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Etude historique et comparative des référendums d'autodétermination et de sécession

Matt Qvortrup

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Voting on Independence and National Issues: A Historical and Comparative Study of Referendums on Self-Determination and Secession

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Matt Qvortrup

L'existence d'une nation est (pardonnez-moi cette métaphore) un plébiscite de tous les jours, comme l'existence de l'individu est une affirmation perpétuelle de vie. *Ernest Renan, Qu'est-ce qu'une nation?: conférence faite en Sorbonne, le 11 mars 1882, Sorbonne, Paris, p. 27*
Lex est quod populus iubet atque constituit. *Gaius, Institutiones, I,3, AD 161*

It is easy to get carried away with the Scottish referendum – at least if you live north of the border in the United Kingdom. The event that has been trumpeted as the most important decision in 300 years, the biggest grassroots campaign in history, and other assorted hyperbole, certainly took up a fair share of column-inches and broadcasting time in 2014.

But before we are being swept away in the maelstrom of claims and counter-claims by respectively *Better Together* and *Yes Scotland*, it is perhaps helpful to consider that this was not the first, let alone the most momentous independence referendum held to date. Indeed there have been many other equally significant independence referendums. This article is aimed at presenting a historical and comparative overview of these referendums

since the beginning of the 19th century. It also seeks to address some of the claims made regarding independence referendums and to consider some of the practical issues pertaining to holding referendums on independence. The issues to be addressed include matters such as:

- When and why have these referendums taken place?
- When and why are they won?
- Do referendums exacerbate ethnic conflict?
- Should there be a special majority in an independence referendum?
- Does the wording of the question on the ballot influence the outcome?
- Should expats have the right to vote?

The earlier history of referendums on independence

It is a little-known fact that the first referendums on independence were held in the Confederate states in America in the early 1860s. At this stage the referendum was already a deep-seated part of political life. The first referendum in America was held in 1788 in Massachusetts, when voters were consulted on whether they wanted to give up their independence and join the newly minted United States. By the mid-1850s it had become commonplace to consult the citizens in major issues of constitutional importance. It was natural, therefore, that Texas, Virginia and Tennessee submitted the decision to secede from the Union to the voters in 1860. What is perhaps interesting is that the support for secession was not unanimous. In Tennessee, for example, 104,019 voted for secession while 47,238 voted against, and in Texas the figures were 34,794 for and 11,235 against. (We do not have figures for Virginia). These were not endorsements of epic proportions – and perhaps this should have caused the Confederate leaders to think again. The less than unanimous support perhaps suggested the nuclear option favoured by the confederate elites was not supported by the Dixie voters.

After the American Civil War referendums on independence were almost forgotten. To be sure, there were debates about plebiscites to resolve the border dispute between Denmark and Germany, but these came to naught. It took a full 45 years before the next referendum on independence was held: in this case, a vote on whether Norway should secede from Sweden (more than 99 percent supported the proposition) in 1905. That referendum was the brainchild of Norwegian Prime Minister Christian Michelsen, who wrong-footed the Swedish Unionist elite by calling a surprise referendum after the Swedish king had refused to appoint a government that had a majority in the Stortinget (the Norwegian legislature).

However, although the principle of self-determination of the people was much espoused in the wake of the First World War, especially by US President Woodrow Wilson who had campaigned for the use of more referendums in America while he was governor of New Jersey, no referendums were held on independence for the newly established countries (e.g. Czechoslovakia or Yugoslavia) or the secession of states from established ones (e.g. Hungary and Finland). To be sure there were several referendums on the drawing of borders in Europe, e.g. in Schleswig and in Tyrol in 1920. But referendums on outright independence were not held. It was very much the case that, as a contemporary scholar put it, *“the rules governing the intercourse of states [did] neither demand nor recognize the application of the plebiscite [referendum] in the determination of sovereignty”*.¹

In the period between the two World Wars, only two referendums were held: one in 1933, on whether Western Australia should secede from Australia, another in 1935, on whether the Philippines should become independent from the United States. In the former, a majority voted for independence, but as the National Party, which campaigned for independence, lost the election held on the same day, nothing came of it.² In the latter case, a successful referendum was held on a new independence constitution after the Philippine Congress had rejected the US Congress's *Hare-Hawes-Cutting Act*, which had granted independence for the erstwhile overseas dependency.

However, it was not after the Second World War that referendums began to be used when areas seceded from their parent states. Of the 56 referendums on independence since 1860, 50 have been held after 1944. But the vast majority of these (39 in total) were held after 1990.

As shown in Table 1 there were only 13 independence referendums in the four decades after the Second World War.

Table 1 Secession Referendums 1944-1980

Parent Country	Seceding Country	Year	Turnout%	Yes%	
Denmark	Iceland	1944	98	99	
China	Mongolia	1945	98	64	
Denmark	Faroe Islands	1946	50	64	
UK	Newfoundland	1948	52	88	
France	Cambodia	1955	100	-	
France	Guinea	1958	97	95	
New Zealand	Western Samoa	1961	86	77	
West Ind Fed	Jamaica	1961	46	60	
France	Algeria	1962	99	75	
Malaysia	Singapore	1962	71	90	
UK	Malta	1964	50	80	
USA	Micronesia	1975	52	59	
Canada	Quebec	1980	85	41	

Source: www.c2d.ch (accessed October 2, 2013).

One would perhaps have suspected that these referendums would have pertained to decolonisation; that the independence movements would have sought popular approval of their newly gained or espoused freedom. This was not the case. The elites who fought for and won independence were not, in most cases, willing to risk the political victories gained in negotiations by submitting declarations of independence to an unpredictable electorate. Indeed, the only colonies to submit the declarations of independence to referendum were Cambodia, Western Samoa and Guinea. In the first two cases, the votes were held at the instigation of the parent states, who wanted to show that there was popular support for abandoning the territories.

The Guinean referendum was somewhat different. It was held on the same day as eleven other referendums in other French colonies, on whether to take part in the newly established *Communauté française*, established by Charles de Gaulle. The Guineans, led by the independence leader Ahmed Sékou Touré, defied Paris and overwhelmingly voted (95 percent) to become independent. France retaliated by withdrawing all aid. However, within two years Mali, Niger, Upper Volta (now Burkina Faso), Côte d'Ivoire, Chad, The Central African Republic, The Republic of Congo and Gabon – all territories that had returned huge majorities for maintaining links with France in the referendum in 1958 – became independent states. But none of the new states submitted the decision to become independent to the voters. It was almost as if referendums on independence were anathema to the independence movements.

Generally, the reasons for holding referendums in the aftermath of the Second World War were varied. In the case of Mongolia, the vote was held for geopolitical reasons at the instigation of Stalin. The vote in Algeria was held after a lengthy war of independence and negotiations; ideologically, Charles de Gaulle was strongly for the referendum – an instrument pioneered by his political idol Napoleon. But overall it would be difficult to find a general pattern of when referendums were held after the Second World War. Not all social science phenomena follow a law-like pattern, or as Karl Marx put it, “*world history would have been a rather mysterious thing if chance didn't play a role*”.³

In the 1970s there was only one referendum on independence: the decision of the Trust Territory of the Pacific Islands to become independent from the USA under the name of the Federated States of Micronesia in 1975. In the 1980s there was a similar paucity of plebiscites, the only one being the 1980 vote in the Francophone Canadian province of Quebec, in which 59 percent, on a 85 percent turnout, rejected the secessionist *Parti Québécois*'s proposal for “sovereignty association” – a veiled description of independence.

It was only after the fall of Communism in 1989 and after the collapse of the Soviet Union in 1991 that the floodgates of independence referendums opened. Again the reasons seem to have been varied. But, in many cases, referendums were held because the international community – especially the major European powers – insisted upon referendums in order to recognise the new states. Especially the Badinter Commission – set up by the European Communities (soon to become the EU) – stressed that referendums were a *conditio sine qua non* for recognizing new states. There is historical and anecdotal evidence to suggest that it was this requirement that prompted a large number of successor-states to hold referendums especially in the Former Yugoslavia.⁴

But the referendum was also in many cases a kind of symbolic national manifestation of a newly found freedom. By voting – often almost unanimously – in an independence referendum, the new state made the plebiscite a symbolic representation of the nation itself; a mirror image of the *demos* and the *ethnos* merged into one indivisible unity. Ernest Renan's often cited remark, that a “*nation is a daily plebiscite*” is an accurate description of these referendums. But as this author has argued at length elsewhere, the referendums were also held for more prosaic reasons, namely when a new elite was under threat from external and internal powers and wanted to prove that it had popular support and the requisite legitimacy to govern.⁵ The celebrations of independence through referendums had ulterior motives and often displayed that “*violent passion for assent, for unanimity*” that Carl Friedrich and Zbigniew Brzezinski famously made the hallmark of totalitarian dictatorship.

Table 2 Secession Referendums 1991-2011

Parent Country	Seceding Country	Year	Turnout%	Yes Vote%		
USSR	Lithuania	1991	91	84		
USSR	Estonia	1991	77	83		
USSR	Latvia	1991	74	88		
USSR	Georgia	1991	98	90		
USSR	Ukraine	1991	70	85		
Georgia	South Ossetia	1991	98	90		
Georgia	Abkhasia	1991	99	58		
Yugoslavia	Croatia	1991	98	83		
Croatia	Serbs	1991	98	83		
Yugoslavia	Macedonia	1991	70	75		
USSR	Armenia	1991	95	90		
Bosnia	Serbs	1991	90	-		
Serbia	Sandjak	1991	96	67		
Serbia	Kosovo	1991	99	87		
USSR	Turkmenistan	1991	94	97		
USSR	Karabagh	1991				
USSR	Uzbekistan	1991	98	94		
Macedonia	Albanians	1991	99	93		
Moldova	Transnistie	1991				
Yugoslavia	Bosnia	1992	99	64		
Yugoslavia	Montenegro	1992	96	44		
Georgia	South Ossetia	1992	NA	NA		
Bosnia	Krajina	1992	99	64		
Ethiopia	Eritrea	1993	99	98		
Bosnia	Serbs	1993	96	92		
USA	Puerto Rico	1993	48	73		
USA	Palau	1993	64	68		
Georgia	Abkhasia	1995	96	52		
Quebec	Cris	1995	95	75		
Canada	Quebec	1995	49	94		
St Kitts and Nevis	Nevis	1998	57	61		
USA	Porto Rico	1998	50	71		
Indonesia	East Timor	1999	78	94		

Somalia	Somaliland	2001	-	97		
New Zealand	Tokelau	2006		95		
Yugoslavia	Montenegro	2006	55	86		
South Sudan	South Sudan	2011	97	98		

Source: www.c2d.ch (accessed October 2, 2013).

Not all of the states, of course, were recognized, and not all of the referendums were conducted in accordance with the internationally recognized standards of free and fair voting.

In addition to referendums in former Soviet and Yugoslav entities, a proliferation of plebiscites were held in sub-national territories such as, for example, Abkhazia in Georgia and Krajina in Bosnia, where minorities sought to win approval for independence from recently declared independent states. None of these sub-national referendums succeeded. While most referendums were held in former Communist countries, a few polls were held in Western democracies. In 1995 the voters in Quebec again rejected independence, this time by a whisker, and so did voters in Puerto Rico in a multi-option referendum in 1993. And in 1998, the voters in Nevis failed to meet the required threshold of 66 percent necessary to secede from St Kitts and Nevis. Perhaps interestingly, the only unsuccessful referendums on independence have been held in countries with established democratic traditions.

Given that most referendums were held in territories with less than impeccable democratic records, it is difficult to establish what determines the outcome of a referendum. But if we broaden the category to include referendums on autonomy and devolution there seems to be a tendency that voters are more inclined to support propositions, firstly, if they are in favour of the proposition and, secondly, if the government proposing the change or the secession has been in power for a relatively short period of time. In other words, it is easier to win a referendum on devolution or independence during the honeymoon period immediately after an election, something proved perhaps by the devolution referendums in Britain in 1997. Conversely the longer you have been in office the greater the risk of losing the referendum. Why is this? One possible and credible explanation was advanced by V.O. Key who in a classic analysis observed that “*to govern is to antagonize*”.⁶ All governments break promises, fail to deliver and enact unpopular laws. A referendum can be a proxy for a vote on the record of the government. Hence, a No vote in a referendum is often a positive function of the years in office, a fact perhaps most clearly shown in the Canadian referendum on a new Constitution in 1992, in which Prime Minister Brian Mulroney’s personal disapproval rating was the determining factor. However, it should be noted that Milo Đukanović, the Prime Minister of Montenegro, had served as premier since 1991 when he succeeded in winning the independence referendum in 2006. The main factor behind winning an independence referendum is the voters’ support for the proposition. Given these factors, it was perhaps not surprising that the Scots rejected independence – though it should be stressed that the SNP achieved a considerable feat in almost closing the gap. At the risk of simplifying matters, the nationalist lost the referendum but they won the campaign.

Balloting to Stop Bullets?

As was shown in the case of Bosnia, referendums on independence have sometimes resulted in civil war and conflict. Yet, at other times the political split has been amicable. But despite horror-examples like the Former Yugoslavia, independence referendums relatively rarely result in wars. To wit, in Aleksandar Pavkovic and Peter Radan's much cited *Creating New States. Theory and Practice of Secession*, the authors use six case studies to uncover the logic of secession; three violent secessions or secession attempts (Biafra, Bangladesh and Chechnya) and three peaceful ones (Norway, Slovakia and Quebec).⁷ Interestingly, the former three all have one thing in common: no referendum was held. Conversely referendums were held in the latter peaceful examples.

Of course this does not prove that referendums are conducive to peaceful political divorce settlements. If we use the cases of secession cited by Radan and Pavkovic (1900-2010), we find that 44 of the 60 secessions or secession attempts were preceded by referendums. Of 44 referendums, war broke out in six cases. In other words, the secession was achieved peacefully in 38 (86 percent) of the cases. Examples such as Bosnia and East Timor are the exceptions to the rule.

Special Majority Requirements

Given the momentous importance of the vote it seems reasonable that "if the approval rate of a referendum is too low, it ought to be discredited. A nearly simple majority does not provide sufficient legitimacy".⁸ Without passing judgement as to the fairness of such a requirement, it is worth outlining a few comparative examples of when such stipulations have been introduced. Turnout and quorum requirements are relatively common in referendums on independence and other referendums on ethnic and national issues.

Of course, this is not just a result of a concern for fairness and democratic legitimacy. Far from it. In politics opportunism and ulterior motives are often presented in the guises of what we might call democratic appropriateness. Special majority requirements are no exception: a special majority quorum is often a mechanism of obstructionism. This was arguably the case in the late 1970s when the Callaghan government's proposal for Scottish and Welsh devolution was obstructed by the Labour MP George Cunningham who introduced an amendment to the effect that devolution had to be supported by a majority that represented at least 40 percent of the eligible voters. This meant that devolution in Scotland was rejected although a majority of those voting voted yes in the referendum in 1979.

This type of obstructionism, albeit in a different setting, was also the motivation behind Soviet leader Mikhail Gorbachev's insistence that a two-thirds majority should be required for secession in Latvia. The Soviet leader was not the only one seeking to use obstructionist tactics. A similar rule was passed by the Israeli Knesset to the effect that a peace-deal with the Palestinians must be supported by a supermajority. Tellingly the law was introduced by parties opposed to returning the occupied territories to the Palestinians. In the light of these examples, it was unsurprising that one of the demands made by the Khartoum government before the independence referendum in South Sudan in 2011 was that at least 60 percent turned out to vote.

The Canadian Clarity Act, passed in response to a court ruling that a referendum in Quebec would have to be decisive for the result to stand, is often (but inaccurately) cited a precedent for supermajority requirements. In fact, the Canadian Act does not provide a special percentage, but merely states that:

[The House of Commons shall consider] whether, in the circumstances, there has been a clear expression of a will by a clear majority of the population of that province that the province ceases to be part of Canada. Factors for the House of Commons to take into account include (2) (a) the size of the majority of valid votes cast in favor of the secessionist option; (b) the percentage of eligible voters voting in the referendum; and (c) any other matters or circumstances it considers to be relevant.⁹

A better example of a supermajority requirement, albeit a small one, was used in 2006 in Montenegro. The law stipulated that independence would be approved if supported by 55 percent of those eligible to vote. The total turnout of the referendum was 86 percent. 55.5 percent voted in favour and 44.5 were against breaking the state union with Serbia.

Another – perhaps more exotic – example is St Kitts and Nevis in the Caribbean. Under the constitution, Nevis has considerable autonomy and has an island assembly, a premier, and a deputy governor general. Under certain specified conditions, it may secede from the federation. In June 1996, the Nevis Island Administration under the Concerned Citizens' Movement led by Premier Vance Amory – a former international cricketer with a batting average of 23.2 – announced its intention to become independent. Secession requires approval by two-thirds of the assembly's five elected members and by two-thirds of voters in a referendum in accordance with Art 38.1 (b) of the Constitution. After the Nevis Reformation Party blocked the Bill of secession, Amory called for elections for February 24, 1997. Although the elections produced no change in the composition of the assembly, the Premier pledged to continue his efforts towards independence. A referendum – which could be regarded as *ultra vires* – was held in 1998, but only 61 percent voted in favour of the proposition, and hence the referendum failed.

A similar mechanism exists in tiny Tokelau, where a self-determination referendum also failed to reach the required quorum. Yet, these examples are – given the small size of the countries – not likely to create precedence in the sense of an international norm with the force of international law.

In most other referendums (e.g. East Timor in 1999, Malta in 1964, and the referendums on independence for former Soviet States in 1991), there were no special majority requirements. While it is certainly possible to cite examples of special majority requirements, it cannot in fairness be said that the simple majority requirement in the forthcoming Scottish referendum is at odds with international norms.

Do Biased Questions in Referendums Affect the Outcome?

There has been a considerable debate about the wording of the question on the ballot in referendums on independence. The Scottish government's decision in 2012 to include the word "agree" in the proposed question on the ballot in the 2014 referendum led to criticism that it was trying to influence the result by using positive language that could sway voters. The argument – credibly enough – was that a biased and one-sided question could prompt the voters to vote yes to a question which they, had they understood it,

would have rejected. This has always been a charge against referendums on divisive issues. But is it a real danger in referendums on independence? Will the voters be swayed by rhetorical questions? Or is the question on the ballot of minor importance as the voters know the question from the debate?

It is difficult to answer this question with any degree of mathematical certainty but we can perhaps draw some conclusions if we compare some of the recent examples of wordings in the referendums on independence held in peacetime in the past 20 years.

Referendum questions have come in many shapes and sizes, from the blatantly biased to the bland. In Northern Ireland, in 1998, the voters were asked to approve (or otherwise) the rather neutral question: “*Do you support the agreement reached in multi-party talks on Northern Ireland and set out in Command Paper 3883?*” (the Command Paper 3883 was a coded reference to the official document containing the Belfast Agreement on power-sharing). 71.2 percent did.

There are several examples of similar questions which have not created a bias. For example in 1999, in East Timor, the voters were asked the question: “*Do you accept the proposed special autonomy for East Timor within the Unitary State of the Republic of Indonesia?*” (*emphasis added*). A majority of the voters – close to 75 per cent – *rejected* the proposal with the result that East Timor became independent. In this internationally monitored referendum, that value laden word “accept” did not swing the voters.

A similar conclusion could be drawn from the referendum in Quebec in 1995. In this referendum the voters were asked a question that included the word “agree”, namely, “*Do you agree that Quebec should become sovereign after having made a formal offer to Canada for a new economic and political partnership within the scope of the bill respecting the future of Quebec and of the agreement signed on June 12, 1995?*” (*emphasis added*).

While the result was very close (the proposal was defeated by 51 percent), there was no indication that the wording of the question swayed the voters. The citizens had learned about the pros and cons of the proposed “sovereignty association” during the campaign. In both East Timor and Quebec, it seems that an attempt to hoodwink the voters to support a proposition by using positive language failed.

So what questions have been asked? There is no standard format, but a quick look at recent examples may be illustrative. In 2006 the voters in Montenegro voted 55.5-44.5 for independence by supporting the proposition: “*Do you want the Republic of Montenegro to be an independent state with a full international and legal personality?*”. The question was drafted with the help of the EU. As in Montenegro, the question on the ballot on Eritrean independence from Ethiopia in 1993 was drafted by an international committee. Having been advised by the United Nations, the parties opted for the simple question: “*Do you want Eritrea to be independent?*”.

Another example of a simple question was provided by the UN-organised referendum in South Sudan in 2011. In this referendum the voters – many of whom were illiterate – were presented with two images and the text in both Arabic and English saying either “*separation*” or “*unity*”.

During the negotiations between the Sudanese government in Khartoum and the pro-independence SPLM/A movement in South Sudan, the latter expressed reservations about the positive connotations of the word “unity” and the negative connotations of the word “separation”. However, on polling day, these positive words did not sway the voters.

Independence was supported by 99 percent in a reasonably fair referendum monitored by the United Nations.

These examples do not conclusively prove that referendum questions have no effect on the outcome, but it is noteworthy that the attempts to use positive language in both Quebec and East Timor – and to a lesser degree in South Sudan – failed to sway the voters in massive numbers. Needless to say, the results do not tell us anything about the motives of the individual voters. But we have no evidence from qualitative or quantitative research that suggests that the question mattered, if anything the result in East Timor and the Sudan show that those who attempted to use value laden words went down to conclusive defeats.

Who should be allowed to vote?

Who is a member of the *demos*? Who is a voter? Are you still a part of the *demos* if you leave the country, or are you then merely a part of the *ethnos*?

It is questionable whether those living outside a jurisdiction have thereby forfeited their right to vote. Some litigation in Europe suggests as much. For example, in an *obiter dictum* in *Matthews v. United Kingdom*, the European Court of Human Rights found that : “persons who are unable to take part in elections because they live outside the jurisdiction [...] have weakened the link between themselves and the jurisdiction, and can consequently not claim a right to vote”.¹⁰ This ruling was recently reinforced by *Schindler v United Kingdom*. However, in the latter case, the European Court of Human Rights held that “the matter may need to be kept under review in so far as attitudes in European democratic society evolve”. It continued that “the margin of appreciation enjoyed by the State in this area still remains a wide one” and as a consequence citizens of countries that are signatories to the European Convention of Human Rights do not have a right to vote in national elections and referendums. But the law may change as “there is a clear trend in favour of allowing voting by non-residents, with forty-four States granting the right to vote to citizens resident abroad otherwise than on State service”.¹¹ However, it is still permissible to deny non-residents the right to vote. This might justify the exclusion of Montenegrins living in Serbia in the 2006 referendum. Conversely, there are examples of voters in the diaspora being entitled to vote. In both East Timor in 1999 and in Eritrea in 1993, the voters living outside the country were allowed to vote. However, in the two cases this inclusion of expats was arguably justified on account of the displacement that took place due to violent conflicts. Given the recent litigation and the precedent from the recent referendum in Montenegro, it seems consistent with international norms that Scots living in England, Wales, Northern Ireland, or other parts of the world are not entitled to vote in the 2014 referendum.

Conclusion

Referendums have come in waves. Beginning in the 1860s when several of the Confederate states seceded from the Union in the United States (and hence precipitated the Civil War), secessionist referendums were held in Norway (1905), the Philippines (1935) and unsuccessfully in Western Australia (1933).

Generally referendums on independence only became common after the fall of the Soviet Union, possibly because a number of Western states insisted on the ratification of

declarations of independence in referendums. But referendums were also held as a kind of national celebration of the newly established unity.

Most referendums have been held in countries with relatively weak democratic institutions. The often huge yes majorities suggest that the votes are not always free and fair. But in the few independence referendums that have been held in democratic countries, it seems that governments have tended to win the plebiscites if they have taken office recently and only if there is broad popular support for independence before the campaign. Given the SNP has been in office since 2007 and that support for independence before the campaign stood at 33 percent, this was not a good omen for those supporting Scottish independence, although the margin of victory for the opponents was much narrower than many had expected prior to the vote.

Referendums have on occasion resulted in the exacerbation of ethnic conflict, such as in Bosnia-Herzegovina and in East Timor. However, generally speaking referendums are not correlated with civil war. War resulted in only 13 percent of the cases.

Most of the debate about the referendums has revolved around procedural questions, such as whether there should be a special majority requirement, or who should be allowed to vote. Independence is an irreversible event; for this reason, it could be argued, there should be a special majority requirement in such a plebiscite. While there are examples of special majority requirements in countries with impeccable democratic records – such as Canada – these are rare. More often than not such requirements have been introduced as an obstructionist tactic, such as in Israel or the Soviet Union. Given that most referendums on independence have not been subject to a supermajority requirement, to demand a special majority in the Scottish referendum would not be warranted. As a general rule, only voters living in the jurisdiction are allowed to vote. To be sure expats and displaced voters were allowed to vote in the independence referendums in Eritrea and South Sudan. But in Montenegro in 2005 only those living in the country, no matter what ethnicity they were, were entitled to vote. A recent case-law from the European Court of Human Rights suggested that the Scottish government is justified in only allowing voters living in Scotland to vote. However the issue of voting rights for non-resident citizens is, as the European Court of Human Rights noted in *Schindler v United Kingdom*, to be “kept under review” as “there is a clear trend in favour of allowing voting by non-residents”. Referendums on independence seem likely to keep constitutional and international lawyers as well as their political scientist colleagues busy for years to come.

NOTES

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2. Thomas MUSGRAVE, “Western Australian Secessionist Movement”, *The Macquarie Law Journal*, Vol. 3, 2003, p. 95.

3. Karl MARX, "Brief an L. Kugelmann", in *Karl Marx and Friedrich Engels Werke*, Vol. 33, Berlin: Dietz, 1946 [1871], p. 309.
 4. Peter RADAN, "Post-Secession International Borders: A Critical Analysis of the Opinions of Badinter", *Melbourne Law Review*, Vol. 50, No. 1, 2000, p. 47.
 5. Matt QVORTRUP, *Referendums and Ethnic Conflict*, Philadelphia PA: University of Pennsylvania Press, 2014.
 6. V.O. KEY, Jr., *The Responsible Electorate: Rationality in Presidential Voting 1936-1960*, New York: Vintage Books, 1968, p. 30.
 7. Aleksander PAVKOVIC & Peter RADAN, *Creating New States: Theory and Practice of Secession*, Aldershot: Ashgate, 2007.
 8. Beogang HE, "Referenda as a Solution to the National-Identity/Boundary Question: An Empirical Assessment of the Theoretical Literature", *Alternatives*, Vol. 27, No. 1, 2002, p. 77.
 9. See Clarity Act, 2000, c. 26 [Assented to June 29, 2000] 2. (1).
 10. *Matthews v. United Kingdom*, 28 ECtHR 361, para. 64, 1999.
 11. *Schindler v. United Kingdom*, ECHR 19840/09, at 115, 2013.
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ABSTRACTS

To date there have been fifty independence referendums. Some have been official, others unofficial. Some have been successful, and others have ended in failure. This article analyses how independence referendums have contributed to more civic engagement and how this use of the referendum can - under certain circumstances - enhance the ideals of participation espoused by the likes of Rousseau, Tocqueville and Mill.

A ce jour, cinquante référendums sur l'indépendance ont été organisés dans le monde. Certains furent officiels, d'autres officieux. Certains ont réussi, d'autres ont échoué. Cet article analyse la façon dont les référendums sur l'indépendance ont contribué à accroître l'implication des citoyens dans la vie publique et ont pu, dans certaines circonstances, conforter les idéaux participatifs promus par Rousseau, Tocqueville et Mill.

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AUTHOR

MATT QVORTRUP

Cranfield University, UK