regarding the appropriateness of the reference and to consider the competence question, concluding that the Scottish Parliament did not have the competence to legislate for an independence referendum, even if it was only advisory or consultative[49]. The court concluded that it was clear that *«the proposed Bill has more than a loose or consequential connection with the reserved matters of the Union of Scotland and England and the sovereignty of the United Kingdom Parliament. Accordingly, the proposed Bill relates to reserved matters and is outside the legislative competence of the Scottish Parliament»*[50]. In this way, the Supreme Court put an end to the debates regarding the competence of the Scottish Parliament to legislate for an independence referendum, as any legislation on this issue will be outwith the Scottish Parliament's competence and therefore "not law". It interpreted the reserved competence provisions in such broad terms that there are no amendments or reformulation of the question that the Scottish Parliament could make to bring the potential Bill within competence; in the court's view, this is a question exclusively for the Westminster Parliament.

At the same time, the Supreme Court's reasoning in the reference decision is not fully coherent or convincing. Central to the court's conclusion are the significant political effects it considers that even an advisory independence referendum would have as an important

[46] Ibid, par. 55.
[47] Scotland Act 1998, S 31 (1) and Scottish Ministerial Code, par. 3.4.
[48] Scotland Act 1998, Schedule 6, par. 34.
[49] Reference by the Lord Advocate of devolution issues under paragraph 34 of Schedule 6 to the Scotland Act 1998 [2022] UKSC 31.
[50] Ibid, par. 82-83 and 92.

political event that would *«possess the authority, in a constitution and political culture founded upon democracy, of a democratic expression of the view of the Scottish electorate»*, and which would, in turn, *«strengthen or weaken the democratic legitimacy of the Union»*.[51] In this sense, the court goes beyond the purely legal effects of a potential referendum and considers that a majority vote in favour of independence would place significant pressure on the UK Parliament to act in this sense and undermine the continuity of the Union. Yet, the decision simultaneously ignores the important political effects of the results in the Scottish Parliamentary elections where the Scottish people have consistently voted in favour of a party that has the holding of an independence referendum in its manifesto. These elections are also a "democratic expression of the view of the Scottish electorate" which should therefore raise questions for Westminster and the status of the Union. There is, however, no reference to any implications of this democratic expression of the views of the Scottish people for the UK Government or Parliament, or to what the Scottish Government should do in order to pursue a second independence referendum.

Furthermore, in its considerations the court's focus is exclusively on the provisions of the Scotland Act 1998 and on its own previous case law in this context. There is no reference to the broader constitutional framework that predates the devolution settlement, to the UK as a multinational Union, or to the 2014 referendum process and the potential precedent it set in relation to any future requests for an independence referendum for Scotland. Notably, the court makes a selective reference to the Canadian Supreme Court's Quebec Secession Reference decision, which is internationally recognised for taking a broad and balanced constitutional approach to a similar question, but does not incorporate this approach in its own decision[52]. Thus, while the Canadian court's balanced approach draws from various constitutional principles to establish a negotiated avenue for the resolution of the conflict, the UK Supreme Court provides no further considerations as to the avenue the Scottish Government should pursue to secure a second referendum, and in particular, no considerations regarding the potential response by the UK Government to a referendum request, or to the circumstances or requirements that could permit a second referendum to take place.

As a result, the Supreme Court closed off the final potential avenue available to the Scottish Government to pursue a legal and legitimate independence referendum under the current constitutional framework. The court not only establishes that the Scottish Parliament has no competence in this area, but also appears to grant full discretion to Whitehall / Westminster to decide whether, when and it what circumstances a second independence referendum for Scotland may one day be held.

[51] Ibid, par. 81.
[52] *Reference Re Secession of Quebec* [1998] 2 S.C.R.

7. What Next? Establishing a Clear Pathway for a Second Independence Referendum.

Both the UK Government's consistent response to the s30 Order request and the Supreme Court's decision on the competence question confirm that the more restrictive interpretation of the UK constitutional framework that followed 2014 vote remains the predominant view in Whitehall and has been judicially endorsed. The SNP plus the Green Party vote resulted in a pro-independence majority in the Scottish Parliament after both the 2016 and 2021 elections, and the Scottish Parliament itself voted in favour of holding a second referendum in 2020. Yet, in contrast with the situation in 2014, this has not been considered a sufficient mandate for the UK Government to transfer the necessary competence to the Scottish Parliament to legislate for the referendum, or for the UKSC to provide for some form of accommodation or response to the continuous expressions of the democratic preferences by the people of Scotland. Despite devolution providing for a democratic institution to directly represent and express the preferences of the people of Scotland, and the more general union framework, this has found no receptive political or judicial response. The 2024 General Election resulted in a new Labour government in Whitehall, with a commitment to improving the UK Government's relations with the devolved nations. However, with reference to the question of Scottish independence, the Prime Minister, Keir Starmer, has stated that he cannot imagine another referendum taking place during his time in office, and that an SNP victory in the 2025 Scottish Parliament elections would not change his mind[53].

The above also highlights that the inherent flexibility of the UK constitutional framework, which facilitated the negotiated process leading up to the 2014 referendum, has since then resulted in a lack of clear avenues for the Scottish Government to legally pursue a second referendum in a context where the political will at the level of the UK Government has changed. Despite there being a clear precedent showing that a Scottish independence referendum is indeed possible and compatible with the constitutional framework more broadly, and this providing an example of process that has been deemed as comparative best practice, ultimately the decision on any future independence referendum appears to correspond unilaterally to the UK Government. In this way, Scotland currently finds itself in a situation which is in many ways analogous to other minority nations of sub-state units which face insurmountable barriers to hold a referendum within their constitutional context. If in other cases these barriers involve rigid reform procedures, national sovereignty or the unity of the state, in the Scottish case they involve broad UK Government discretion and the sovereignty of the UK Parliament.

When returning to the distinctive features of the UK constitutional framework discussed at the start of this article, this situation is notably problematic from a number of perspectives:[54] from a democratic perspective, where the consistently expressed view of the people of

[53] G. CAMPBELL, *Starmer says no independence referendum while he is PM,* in *BBC NEWS,* 3 June 2025.
[54] In this sense, see also C. MARTIN, *Resist, Reform or Re-Run? Short and Long-Term Reflections on Scotland and Independence Referendums*, Blavatnik School of Government, 2021.

Scotland through their Parliament is not being acknowledged or responded to; from the perspective of the equality and balance between the majority and minority nations within the UK's multinational Union, where the vulnerability of the Scottish nation within the constitutional framework is continuously highlighted but not addressed; and more generally, from the perspective of legal certainty, as while it is clear that a second referendum is possible and compatible with the constitutional framework, there is a lack of clarity regarding the circumstances, requirements or process necessary for this to take place. It is hard not to conclude that while many aspects of the UK's unique constitutional framework facilitated the success of the 2014 referendum process, they are now contributing to the current situation of deadlock, and that legislation must be enacted to provide for a clear pathway for a Scottish independence referendum that does not confer the decision unilaterally on the UK Government.

Raising similar concerns, Dugdale and Noon stress that the time is now right for a clear pathway for a further Scottish independence referendum to be agreed[55]. Adopting the generalised understanding that the UK is indeed a voluntary union, and that therefore the parties in the union must be able to choose to leave, they develop a set of suggestions as a starting point for discussion. Building on a number of comparative experiences and on the extensive work that has been carried out on a potential unification referendum in Northern Ireland, they propose a pathway for Scotland that largely mirrors the existing Northern Irish mechanism[56]. In this sense, the Secretary of State for Scotland would have a legal duty to permit a referendum if it looked likely that independence would secure majority support in such a vote. The assessment would therefore be left to the Secretary of State, but the criteria for determining this would be agreed by the two governments. They note that the advantage of this approach, which would require a degree of compromise by both unionists and pro-independence supporters, is that it would move the focus to the support for independence rather than the support for an independence referendum.[57]

While these suggestions provide a valuable starting point for discussions on determining a clear pathway for a potential Scottish independence referendum, and indeed one that is based on compromise and negotiation, they fail to take into consideration one of the other key features of the UK constitutional framework in the development of the territorial model, which is its inherent asymmetry and the tailoring of mechanisms and solutions to the preferences and requirements of each devolved nation. Indeed, the initial design and further development of each devolved settlement has followed its own distinct and independent path. Furthermore, the unwritten nature and flexibility of a large part of the Constitution also allows for the consideration of a range of options, as long as they are the result of the agreement between the UK and Scottish Governments, and have the approval of Westminster and the Scottish Parliament. In this sense, there are no constitutionally predetermined requirements or procedures in relation to the establishment of a pathway

[55] K. DUGDALE, S. NOON, *op. cit.*
[56] K. DUGDALE, S. NOON, *op. cit.*
[57] K. DUGDALE, S. NOON, *op. cit.*

for a second independence referendum. Therefore, while the existing Northern Irish mechanism was considered the preferable option for the unique Northern Ireland context in 1998, as part of the broader peace process and Belfast/Good Friday Agreement, the current circumstances in Scotland are notably different. Dugdale and Noon themselves recognise that *«Scotland's situation does not map precisely onto any other international or domestic example»*[58]. A specifically Scottish solution based on Scotland's specific circumstances and on the preferences of the majority of citizens in Scotland is therefore preferable.

Furthermore, since 1998 expert research on these issues has also developed substantially, with more clearly developed reflections on what are considered best practice examples, requirements and procedures for the resolution of territorial conflicts of sovereignty, and the organisation of independence referendums in particular. For example, during 2019-2020, an in-depth collaboration between academics and civil society organisations led to the drafting of a "Basis for the Writing of a Code of Good Practice for the Resolution of Territorial Sovereignty Conflicts". This document provides a detailed framework for the democratic resolution of these conflicts, and has also be incorporated into a proposal for EU legislation in this area[59]. More recently, the Catalan Government appointed a group of academics from different disciplines and political sensitivities on the constitutional future of Catalonia within Spain to deliberate and set out a series of options that could provide the basis for a Clarity Agreement between the governments of Catalonia and Spain. The aim of the report was to provide starting point for the development of an agreed pathway for resolving the ongoing territorial conflict in a way that enabled citizen participation and informed deliberation, drawing from both comparative experiences and specific Catalan/Spanish Constitutional and legal provisions and debates[60]. The 2014 Scottish referendum itself and the experiences of attempting to hold a legally recognised referendum in Catalonia, among other comparative examples, have also shaped views and understandings of such processes. The establishment of a pathway to enable a second independence referendum for Scotland should also draw from and build on this set of recent comparative research, documents and experiences.

In sum, while the distinctive features of the UK's constitutional framework are contributing to the current deadlock, they also have the potential to provide the basis for the legal establishment of a pathway for a Scottish independence referendum that is tailored to Scotland's particular circumstances, preferences and context, and that at the same time reflects the most recent research and recognised international best practice in this field.

8. Concluding comments.

The UK has a unique constitutional framework from a comparative perspective, where its multinational reality is both recognised and accepted, and where the union nature of the

[58] K. DUGDALE, S. NOON, *op. cit.*, p. 46.

[59] EUSKO IKASJUNTZA AND INSTITUT D'ESTUDIS CATALANS, *Basis for the Writing of a Code of Good Practice for the Resolution of Territorial Sovereignty Conflicts*, 2020.

[60] ACADEMIC COUNCIL FOR THE CLARITY AGREEMENT, *Report on the Clarity Agreement,* Generalitat de Catalunya, 2023.

state frames the general understanding and approach to independence referendum requests. This framework was fundamental to both the development and implementation of the Edinburgh Agreement and the 2014 referendum process, and to its success. In this sense, it is recognised as a paradigmatic example of an sub-state independence referendum around the world. However, the aftermath of the 2014 referendum led to a shift in the approach of the UK Government to these questions, and it has therefore refused to follow its previous practice or engage with requests for a second referendum, despite the consistent pro-independence majority in the Scottish Parliament. In this new context, and despite the Scottish Government attempting different strategies to secure and agreement with the UK Government, or obtain some recognition of their claims in the Supreme Court, the flexibility of the framework has left the Scottish Government with no available options to pursue and no clarity regarding what circumstances or procedure may enable such a referendum to go ahead in the future. This situation is notably problematic from a range of different perspectives, highlighting the need for a legally established pathway for an independence referendum for Scotland. Here again, the uniqueness of the UK's constitutional framework provides the opportunity for the design of a mechanism that responds to the specific circumstances of Scotland and to the preferences of the Scottish citizens, while also incorporating and building on recent research and experiences in this field. In this way, the development and content of this mechanism could also become an example of best practice, as the referendum process was in 2014.