

## POTENTIAL CONSTITUTIONAL DESIGNS FOR AN INDEPENDENT SCOTLAND\*\*

### *Abstract*

*In 2014 the Scots voted by a small margin against the proposal that their country should become independent from the United Kingdom. However, in 2016 British citizens chose, again with a knife-edge majority of votes, that the United Kingdom should leave the European Union. Motivated by this fact and backed by continuous voters' support expressed in regional and national elections, Scottish political elite has been for many years expressing the ambition to demand a second referendum for independence. In case that another noteworthy occasion for establishing an independent Scottish state arrives in the near future, answering the question regarding its plausible constitutional foundations gains noteworthy value. Some of the responses to this question are contained in earlier proposals for a written constitution for Scotland, but many other had already been established in 1997 by the devolved institutions in that part of the United Kingdom. They are recognized as well-grounded to be transferred into the constitutional structure that a new independent state at the north of the British Isle could*

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\*\* Author's remark: This article does not in any way express the author's position on the eventuality of Scotland's independence, nor does the author pretend to forecast further political developments in the United Kingdom or Scotland. Its sole purpose consists in laying out analysis of proposed models for constitutional framework for Scotland if its voters and main political subjects do in future come to the conclusion that it should leave the UK and become an independent state. If their wishes materialize, the process of making Scotland independent would hopefully be organized with the consent of the UK authorities, in particular because in November 2022 the United Kingdom Supreme Court unanimously ruled that the Scottish Parliament is not empowered to legislate on an independence referendum.

*adopt. Potential constitutional foundations for Scotland are not shallow. They have been developing for more than half a century and could readily be put in place if Scotland gains independence. In this article available models for the constitutional arrangements for an independent Scotland are analyzed, coupled with the principles on which the new state would be based on, and proposed institutional frameworks for an independent Scotland are outlined.*

*Keywords: Constitution of Scotland, Devolution in the United Kingdom, Referendum on Independence*

## 1. INTRODUCTION

In 2024, we mark the tenth anniversary of the unsuccessful referendum for an independent Scotland, aimed at this region's secession from the United Kingdom. On September 18, 2014, with the turnout of impressive 84 per cent of voters, 55 per cent of Scottish citizens voted against the proposal of constituting an independent Scottish country, while slightly less than 45 per cent of voters supported the idea of a free Scottish state (McInnes et al. 2014, 1). The referendum procedure was based on the Scottish Independence Referendum Act, which was adopted by the Scottish Parliament in November 2013, receiving the Royal Assent a month later.

The relief of the opponents of independence proved temporary. In 2016, throughout the UK another referendum was organized. In a neck and neck finish, the UK decided to leave the European Union. On the basis of this event (the Brexit), Scotland had left the EU against its express will, because more than 60 per cent of its voters and the majority in all of the constituencies in Scotland voted for the "Remain" option, meaning that the Brexit was "primarily decided by the voters from England" (Radomska 2019, 40). Now, the legitimacy of the 2014 referendum might be put into question, because, by the wording of the Scottish First Minister, "when people last voted on the issue, (...) they were told by the British government (...) that the only way to protect Scotland's place in [the EU] was to reject independence" (Sturgeon 2023, 43). Additionally, at the time of the 2014 referendum, many Scottish voters "assessed that Scotland was too weak to create its own state [and] that the [EU] might not accept it" (Radomska 2019, 46).

Scottish reaction to the Brexit appeared to be determined and consistent. Comfortably the largest party in Scotland, the Scottish National Party (SNP), which has been in power in Scotland since 2007, has been intensifying its calls for a new independence referendum, claiming that an

independent Scotland could and should (re)gain a full membership in the EU. In the actual session of the Scottish Parliament, a devolved legislature of Scotland, the ruling SNP has 63 out of 129 seats (previous election were held in 2021, while the next ones are scheduled for 2026, and identical result was obtained in the last election for Scottish Parliament in 2016). Further questioning the legitimacy of the UK government in Scotland, Brexit could become momentous for the cause of independence of Scotland.

Ever since 1997, the UK has been representing a special type of a unitary state. Namely, in that year the then Labour Government started with the so-called devolution process, legally granting a high level of self-government to Scotland, Wales, and Northern Ireland. The Scotland Act of 1998 enabled significant constitutional concessions to it by the UK. The Act devolved important set of competences to the Scottish Parliament and the Scottish Government. “Using [this] change of English policy” (Scotland Act 1998, 43), 74 per cent of the Scottish voters supported the establishment of a Scotland’s own parliament, while 63 per cent voted for Scotland’s tax-raising powers, which represented “a resounding success” (Mény & Knapp 1998, 37).

On the basis of these acts and decisions, Scotland was given autonomous legislative and executive bodies, the Scottish Parliament and the Scottish Government respectively. In contrast to the devolution to Wales, which was predominantly of *administrative* nature, the powers devolved to Scotland and Northern Ireland were effectively very wide. These two political units of the UK were given all the political and legal competences with the exceptions of foreign policy, defence, national fiscal policy and constitutional matters. In effect, the Scottish institutions were empowered to adopt laws in any domain which was not reserved.

Scotland’s devolved authorities accelerated demands for a second referendum. This development of events reintroduced the question of whether a Scottish statehood could be reinstated sooner than expected, and also led to searching for answers to the question that is perhaps not overriding, but bares a high degree of significance: what would the constitutional framework of such a state look alike? In other words, there is a need to inquire whether which type of a constitutional system would replace the one actually existing in Scotland, in case the current institutional arrangements are one day esteemed to be no more sustainable.

Even though the proposals for an independent Scotland’s constitutional arrangements are not numerous, there is room to assess the basic directions of reflecting about the arrangement of a potential Scottish state.

The earliest proposal of a Scottish constitutional document is the creation of the SNP (the 1964 Model) (Bulmer 2011, 681). The SNP had circulated a similar draft in 1977 (the 1977 Model) (Bulmer 2020), hoping that Scottish voters would support it in referendum after the eventual proclamation of independence (Bulmer 2011, 674). A few decades later, in 2000, Neil MacCormick, a prominent professor of law and independence protagonist had claimed that “there is in fact a very broad consensus about key points of a constitution in Scotland” (MacCormick 2000, 722). Two years later, the SNP published the document named *The Scottish Constitution*, with MacCormick as its architect (Bulmer 2011, 674).

The constitutional policy of the SNP reached now points of ascent in 2023, when the Scottish Government issued the document named *Building a New Scotland: Creating a modern constitution for an independent Scotland*, in which basic foundations of the new state were presented. In the meantime, a constitutional draft (the 2013 Model) (Constitution for Scotland n.d.) was proposed by the *Centre on Constitutional Change*, an organisation based at the University of Edinburgh since 2013, whose fellows include academics from several highly reputable British universities.

In this article, a history and impacts of the devolution process, as well as the recent announcements for a new referendum on Scotland’s independence are summarized (Part 2). Furthermore, proposed constitutional models contain referrals to basic principles around which the new state would be organized (Part 3). Before the concluding part of the article, the most important aspects of the suggested institutional structure of the Scottish state are outlined, i.e. the legislative and the executive branches of power, the judiciary, and local government (Part 4).

## 2. DEVOLUTION OF POWERS TO SCOTLAND AND PROSPECTS OF A SECOND INDEPENDENCE REFERENDUM

One of the key initiatives of the Anthony Blair’s first cabinet was to devolve an important set of competences to Scotland, Wales, and Northern Ireland. Although these initiatives were approved in the referendums held in 1997 and 1998, any successful strides in that regard could still be revoked by the UK Parliament (The Scottish Government 2023). This conclusion comes fully in line with the thesis that there are virtually no guarantees provided by the devolution legislation which could prevent the central government to revoke the proclaimed guarantees and to respect the devolved competences consistently and permanently (Petrov 2007, 122).

Nevertheless, soon after the devolution mechanisms were put in place, signs of encouraging Scottish political and legal tendencies towards independence appeared. Not long after the devolution acts had been enacted, contours of a constitutional convention evolved in Scotland (the so-called Sewel convention), in accordance to which an adoption of a UK law on a subject devolved to the competence of the Scottish Parliament needs to be based on the formal assent of the same body (i.e. the Scottish Parliament), although this presumption does not follow the formal logic of British parliamentary system and the country's *real* constitution (Petrov 2007, 122).

Although the Scottish Parliament has fully exercised its powers for almost three decades, the urge to call for an independent Scottish state did not cease to reappear. As a consequence, a need arose to prepare paths for a second (new) referendum on Scotland's independence. In December 2019, the Scottish Government expressed its resolve to continue with the efforts to achieve full independence. In its official publication entitled *Scotland's right to choose: putting Scotland's future in Scotland's hands*, and published by the Nicola Sturgeon, First Minister of Scotland (head of the executive branch of Scotland's devolved power), the Scottish Government claimed that "the best future for Scotland is to be an independent country" (The Scottish Government 2019). Pointing out that "there has been a significant and material change in circumstances since the 2014 referendum",<sup>1</sup> the Scottish Government asserted that "people in Scotland have the right to consider their future once again", i.e., that a second referendum is needed. In particular, the Government insisted that the results of the UK general election in 2019 clearly indicated that the "Westminster government (...) has been rejected by the people of Scotland", assuming that the election produced a confirmation for the supposed pro-independence majority of voters in Scotland.<sup>2</sup> Basing her (and the Government's) arguments on the principle of self-determination, the First Minister invited London to let the new referendum be organized before the end of 2020, within confines of "an agreed, legal process" between the British and Scottish political institutions (McCorkindale & McHarg 2020).

In addition, Scotland's eagerness to hold a second referendum may be esteemed to be approved by the overwhelming support for the SNP

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<sup>1</sup> "The material change in circumstances is said to be the fact that Scotland will be leaving the European Union despite the desire of the majority of Scottish voters to remain" (McCorkindale & McHarg 2020).

<sup>2</sup> The SNP won an overwhelming majority of seats in the British House of Commons belonging to Scottish electoral units (35 out of 59).

expressed in the 2021 election for the Scottish Parliament. Consequently, at the end of 2022, Mrs. Sturgeon had claimed that “Scotland cannot afford not to seize the opportunity of independence given the current [political and economic] circumstances” (Sturgeon 2023, 43). Similar calls for independence were laid out in a new proclamation of the Scottish Government, issued in June 2023 (The Scottish Government 2023). In October 2023, Mrs. Sturgeon once again expressed her hopes for a second referendum on independence (Holehouse 2023, 40). Regarding the legality of the possible second referendum, it is important to note that, although the 2014 referendum was *advisory* only, meaning that it “did not legally bind the UK or Scottish Government to give effect to a vote for independence” (McCorkindale & McHarg 2020) any such advisory referendum could “carry compelling authority in political terms”, and produce “a clear result”, which would represent “a signal for negotiations to commence” (MacCormick 2000, 726).

### 3. PRINCIPLES OF THE PROSPECTIVE SCOTTISH CONSTITUTIONAL DESIGN

The existing models of Scotland’s constitutional document share many similar features. Namely, all of the proposed models give constitutional recognition to the importance of having a written constitution (either permanent or temporary), containing principles of state organization, its institutional framework, as well as the fundamental rights and freedoms and the legal tools for their protection.

Available patterns of the constitutional system for an independent Scotland evince no sign of deviating from the centuries-long established British model of legal system, with a notable exception: Scottish political and intellectual elites strive for a constitution in a codified form, as is the case with all the other European (and most of the world’s) countries (The Scottish Government 2023; McHarg 2014).

By the text of its frontal provision, the 2013 Model asserts the right of “the people” to express and enact their “collective will through this written Constitution“ (Art. 1, Sect. 1.1). The Scottish Government proposed in June 2023 a *written* constitution for Scotland, “that puts democracy, rights and equality at the heart of everything we do as an independent country” (The Scottish Government 2023), supporting the direction the First Minister had announced earlier (McHarg 2014).

Some authors have been contemplating a proposition that in the first phase of independence Scotland should adopt a *temporary* constitution. It

seems quite reasonable to claim that the adoption of a constitution is a project that can only follow after the legal and political framework of Scotland is based on “a set of constitutional arrangements to enable it to function as an independent state” (McHarg 2014). A provisional constitution would not be codified. Rather, a series of organic laws would be adopted, which would provide normative support for the implementation of the Scotland Act, the Human Rights Act, the Representation of the People Act, and other fundamental legal documents which are in force in Scotland today (McHarg 2014). It is logical to presume that a temporary constitution would enable a more suited and phased handover of powers. Similarly, in June 2023, the Scottish Government proposed a three - step procedure for achieving a properly established independent Scotland. First, “an interim constitution”, developed by the means of “consultation and conversation with people” would “take effect on the day of independence”. Afterwards, “a permanent constitution created by the people through a legally - mandated Constitutional Convention” would be adopted. Finally, a referendum on the approval of the permanent constitution would be held (The Scottish Government 2023).

Conducted on a proper legal footing, the process of making Scotland independent would also encompass proclaiming the new state as a constitutional democracy and the rule of law, governed by the principle of the separation of powers. Scotland should be “a parliamentary democracy” (McHarg 2014), or “a constitutional democracy” (Art. 1, Sec. 1.2 of the 2013 Model), established on the rule of law (McHarg 2014) and the separation of powers (Bulmer 2011, 674).

Any country aspiring to become a full member of the EU is presumed to have adopted an adequate constitutional framework for the protection of human rights and liberties. Scotland, of course, would not represent an exception, particularly when one takes into account a highly developed human rights culture in the UK. A reflection of this idea can be found in the proposed drafts of the Scottish constitution. The lengthiest article of the 2013 Model (Art. 2) is devoted to the protection of the fundamental rights, liberties and duties of individuals. In accordance with the Art. 2, Sec. 2.1 of the 2013 Model, the European Convention on Human Rights and Fundamental Freedoms (the ECHR) would be recognized fully as part of the law of Scotland (McHarg 2014). Many provisions of the ECHR are incorporated in the constitutional framework by explicit guaranties of the rights

and freedoms contained in the ECHR.<sup>3</sup> Alternatively, in accordance to the 1977 Model, the Constitution would be accompanied by a Bill of Rights in which the dispositions of the ECHR would be included (Bulmer, 2020). What is more important, the Scottish Government announced in 2023 that “the interim constitution would embed human rights set out in the [ECHR], as well as the core international human rights treaties relating to economic, social and cultural rights and the rights of children, women, minority ethnic communities, disabled people and refugees, and the right to a healthy environment” (The Scottish Government 2023). Official constitutional domestication of the ECHR thus appears to be a logical step in the process of Scotland’s potential full membership in the EU. Basic rights and freedoms would be provided with direct constitutional protection (Bulmer 2011, 676). In the *Preamble* of the 2013 Model, it is claimed that “the People of Scotland (...) adopt the overriding purpose of upholding the fundamental rights and freedoms set out in this Constitution (...)”.

From the comparative point of view, the Scottish constitution might encompass certain authentic provisions such as the right of citizens “to participate in society as full and equal members, and to have barriers to such participation removed” (Art. 1, Sec. 2.16 of the 2013 Model), or the right of equality before the law extended by “the right to equal benefit of the law” (Art. 1, Sec. 2.19). Public authorities would dispose of not more than one single tool for interfering with guaranteed rights – “the interests of national security or public safety” (Art. 1, Sec. 2.2). Principle of non-discrimination (Art. 1, Sec. 2.3), and the prohibition of death penalty (Art. 1, Sec. 2.5), are also proclaimed. According to one rather awkward provision, citizens of Scotland have “the right to use reasonable force to defend self and family under threat of violence”, with the notion of “reasonable force” being determined as “up to and inflicting bodily harm on the antagonist, short of death” (Art. 1, Sec. 2.13 of the 2013 Model).

In the proposed drafts the determination for Scotland’s membership in the EU clearly holds a dominating position. Although it is reasonable to suppose that a number of pro-independence voters would not support Scotland’s membership in the EU, one could not rule out the option that the majority of voters in Scotland want that country to be a member of the EU (to put aside ever more strenuous conditions for membership in the EU).<sup>4</sup>

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<sup>3</sup> Such is the case with, for example, right to life (Art. 1, Sec. 2.5), right to liberty (Sec. 2.6), right to respect for private and family life (Sec. 2.12), prohibition of torture, slavery and forced labour (Sec. 2.15), etc.

<sup>4</sup> It is valid to claim that “the EU institutions, for whom the legality (as well as the consensual nature) of the process [of declaring independence] might condition any future relationship



Scottish political decision - makers have continuously been convinced of anchoring Scotland in the EU. In accordance with its official proclamation from 2023, the Scottish Government “believes that the constitution of an independent Scotland should (...) reflect Scotland’s values as a modern, democratic, European nation” (The Scottish Government 2023). According to a highly representative political and academic source, “re-establishing Scotland’s position as an independent state, in contemporary terms as a member state of the [EU]” would be the SNP’s “central policy objective” (MacCormick 2000, 721).

One of the more logical steps in the process of preparing Scotland to be included in the EU would be transposing the European acts into domestic law. Assuming that Scotland would acquire the EU membership, the direct application of the EU law and its supremacy in relation to the national law of Scotland would be an implication of the logical course of relations between international and domestic law (McHarg 2014). Nonetheless, international treaties “whether enacted past, present or future, to the extent that they are incompatible with this Constitution, will be void and without effect” (Art. 1, Sec. 1.3 of the 2013 Model). Treaties “delegating sovereignty powers (...) to a confederation, union, alliance or international body” may take effect only if they are ratified by the Parliament and the voters, whereas all Scotland’s international commitments “must comply with this Constitution and be revocable at any time in accordance with a majority vote in both parliament and a referendum” (Art. 7, Sec. 7.9).

#### 4. INSTITUTIONAL STRUCTURE OF A SCOTTISH STATE

When it comes to the composition and the sphere of competence of independent Scotland’s authorities, all of the proposed constitutional models pay attention to the three traditional branches of power, with a subdivision of topics related to the executive power – the Government and the Head of State.

In operation since 1999, the Scottish Parliament has developed two distinctive characteristics in comparison to the British constitutional heritage: its *unicameral* form, and the *proportional* nature of its representation. Scottish legislature would be composed of a single chamber, bearing the

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with an independent Scotland” (McCorkindale & McHarg 2020). This type of arrangement was once effectively put in motion: process of dissolution of the former union of Serbia and Montenegro (2003-2006) was closely scrutinized by the EU, which enabled a successful and peaceful referendum on independence in Montenegro in May 2006.

name the Scottish Assembly (the 1964 Model (Bulmer 2011, 676) and the 1977 Model (Bulmer, 2020)), or the Scottish Parliament (the 2013 Model). Again, as an expression of obvious difference from the UK, Scotland's legislative body would be elected by the method of proportional representation (the 1964 Model (Bulmer 2011, 676), the 1977 Model (Bulmer, 2020); Art. 4, Sec. 4.5 of the 2013 Model), fully in line with the pattern established at the beginning of the devolution period. In another deviating move from the British convention, a legislature could not be dissolved without its express consent, with the sole exception in case that it could not be able to elect the Government (the 1964 Model (Bulmer 2011, 681); the Art. 3, Sec. 3.5 of the 2013 Model also provides for the dissolution of Parliament by the Head of State). A third notable distinction is the proposal that the Parliament should be consisted of 188 representatives (Art. 4, Sec. 4.2 of the 2013 Model), which represents the number almost as three - times as large as the one currently held by Scottish members of parliament in the British House of Commons.

When it comes to the incompatibilities of the members of parliament, “no person who holds executive, administrative, military, diplomatic or judicial public office (other than Ministerial office) may be elected to Parliament unless they resign from the incompatible office” (Art. 4, Sec. 4.10 of the 2013 Model). The 1964 Model contains an implicit linguistic message of discontinuity with the British parliamentary tradition. Hence, instead of the expressions “member of Parliament” and “Speaker of the House”, the formulations “Commissioner” and “President” of Parliament are used.<sup>5</sup>

In line with the (comparatively rare) pattern existing in the British House of Commons, the term of office of any Scottish Parliament legislature would be five years (the 1977 Model (Bulmer 2020), and the Art. 4, Sec. 4.4 of the 2013 Model). Yet, the 1964 Model proposed a four-year term of the Parliament (Bulmer, 2011, 681). The overpowering institutional position of the Scottish Parliament<sup>6</sup> would be limited by its accountability to citizens. Thus, “the people of Scotland” is authorized to claim “absolute sovereignty over the territory and natural resources of Scotland” (the 1964 Model) (Bulmer 2011, 680). This marks a sharp distinction from the British constitutional principle of the sovereignty of the legislative (representative)

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<sup>5</sup> The Speaker is renamed the *Presiding Officer* by the 2013 Model (Art. 3 Sec. 3.5).

<sup>6</sup> The level of confidence of the Scottish citizens to their representative body is outlined by the fact that on referendums held in 1997, Wales voted 4 to 1 against having an assembly, while Scotland voted 52 per cent in favour. Since, however, a turnout was 74 per cent, this *yes* vote did not pass the hurdle of 40 per cent which the Government had set as a condition for implementing the law (Mény & Knapp 1998, 272).

body – the Parliament (*the King in Parliament*). The Parliament would enact laws on: citizenship and naturalization, limitations of basic rights and freedoms, and the organization of the judiciary. It elects the Head of State, and holds “the supreme legislative power” in the state, and is enabled, in extraordinary circumstances, to extend its term of office for the maximum duration of one year.<sup>7</sup> Art. 5 of the 2013 Model is dedicated to the parliamentary procedure, enriched with extensive details.

The constitutional designs propose for two centers of the executive branch – the Government, and the Head of State. Devoted to the parliamentary system of government already in place in the UK for centuries, they outline the model in accordance to which members of Government should be elected by the Parliament (Bulmer 2011, 674; MacCormick 2000, 722; Art. 4, Sec. 4.14 of the 2013 Model), and from within the Parliament members (the 1964 Model) (Bulmer 2011, 681). The Government is accountable to the Parliament (McHarg 2014). The effective executive power is to be held in the hands of the “Scottish Government”, “comprising Cabinet Secretaries, Ministers and Law Officers” (Art. 4, Sec. 4.3 of the 2013 Model). The Government is authorized to “determine all matters of foreign and domestic policy”, “direct the administration, conduct foreign relations and manage monetary and fiscal policies”, and has “authority over the Armed Forces” of Scotland (Art. 7, Sec. 7.6-8 of the 2013 Model). The number of ministers could not exceed a fifth of the total number of members of parliament (the 1964 Model) (Bulmer 2011, 681).

According to an explicit proposal contained in the 1964 Model, Scotland would be constituted as a (hereditary) *monarchy*. The Head of State would be a king or a queen, and the royal succession would be established by the law (Bulmer 2011, 680). This proposal could be derived from the “the cult of the constitutional monarchy [as one of the] aspects of British identity” (Eatwell 1997, 53). On the other hand, the 2013 Model does not specify the nature of the “Head of State”, the institution to which its Art. 3 is dedicated. The “selection” of this institution would be left to the choice of the voters, by the means of referendum. However, monarchy seems to be implicitly excluded, seems the Parliament is entitled to legislate on the selection, appointment and *recall* of the Head of State (Art. 3, Sec. 3.1). A rather limited political position is devised for the Head of State. Aside from being empowered to give assent to the laws adopted (the 1964 Model

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<sup>7</sup> Respectively: Art. 1, Sec. 1.8-9, Sec. 2.7-8, and Sec. 9.5 of the 2013 Model.

<sup>8</sup> Respectively: Art. 3, Sec. 1, Art. 4, Sec.4.1, and Sec. 4.16 of the 2013 Model.

(Bulmer 2011, 681); Art. 3. Sec. 3.6, and Art. 5. Sec. 5.7-8 of the 2013 Model), he should be “impartial to all matters politic”, possessing “only such powers as are expressly vested in him or her by this Constitution and will exercise those powers with the advice and consent of the responsible constitutional authorities” (Art. 3, Sec. 3.3-4 of the 2013 Model).

Staying close to the shores of comparative constitutional law prospects, Scotland’s Constitution would not deviate much from the usual set of powers given to the judiciary and from the principle of its independence (Art. 9, Sec. 9.1 of the 2013 Model), guaranteed by a Commission on Judicial Appointments (Bulmer 2011, 681; MacCormick 2000, 722). Under the 1964 Model, immovability of judges could be abrogated only in individual cases, by the basis of the consent of at least two thirds of the members of the Parliament (Bulmer 2011, 682).

A theoretical framework for judicial *scrutiny of the constitutionality of laws* was first established the 1964 Model (for that purpose a *Court of Session* would be designed) (Bulmer 2011, 675). This, in a way, is in line with the current system under which the UK Supreme Court is empowered to hear cases from all of the three devolved jurisdictions in the UK (as well as from the *English* judiciary). A supreme court was mentioned in the Scottish Government’s white paper from 2013, in which it was announced that “the Inner House of the Court of Session and the High Court of Judiciary sitting as the Court of Criminal Appeal will collectively be Scotland’s Supreme Court” (The Scottish Government 2013, 46). The institution of *jury* would also find its place in the Constitution (Art. 1, Sec. 2.25 of the 2013 Model).

Finally, the 1964 Model contains certain proposals regarding the organization of *local autonomy*. Namely, local assemblies would be unicameral and elected by the proportional system (Bulmer 2011, 676). Principles of local autonomy would be restricted by the Scottish Parliament being entitled to legislate on local autonomy, and on the organization of local bodies and their competences, including their financial and tax-collecting powers (Bulmer 2011, 681).

## 5. CONCLUSION

More than four centuries have passed since King Charles I proclaimed indissolubility of the union of two kingdoms (England and Scotland), comparing it to a marriage from which there could be no divorce. If it happens that the UK appears to be unable to continue as a single state, there are already existing models for the stable constitutional founding of

an independent Scotland. Although prospect of an independent Scotland represents a matter held in abeyance pending further developments, the Scottish legal scholars and its leading political party representatives have not been waiting unprepared.

Many of the choices put at disposal by various authors to potential constitution-writers are derived from the already existing models, created and developed during the process of the devolution of powers in the UK. The available constitutional models are to a large extent mutually similar, beginning with the fact that all of them propose that the constitution should be composed in the written codified form, sidestepping from the proud constitutional tradition of the UK. With only minor differences, similar applies to the dispositions regarding the core principles of organization of a Scottish state, basic rights and freedoms, Scotland's aspirations to respect the European law, the competences and modality of election of the legislative body, judiciary or of the executive.

The existing proposals for a constitution for Scotland may constitute the basis of a state-building process which might comfortably lead to the composition of a document which could, in a favorable political climate, be accepted by decision-makers and experts and formally approved by the Scottish electorate. The essential elements of the constitutional framework for an independent Scotland are well-prepared, comprehensible, and susceptible to the process of arranging the details, not necessarily their most important components.

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## МОГУЋЕ УСТАВНО УРЕЂЕЊЕ НЕЗАВИСНЕ ШКОТСКЕ

### Сажетак

*Шкотски бирачи су 2014. године малом разликом у гласовима одбацили предлог да се Шкотска отцепи од Уједињеног Краљевства. Ипак, две године касније британски грађани, поново веома малом већином гласова, одлучили су да Уједињено Краљевство иступи из чланства у Европској унији. Подстакнути овим, али и подржани сталном подршком бирача, шкотска политичка елита почела је да испољава амбицију да захтева нови референдум за независност. Уколико се ускоро изроди нова прилика за успостављањем независне Шкотске, од значаја је пружити одговор на питања везана за њено уставно уређење. Одређени одговори садржани су у ранији предлозима за писани устав Шкотске, али неки од њих успостављени су 1997. године путем деволуције овлашћења на овај део Уједињеног Краљевства и они су препознати као довољно добри да буду пренети у уставну структуру потенцијалне нове државе. Темељи могућег уставног уређења Шкотске нису плитки. Напротив, они су развијани већ дужи од пола столећа и могу брзо да буду искоришћени ако Шкотска ускоро буде постала независна. У овом раду су истражени доступни модели устава Шкотске, начела на којима би таква држава била заснована, те постојећи предлози за њено институционално уређење.*

Кључне речи: Устав Шкотске, Деволуција у Уједињеном Краљевству, Референдум о независности