

On Referendums and Secession: Discussion with Prof. Matt Qvortrup

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There has been a rising number of referendums in the world recently, including referendums on independence. However, these types of referendums are very unique, as they quite irrevocably decide about the future of a group of people in the given territory that they occupy. In short, referendums on independence need to be reconsidered under certain normative and administrative criteria. First, it is not clear whether a referendum or plebiscite should be used. Second, it is questionable whether the rising number of referendums is tied to crises of legitimacy of contemporary regimes and, third, it is also questionable whether referendums are good or bad for democracy in general. Fourth, the referendum on independence in Scotland and the Brexit referendum in the UK may qualitatively differ from other referendums of such kind. Fifth, there is a question surrounding why referendums (and potential referendums) on independence in contemporary stable democracies (Canada, Spain, the UK vs. Scotland) may have a completely different constitutional framework? Finally, how should we view certain criteria like a “clear majority” requirement and the right to vote for diaspora as justifiable for referendums on independence? In discussion, Přemysl Rosůlek and Matt Qvortrup are seeking answers to these questions.

Matt Qvortrup is Professor of Political Science and International Relations at Coventry University, having previously taught at the LSE, Aberdeen and University College London. An expert in referendums, European politics and comparative government, Professor Qvortrup was awarded the PSA Prize in 2013 for his research on political institutions and policy outputs. Matt was a Specialist Advisor to the *House of Commons Public Administration and Constitutional Affairs Committee*. He has previously worked as member of *President Obama’s Special Envoy Team in Africa* (2009–2010). His books include *Referendums and Ethnic Conflicts* (2014), *Government by Referendum* (2018) and *The Referendum and other Essays on Constitutional Politics* (2019).

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Přemysl Rosůlek: To begin with, for a proper definition of the term referendum, some scholars prefer the term referendum, while a minority of other academicians use the term plebiscite. Finally, some scholars use both terms interchangeably. What is your opinion on this case? As for the term secession, some scholars prefer the term secession over the term separation, while some use both words as synonyms. And, finally, can we use the word secession for both the separation of an entity from a larger state or also for internal secession, such as the secession of Jura from the Canton of Bern? Is this notion also acceptable for other manifestations of self-determination? What is your opinion on the usage of both terms? I’m asking because the term secession has proliferated into cases in which – as I assume – either break-up (at least states in central Asia which did not want to leave the USSR until its termination) or demise (the case of division of Czechoslovakia in which neither Czechs nor Slovaks became a legal successor state to the previous one) would be a more suitable word.

Matt Qvortrup: Let me give you a slightly philosophical answer, if I may? I am a nominalist and I don’t believe there are ‘true’ definitions, like in the case of Plato’s forms. So, I don’t think it is wrong to use the terms interchangeably, but the norm is that referendums are votes held in democracies, whereas plebiscites are votes held in non-free states. Thus, we have had

referendums in Switzerland, Slovakia and Sweden, but the votes organised in Kazakhstan, Belarus and Crimea in 2014 – to name but a few – are plebiscites. I do believe, however, that some referendums have a plebiscitary character. Basically, referendums are when the people have a choice. A plebiscite is when they're asked to approve a fait accompli.

Přemysl Rosůlek: You've recently published extensive research on secessionist referendums in the world since the Napoleonic Era. Do you agree with scholars who argue that, quantitatively, there is a tendency towards a rising number of referendums in general in the world in previous decades (see Aguiar-Conraria, Magalhães 2010; see also Qvortrup 2014b)? If so, do you think that it can be tied to the crisis of legitimacy of current political elites – though legally elected – both in liberal democracies and in former third world countries? Second, there are many scholars that think referendums are good for democracy (e.g. Ureli 1996; He 2002), while some others disagree with it (e.g. Duchacek 1975: 47). The third group of scholars is convinced of both the positive and negative aspects of referendums in representative democracies (see Setala 1999: 81). Finally, there are scholars who are undecided as to whether the referendum is good or bad for democracy (see Gallagher 1996: 244; Walker 2003: 118). Do you also belong to this fourth group of scholars (see Qvortrup 2014a: 48)?

Matt Qvortrup: I generally think referendums – provided they are conducted fairly and in accordance with human rights – are good for democracy. But referendums have to be a people's shield, a way of stopping the politicians for doing things that they do not have a mandate to do. It is evident that the number of referendums has grown. The main reason – and there are probably more than one – is that fewer people identify with parties and hence, politicians submit issues to referendums for fear of losing support. I think this tendency is a healthy one.

Přemysl Rosůlek: In what respect do you perceive referendums on independence in Scotland 2014 and on secession from the UK in 2016 as quantitatively different from other similar referendums in the post-Cold-War era?

Matt Qvortrup: Those two referendums were very different. The Scottish referendum was a classic constitutional referendum; the SNP (Scottish National Party) had won an election but needed a mandate to carry out a policy they believed in. The 2016 Brexit referendum was a vote to save the Conservative party from losing votes to UKIP. It was a referendum held for party political purposes, not one that followed from constitutional principle, nor one the voters demanded. The EU was a minor issue at the time. The Scottish referendum was an example of what a referendum ought to be like – the Brexit referendum was not.

Přemysl Rosůlek: In the 1990s, scholars who focused on the normative aspects of secession often appealed to have secession included into international law. However, the first decade of the 21st century was less optimistic in terms of this issue. And in fact, the secession of Kosovo from what remained of Yugoslavia brought pessimism about this international area being suitable for the issue. Nevertheless, how problematic is it in your eyes that no international instrument for peaceful secession from liberal democratic states has yet been developed? For example, as the Edinburgh agreement – negotiated between the Scottish government and HM Government of the UK – paved the way for the referendum on independence with a simple majority of voters in Scotland only without any other procedural hurdles, the Supreme Court of Canada (see Supreme Court of Canada 1998) introduced a rather restrictive way for Quebec to secede if their political representatives wished to secede from the federation. Most strikingly, the case of Spain vs. Catalonia represents strong condemnation from the central executive, legislative and judicial authorities, and dozens of Catalan political representatives faced charges such as rebellion and sedition on trial in Madrid (see BBC 2019). Nevertheless, all

three countries are full-fledged liberal democratic states. Which of the above-mentioned examples best follows good democracy – Canada vs. Quebec, the UK vs. Scotland or Spain vs. Catalonia?

Matt Qvortrup: These are tricky questions. As a general rule, referendums have to follow the law. If it is against the constitution to hold a referendum, then one needs to change the constitution first. Having said that, the rules can be too rigid. The Spanish/Catalan situation was a result of many things, no doubt, but its main cause was that the courts were spurred on by the PP government, who counted on the courts' conservatism. Again, negotiation and an attempt to reach a compromise is key. In that regard the Edinburgh Agreement (and the agreement in Bougainville and Papua New Guinea at the time of writing). The Canadian situation in regard to the Re Quebec Case must be seen in context. The 1995 referendum was not on independence per se, rather it was on a mandate to negotiate independence. The Supreme Court of Canada did require a 'clear mandate' but that was only in case of a unilateral declaration of independence. It was not, as I read it, a blanket case for super-majorities (like in Montenegro) or special majority requirements (like the turnout requirement in South Sudan).

Přemysl Rosůlek: In regard to the chaos after the Brexit referendum, do you think that referendums on independence or referendums in general will become less popular and attractive in both the international area or the international environment?

Matt Qvortrup: Perhaps, for those who supported 'remain', but not for those who were in favour of Brexit. In fact, even Macron in France has recently made a case for more referendums, and Renzi held a referendum (which he lost) a few months after Brexit. Referendums are still a convenient way of settling a problem for politicians. The overall number has not gone down after Brexit.

Přemysl Rosůlek: I have noticed that you've recommended administrative criteria which must be met by actors to follow good practice in referendums: an independent electoral commission, balanced public broadcasting, no public funds, grants allocated equally, transparency on expenditures, the right to vote for displaced voters and voters in diaspora, and no special majority requirements (see Qvortrup 2014a: 137–138). In this respect, did the Brexit referendum clearly show that other special items must also be included into referendums to be considered as justifiable?

Matt Qvortrup: One may be critical of the result of the Brexit referendum. One may argue that the voters made a mistake and that – at least on economic grounds – the result was irrational. However, the Brexit referendum was based on solid regulation; the rules were applied and adhered to. The Brexit referendum was, from an administrative point of view, a model for other countries to follow. The problem was not the regulation, but that the voters were more interested in national sovereignty than in economics. But that was their choice. There was a spirited debate and both sides had an opportunity to rebut claims. It was just that the 'Leave' side fought a better campaign.

Přemysl Rosůlek: Back to the issue of criteria for good referendums. As already mentioned above, you defend "no special majority requirements" as justifiable criteria for referendum on secession. Christopher Wellman thinks similarly, pointing to the fact that the legitimacy of states is not determined by the principle of consent but that states are defined territorially and legitimized through their capacities to function well and can barely satisfy all their citizens (Wellman 2005: 62). Differently, there is empirical evidence – supporting your view – arguing that the quorum may discourage turnout and promote boycotts of elections (see Aguiar-Conraria, Magalhães, Vanberg 2015). Contrary to the rules set up for referendums on Scottish independence, the Brexit referendums or 1999 East Timor referendum on independence, where no special requirements – backed by electoral commissions – were even under

consideration, there was quite the opposite (and very sophisticated) argumentation by the Supreme Court of Canada in the 1998 Reference Re Secession of Quebec. It found out that a clear majority must be accepted in such a referendum on independence. Subsequently, this judicial judgment was interpreted by the Parliament of Canada in the Clarity Act (Bill C-20), resulting in the fact that the 50%+1 vote (for independence in Quebec) would not be sufficient. Interestingly, this viewpoint was backed by some scholars such as Margaret Moore (see 2004: 208, 216). In the case of Montenegro, a similar judgement backing more than a simple majority was issued by the European Commission for Democracy by law (Venice Commission) of the Council of Europe in its Opinion on the Compatibility of the Existing Legislation in Montenegro concerning the Organisation of Referendums with Applicable International Standards in 2005 (Council of Europe 2005). Why are the scholarly community and institutions so disunited on this issue? And mainly, do you still back the simple majority of voters in order to change the status quo in such a significant manner, which includes forming a new, independent state and the change of borders and citizenship?

Matt Qvortrup: Politics is a subjective business, and law even more so. No doubt scholars use ‘objective arguments’ to defend personal preferences. For me the main thing is that the vote reflects the will of the majority. For that reason, I am open to turnout requirements, as in Lithuania, Italy and Hungary; this ensures that the majority of voters is also closer to the majority of those entitled to vote. For example, only 37 percent of the eligible British voters actually voted for Brexit. A turnout requirement will ensure that the issue is salient. Italy is a good example of this.

Přemysl Rosůlek: Your other “administrative” requirement for a good referendum is aimed at the right to vote for displaced voters and voters in diaspora. However, as you mentioned (see Qvortrup 2015), voters in both Eritrea and East Timor in 1993 and 1999 respectively had the right to vote even if they were in diaspora. You seem to justify it only with the reason that they may be out of their country of origin due to long and violent conflicts there. The case of the referendum on independence in South Sudan was similar. However, you have equated conditions for referendum on independence in the poor and rather (albeit not violently) unstable Montenegro in 2006 with “Scots living in England, Wales, Northern Ireland, or other parts of the world” (Qvortrup 2015: 10), who all were not eligible to vote in both the 2006 or 2014 referendums. Do you think that this is correct and can we differentiate between referendums in post-conflict areas from referendums in relatively stable entities?

Matt Qvortrup: I think you are right. One cannot compare Eritrea and East Timor with Montenegro, and still less with Scotland. Diaspora voting is only relevant in post-conflict societies.

Přemysl Rosůlek: As for criteria for a good referendum related to campaigns, the role of the public, and mass media including the justifiable allocation of sources into two umbrella (e.g. “yes” and “no” deal) organizations only, do you think that such rules should be extended into the absence and restriction of manipulations, hacking and the potential impact of the fake news industry from external forces such as Russia, which has been quoted in previous referendums? Do you think that the outcome of referendums can be significantly influenced by an external force? If so, how can such interference be sanctioned – and can the results of voting be fully cancelled?

Matt Qvortrup: Yes, I think referendums can be influenced – if not decided – from the outside. That is why regulation of social media is essential. Regulation in most countries has largely overlooked the fact that newspapers and television is now less important than social media.

Přemysl Rosůlek: As for referendum questions in ballot texts, are you still convinced that, quoting you exactly, “we have no evidence from qualitative or quantitative research that suggests that the question mattered” (see Qvortrup 2015: 10)? However, Lord Ascroft Polls found different decision from voters

if asked differently (see Ascroft 2012). In addition, in the cases of the 2014 and 2016 referendums in Scotland and the UK respectively, the Electoral Commission tested referendum question on focus groups and its findings were identified as serious and were applied into the reformulation of both referendum questions. In particular, the Electoral Commission found that phrasing “Do you agree” (by the way so far commonly in use) is misbalanced, lacks neutrality, may be viewed by voters as too personal and can have a tendency to instruct voters to side with the “Yes” option (see The Electoral Commission 2013: 1). And as for the Brexit referendum, the Electoral commission made even one step further when it shifted from previous practice and recommended instead of using “yes” and “no” in ballot texts more extensive formulation in order to reach more neutral – and much clearer – wording: “Remain a member of the European Union” or “Leave the European Union” (The Electoral Commission 2015: 40). Do you think that such changes triggered by the Electoral Commission which – by the way – has worked hard on precise referendum questions since around 2002 (it did not hesitate to change the established norms coined hitherto in the international environment and by the international community – e.g. the UN and the EU led referendum missions in Eritrea or Montenegro respectively where the referendum questions started with the phrases “Do you approve” or “Do you want. . .” and ended up with “yes” and “no” options which were both condemned by the Electoral Commission as misleading)?

Matt Qvortrup: Well, Lord Ascroft based his findings on a poll. But my research is based on actual referendums. In cases where there are few referendums, and a healthy debate before the vote, the wording of the question does not seem to matter. People have decided to vote long before they enter the polling booth.

Přemysl Rosůlek: In conclusion, in the light of the Brexit chaos caused by the referendum (motivations and results), would you agree with the opinion given by some scholars that it would be most suitable to organize two binding referendums – initiatory and ratificatory simply for two reasons – in the initial period of the (first and only) referendum campaign, voters barely know the consequences and have no power over the final agreement reached. Secondly, there is argumentation that the second referendum can calm hot heads and bring down the impact of populism and manipulation, which can occur with significant force if only one referendum is organized?

Matt Qvortrup: I don't think that two referendums are necessary. The practice of holding two referendums – the first round to narrow down the choices to two, and then a run-off, has been practiced in New Zealand. It is kind of like the French electoral system. Here it has worked. It might work for controversial issues. Brexit is a good example of an issue where we NEED a second vote. The people did not vote for no-deal; Boris Johnson promised we would remain in the single market. A referendum on the final deal or the future relationship with Europe is something I support. I have written about it at length in the New European (see Qvortrup 2018).

Přemysl Rosůlek: Matt, thank you for your answers.

Matt Qvortrup: I'm delighted to be interviewed here. It is a great honour, thank you!

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Přemysl Rosůlek
University of West Bohemia
rosulek@kap.zcu.cz

Professor Matt Qvortrup (Coventry University) has written extensively on referendums. Trained as a lawyer and a political scientist, his books include *Referendums and Ethnic Conflict* (2014), *Referendums Around the World* (2nd edition 2017) and *Government by Referendum* (forthcoming 2018). He is a frequent commentator for CNN, the BBC and has written op-eds for *El Pais*, the *Guardian* and *Newsweek*. Consensual secession requires an agreement with the host state and is a process that is characterised by little or no violence. On *Referendums and Secession: Discussion with Prof. Matt Qvortrup*. *Acta Fakulty lozockã Zãpadoãeskã© univerzity v Plzni*. 2019, Vol. 11 (1), 81-86 <http://zcu.cz/research/edicni-cinnost/acta/>. Matt Qvortrup is Professor of Political Science and International Relations at Coventry University, having previously taught at the LSE, Aberdeen and University College London. An expert in referendums, European politics and comparative government, Professor Qvortrup was awarded the PSA Prize in 2013 for his research on political institutions and policy outputs. Matt was a Specialist Advisor to the House of Commons Public Administration and Constitutional Affairs Committee. *Referendums and ethnic conflict*. M Qvortrup, M Qvortrup. University of Pennsylvania Press, 2014. 91. 2014. *Direct democracy: A comparative study of the theory and practice of government by the people*. M Qvortrup. Direct democracy, 2015. 79*. The three referendums on the European constitution treaty in 2005. M Qvortrup. *The Political Quarterly* 77 (1), 89-97, 2006. Matt Qvortrup is Professor of Sociology and Public Policy at the Robert Gordon University, Aberdeen. Product details. Hardcover : 208 pages. Chapter Four asks whether referendums on constitutional issues should be obligatory. Chapter Five looks at different models of referendums, either called by a minority in parliament or by a specified number of electors. Chapter Six proposes reforms. The book includes an overview of the history of referendums on independence and a summary of the legal issues involved in doing so, as well as a chapter on referendums in unrecognised states and case study chapters exploring referendums in Kosovo, Cyprus, Kurdistan and Somaliland amongst others. 1. Introduction: Nationalism, Referendums and Democracy: Independence, Recognition and Voting. Matt Qvortrup. 2. The History of Ethno-National Referendums 1791-2018. Matt Qvortrup. Part II - A Theory of Self Determination. 3. Secessionist Referendums in International and Domestic Law. Peter Radan. 4. Theory of State Recognition: A Contemporary Assessment.