THE LOGICAL CASE

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by Jim Sillars

For supporters of Scottish independence, the EU referendum poses problems. Much of the material around which the debate will circle is UK in character, whereas our preoccupation will be about the consequences for Scotland, and how the result will affect our path to independence.

The SNP would have us believe, or perhaps it wants the English to believe, that if Scotland votes to stay in the EU, while rUK votes to come out and wins, this will trigger a second referendum. A seductive message, but is it valid?

With the approaching Holyrood elections, there is a natural tendency for all in the SNP and Yes voters to come to the aid of the party, and there is an evident tendency to label any dissent on any policy position as “disloyal.” That is understandable, but wrong, because that attitude substitutes objectivity for blind loyalty, and that ill serves society. It is legitimate to have a different position from the SNP on the EU referendum as it will affect the strategy of gaining independence; and that is not for the SNP alone to decide.

It is not my intention to scourge the leadership of the SNP as if they are guilty of some political crime in arguing for the UK to remain in the EU. There can be no doubting their integrity. But their position has to be tested, and that, among other matters, this pamphlet seeks to do. It should not be forgotten that the SNP leadership’s judgment can be flawed. An example was to be found in the 2014 White Paper. The currency Union, which required agreement from Westminster gave the political initiative to George Osborne who only needed to say No, and thus create uncertainty. The promised cut in corporation tax was a gift to Unionist Labour.

On the EU, it is essential that the SNP policy is examined closely. Such an examination must be based on knowledge of the animating purpose of the elite who run the EU, their record in dealing with small nations, their fundamental lack of democracy in how it is run, their contempt for people, and an assessment of the better alternatives that exist.

We on the Yes side are being asked by the SNP to campaign in favour of an EU that, during the referendum campaign, told us to get stuffed, and if the UK remains in, will tell us that again when we come to the second independence referendum. For all that the SNP has been pro-EU, and is the most pro-EU party in the UK, there was no welcome from the EU to the prospect of an independent Scotland. The Commission refused us a seamless entry as a member state, we were told to wait in a long queue, while Spain threatened us with its veto.

Yes voters must ask: if the SNP succeeds, through the Scottish vote, in keeping the UK in the European Union what will be different for the independence movement? The
EU will return to the status quo, the UK’s bluff having been called with no change towards Scotland. For Scotland, that means back in the same trap, our fate in their hands, with their distaste for the break-up of a member state the ruling factor in their attitude to our independence.

**Seductive but not rational**

The SNP is saying to people in England, Wales and Northern Ireland “we do not want you to leave the EU, but if that is how you vote, and we in Scotland vote to stay, then we will leave the UK, because your result will trigger a second independence referendum.”

Implicit in that policy is the belief that on the day the UK leaves the EU, (1) An independent Scotland, having voted to stay, will get automatic seamless entry to the EU as a new member state, (2) An independent Scotland will inherit the opt outs granted to the UK, (3) An independent Scotland will not be subject to the rule that new member states have to join the Eurozone, (4) Being a member state will be more advantageous to Scotland than other alternatives that are likely to arise from the UK exit negotiations.

Seeking entry as a member state is a weak “only one option” policy. The EU would know Scotland had no where else to go – 5 million people negotiating entry with a Commission representing nearly 500 million. What would our negotiators do if joining the euro was a basic requirement? Would the SNP have us sign up, when all know that the euro can only survive if there is a full fiscal union in a full political union in which the member states surrender all sovereignty?

*Out of one union into another, where Scotland would have even less clout than in the UK? That is the scenario that arises from SNP policy. Is that an independent future for our nation?*

The EU attitude to Scottish independence has been settled policy for a long time. Here is an extract from a letter from Viviane Redding, Vice President of the European Commission, to Christina McKelvie MSP, Convener European and External Relations Committee of the Scottish Parliament, dated 20th March 2014:

> “The Commission’s position on the issue that you have raised has been stated on a number of occasions since 2004. The Treaties apply to the Member States. When part of the territory of a Member State ceases to be part of that State, e.g. because that territory becomes an independent state, the treaties will no longer apply to that territory. In other words, a new independent region would, by the fact of independence, become a third country with respect to the Union and the Treaties would, from the day of its independence, not apply anymore on its territory.

**Under Article 49 …….any European state …..may apply to become a member of the EU. If the application is accepted by the Council acting unanimously after consulting the Commission and after receiving the consent of the European Parliament, an agreement is then negotiated between the applicant state and the**
**Member States on the conditions of admission.....This agreement is subject to ratification by all Member States and the applicant state.”**

The EU message, repeated in 2014: you are out, and to get back in you have to jump several hoops where one vote against means you stay out; and that is not counting the terms we would extract from you.

So, where is the advantage for Scotland helping to keep the UK in the EU? None. Are there alternatives that would make independence easier? Yes.

**Article 50 of the Lisbon Treaty and the alternative it offers with Brexit**

Brexit in June would not mean the UK out in July. The relevant parts of Article 50 of the Lisbon treaty read as follows:

1. Any member state may decide to withdraw from the Union in accordance with its own constitutional requirements.

2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218 (3) of the treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament. (emphasis added)

3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decided to extend this period.

4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussion of the European Council or Council in decisions concerning it.

5. A qualified majority shall be defined in accordance with Article 238(3)((b) of the Treaty on the Functioning of the European Union.

6. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.

Clause 4 above is logical. The UK will be excluded from the internal private discussions of the EU while the EU decides its negotiating position; just as the EU will be excluded from the internal discussions of the UK. That is normal practice, with the final exit agreement decided by joint negotiations.
There will be, within 2 years, a negotiated association agreement between the UK and the EU, concerning trading relations. The UK aim will be to have non-tariff access to the EU market, and the EU aim will be to maintain non-tariff access to the UK market, for obvious reasons.

As has been the case for a very long time, the UK buys more from the EU than the EU does from the UK. The latest figures available are: UK exports to the EU £228.9 billion. EU exports to the UK £290.6 billion (House of Commons Library) The balance in favour of the EU, £61.7 billion, represents business, and jobs they will want to protect.

The major EU trade partners whose balance of trade with the UK is to their advantage are Germany (£27.3 bn.) Spain (£11.5bn.) Belgium (£8.5 bn.), France (£6.4bn) and Ireland (£10.8 bn). In negotiating an exit agreement those figures mean that the UK has the stronger bargaining position.

There is an attempt by the new “Project Fear” to create uncertainty about the UK’s continued free access to EU markets. Why the EU would seriously damage EU companies who do business with the UK is hard to fathom. In any event EU States, like the UK, are members of the World Trade Organisation whose purpose has been to lower tariff barriers, and resist the erection of any where none have existed.

**The importance for Scottish independence of an EU-UK Association Agreement**

If the UK remains in the EU, then nothing changes. The Yes movement will be told, as we were in 2014, that there is no guarantee of EU membership, because all 28 countries would have to agree and Spain would threaten its veto again. The EU is not in favour of member states separating.

**Yet Brexit means that the UK will no longer be a member state, as its status will change with an association agreement. For the EU the issue of Scottish independence from the UK changes along with it. That is something the SNP does not seem able to understand, yet it is of enormous importance.**

The principal fear of the EU, setting a precedent of secession from a Member State will disappear. There will no longer exist the *internal* political imperative (Spain) for the EU to reject an independent Scotland because it will be an *external* matter; and so it will be much easier for the EU to accept an independent Scotland through an association agreement based on the one negotiated with the UK. Indeed, if the SNP leadership was more clear-sighted, it would be demanding a place on the Article 50 negotiating team to ensure that Scotland’s distinctive position is recognised in the text of the agreement.

**Brexit under Article 50 makes it politically easier for the EU to accept an independent Scotland in an association agreement, than as a member state. Such agreement would not be subject to an EU Member State veto as it would be by qualified majority voting as set out by clause 2**
Such an outcome would be in accordance with Article 8, 1 of the Lisbon Treaty which states:

“The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation.”

**Why not EFTA?**

One of the great puzzles of SNP European policy is its failure to look at the alternative of the European Free Trade Association (EFTA) which, in 1994, signed an agreement with the EU to create the European Economic Area where free trade flows. After the role the EU played assisting the Better Together gibe of “the EU will not let you in,” it would seem sensible to engage in discussions with EFTA.

Far from engaging in such discussions, what emerged in 2014 was a Scottish Government document that rubbished the very idea of EFTA membership. It trotted out all the old canards about Norway having to toe the EU line – receiving and obeying EU orders but not being involved in discussions on policy. It was wrong.

The treaty between EFTA and the EU is not a surrender document by EFTA. It has 129 Articles setting out the EFTA-EU relationship, prominent features being an EEA Joint Committee and a Joint Parliamentary Committee. Article 90 is instructive:

1. As soon as new legislation is being drawn up by the EC Commission in a field which is governed by this Agreement, the EC Commission shall informally seek advice from experts of the EFTA States in the same way as it seeks advice from experts of the EC Member States for the elaboration of its proposals.

2. When transmitting its proposal to the council of the European Communities, the EC Commission shall transmit copies thereof to the EFTA States.

3. During the phase preceding the decision of the Council of the European Communities, in a continuous information and consultation process, the Contracting Parties consult each other again in the EEA Joint Committee at the significant moments at the request of one of them.

4. The Contracting Parties shall cooperate in good faith during the information and consultation phase with a view to facilitating, at the end of the process, the decision-taking in the EEA Joint Committee.

Article 100 states: “The EC Commission shall ensure experts of the EFTA States as wide a participation as possible according to the areas concerned, in the preparatory stage of draft measures to be submitted subsequently to the committees which assist the EC Commission in the exercise of its executive powers….When drawing up draft measures the EC Commission shall refer to experts of the EFTA States on the same basis as it refers to experts of the EC Member States.”

The Scottish Government document is wrong also when it is claimed that Norway must obey all EU directives. When the EU stated that European offshore oil and gas production would be subject to new regulations, and noted that this had EEA
relevance, Norway would not comply. As reported from the EEA Joint Parliament Committee on 27 November 2012: “The Norwegian government has taken the view that the proposed regulation by the European Commission falls outside the geographic and substantive scope of the EEA agreement.”

Between 2000-2013 Norway adopted 4,724 EU laws, most of them being technical and compatible with Norwegian interest. Compare that to the 52,183 directives and regulations the UK and other EU Member States had to adopt in the same period.

The Scottish Government rejected EFTA on the basis that EU membership enables free trade agreements with other countries, as though EFTA States could not do the same. In fact, EFTA has thirty-five free trade agreements. The point missed by the SNP Government is that EFTA States exercise sovereignty over a wide range of policies outside the single EEA market, a sovereignty not available member states of the EU.

The EEA agreement between EFTA and the EU is about regional free trade, not a customs union. It is important for the Yes movement to understand what the EEA does not cover:

- Agriculture and Fisheries policy.
- International trade policy with other countries.
- Justice and Home Affairs.
- Foreign, Defence and Security Policy.
- Energy
- Currency.

In these key areas, EFTA states make their own sovereign laws, subject to no other organisation.
It is impossible to support the SNP position

It is not possible to accept the SNP position in the EU referendum when viewed from a Yes movement perspective. It is an incoherent policy for these reasons:

1. The SNP position is that if Scotland votes to remain in and the rest vote for leaving, then it will trigger a second independence referendum.

2. Does this mean the SNP wants England, Wales and Northern Ireland to vote to leave?

3. No, Bizarrely, the SNP intends to campaign in England for an in vote. By campaigning in England the SNP implicitly recognises and gives legitimacy to the Unionist case that this is an all-UK vote, with no separate status for Scotland.

4. In an all-UK context, how can England’s vote, if different from ours, trigger a second referendum?

5. If the SNP succeeds in keeping the UK in the EU, it keeps Scotland exactly where it was in 2014, with the EU refusing to endorse our right to independence and automatic membership of the EU. What makes the SNP believe that the EU will act differently towards us next time?

6. Why does the SNP ignore the lesson from Greece of how a small member state can be crushed, and its people made destitute, by powers like the EU Commission, Germany and France?

7. Why does the SNP have only one policy position, being a member state of the EU, when the experience of the 2014 referendum dictates that alternatives are required, which are there to be pursued?

The EU is run by and for an elite

Article 2 of the Lisbon Treaty declares: “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, intolerance, justice, solidarity and equality between women and men prevail.”

An unimpeachable ethical statement. But in the EU there is a difference between principle and practice. That respect for democracy and a minority was missing in 2014. Scotland’s referendum had democratic legitimacy, was conducted under legal rules, was non-violent, and the voting and count were guaranteed to be honestly conducted. Yet, during the referendum campaign the EU did not accept or respect our democracy, instead they told us that, although we had been in membership since 1973, we would be thrown out if we voted Yes.
Ask the people of Greece, Denmark, and Ireland about democracy as practised by the elite. When these countries rejected new Treaties, they were required to vote again to get the result Brussels demanded.

The Lisbon Treaty is a case in point. The EU elite seek a United States of Europe. So a Convention was set up to produce a Constitution to bring that about. The French and the Dutch, in referenda, rejected it. End of story? No. All they did was tweak a few words, called it the Lisbon Treaty and got the member states to sign up to it. Former French President Vallery Giscard d’Estaing, who chaired the Convention, was quite openly cynical: “the proposed institutional reforms, the only ones which mattered to the drafting convention, are all to be found in the Treaty of Lisbon. They have merely been ordered differently and split up between previous treaties.” No one asked the people of the EU if they wanted the centralising powers of the Lisbon Treaty.

Since the great financial crash of 2007-08, nations have experienced their democracy being trashed when it conflicted with the wishes of the Brussels centre. The elected Prime Minister of Italy was deposed and replaced by a technocrat. When the then Prime Minister of Greece said he would hold a plebiscite on the austerity measures Brussels wished to impose, he was deposed and replaced by a technocrat. When a new democratically elected government in Greece held a referendum in which 61% of the people voted to reject the EU austerity measures, the government and the people were crushed.

The unelected political leadership of the EU

The European Commission’s web page declares it to be the political leadership of the EU. The Commission is where EU law originates. There are 28 Commissioners. None are elected. There is a President of the European Council, where the heads of EU Governments meet. He is not elected. The EU is a highly centralised organisation which sets out to make laws applicable in all member states irrespective of the fact that national conditions may vary considerably.

That characteristic of centralisation will not be reversed. When you have 28 States, of varying sizes, with varying interests, they need a central decision-making body, otherwise nothing would ever get done.

When the EU was only a 12 member strong organisation, it was possible for member states to wield a national veto, and so limit the power of the Commission. But once the numbers increased to 28, the national veto had to be pushed aside and majority voting introduced on matters proposed by the Commission.

There is, of course, a European Parliament elected by people voting for parties within each member state. That Parliament is not elected on a pan-European basis, with people voting for pan-European parties. Only after an election is there cobbled together political groups, in order that the Parliament can operate. The extent to which the European Parliament provides democratic legitimacy, can be
answered by considering this question: can you name all, or any, Scottish members of the European Parliament?

Economic Immigration

Economic immigration is different from the migration of refugees. Refugees are treated differently in international humanitarian law. Nothing written here would or should remove our obligation to refugees. Over generations we have given a home to refugees: Jews fleeing persecution, Spanish civil war veterans, victims of Fascist Italy and Nazi Germany, Poles who could not return home in 1945, and people from Africa, Asia and the Middle East. That must remain our policy. There is one facet of our history Scots should be proud of: we are the only country in Europe which has never had a formal policy of persecuting Jewish people.

Economic Immigration is a toxic subject. Yet it must be addressed because it is an issue in the EU referendum. I brush aside the Cameron claim that his policy on curbing benefits is important in reducing the numbers who come to the UK from other EU States. It is a shameful claim that we should operate an apartheid social security policy that treats one person differently from another because of national origin.

Research has shown that the vast majority of people come here, not for benefits, but for work, and the vast majority get work.

There are issues about economic migration that the Left dodges, through fear of being called racists, or accused of lining up with UKIP. It is intellectual cowardice to back off the subject, which has importance on several levels, including – the labour market, health and education provision planning, and housing.

There is a basic principle to be addressed: is an open door immigration policy sensible? It is not. An open door, which means no one knows how many people will come, makes for serious difficulties in planning health care, education, assessing and meeting housing needs. That is why Canada, for example, to where Scots could freely migrate in years gone by, now has a system that welcomes migrants, but controls the numbers in accordance with its ability to absorb them.

There is the key question of the labour market, where people must sell their labour to live independently, knowing that if the market is rigged against them, then it is to the Job Centre and a sanctions regime they must go. Employers like the open door, because if many more workers come on to the labour market, then local workers can be exploited with lower wages and so can the incoming workers. Exploitation of both is now taking place; and will intensify with the Tory Trade Union Bill giving employers the ability to hire Agent-recruited workers to break strikes. That “right” includes the right to recruit EU workers from poorer countries – a recipe for civil strife that only UKIP could benefit from.
No closed door to economic migrants

That does not mean a stop to economic migration. But there needs to be a policy where there is control of numbers so that the labour market is not manipulated to the advantage of employers over wage rates. That requires border control, which is impossible as a member of the EU.

Leaving the EU does not mean slamming the door on economic migrants. With an ageing population, Scotland needs young workers to create the wealth that will pay for the social care of the elderly. So, migrants will continue to come, and be welcomed for their contribution, not only in economic terms but in the cultural diversity they help create.

Economic migration has to be balanced with the needs of the home country workers, whose bargaining power in the labour market has to be protected. The way to do that is through controlling numbers and the skills that economic migrants bring, together with raising and maintaining a Living Wage.

A sensible economic immigration policy should ensure, no matter the national origin of workers, that employers chase them with job offers, rather than the workers competing with each other for the jobs on offer, and so chase wages down to the lower levels.

Should the Parliament we directly elect make our laws?

If the answer is Yes, then coming out of the EU is a must. If the answer is No, then you must accept having laws imposed upon your society with which your elected government does not agree.

In the House of Commons, 22nd. February, 2016, Peter Lilley MP, a former Minister said this:

“For decades, British Ministers who have had involvement with Europe – I include myself in this – have been tempted to exaggerate the influence we bring to bear and conceal our inability to achieve British interests. Is that why it took a freedom of information request to establish that over the last two decades, Britain has voted against 72 measures in the European Council and been defeated 72 times, and that the pace of defeat is accelerating?”

Seventy-two times out of seventy-two, the UK elected Government did not wish to accept laws proposed within the EU, and seventy-two times they had to accept defeat. The lack of democracy and accountability at the heart of the EU is glaring. It should offend us all.
Conclusion

Scottish national sovereignty is the aim of the Yes movement. It is not just a noble, but a necessary ambition to achieve it. Without sovereign power we cannot re-build our society, and so change it from an indecent one in which people can starve, into a decent one where all are endowed with dignity and respect.

If we vote to remain in the UK and the EU, then seeking sovereignty is but a pretence, because we cannot be sovereign while remaining locked within a super state, because the price the EU demands is permanent surrender of sovereignty. That is the inescapable reality that every one of us in the Yes movement has to face.

By voting to leave the EU on 23rd June, we shall re-assert the message of 2014: that we in Scotland are on an irreversible march to independence as a sovereign nation, under the control of no other than the people.