

## **What you may not know about independence referendums, by Alexandra Remond.**

Independence Referendums are part of the bigger family of sovereignty referendums. That is, popular consultations of the citizenry of a state or region asking where part of their sovereignty should lie. Such referendums see the traditional form of referendums, of enabling direct 'popular sovereignty' and the *demos* deciding on a specific issue, expended and applied to the very question of where and how this sovereignty is defined (Tierney 2009). Referendums on supra-national institution such as the European Union, or devolution as in Scotland and Wales in 1997 are about where some competencies of law-making and enforcement should lie therefore transferring the sovereignty of the people traditionally attributed to the nation-state to upper or lower governmental bodies. German and Mendez resume it neatly: sovereignty referendums are "a direct popular vote which involves a major reallocation of sovereign rights over a given territorial entity between at least two territorial centres" (2014, 8), one of them being the national government. In the case of an independence referendum these sovereign rights are no less than what a full-independent state would enjoy. Irredentist referendums differ from the ones on independence, as the question is not about creating a new state; but joining an existing one. A less risky scenario compared to independence since difficult question of state viability (from the economy, to the military and the ability to established embassies for example) do not come into the debate over a region should secede from its current sovereign host-state.

Within independence referendums we can also make further distinctions. Firstly, we can differentiate between consensual or agreed independence referendums and unilateral independence referendums. Consensual independence referendum occurs when the central authority of the state within which the region at risk of secession agrees to the referendum process. A typical example is the 2014 referendum in Scotland where Westminster agreed to the Scottish government holding a public consultation on independence and the unionist opposition within Scotland participated in the referendum process and campaign. The outcome is recognised as legitimate and bounding by all major actors: the independentist sub-national government, the central government and the population whose status is at stake in the referendum. An unilateral independence referendum on the other hand do not have such recognition

from the central authority of the existing state. Two such referendum happened in 2014 in Crimea, Ukraine and Catalonia, Spain. In Crimea the plebiscite was conducted under military threat and without any consultation with the Ukrainian government which did not recognise the referendum outcome and the region is now a *de-facto* state (operates without control from Kiev) but not *de-jure*; meaning that it is recognised by the international community made of sovereign state as a peer. The Catalan government conducted a similar referendum where the opposition in favour of retaining the union with Spain did not participate. Moreover, the government in Madrid insists that Catalonia does not hold the right to secede and therefore any referendum on independence is illegal.

There is however a difference between a legal referendum and a consensual referendum. While Croatia or Slovenia had a right to secede under the Soviet Federal Republic of Yugoslavia constitution, what was left of the SFRY government in 1990 opposed the plebiscites and the secession of the two republics leading to civil war. On the other hand, nowhere in the (unwritten) British constitution does Scotland holds the right to secede yet the referendum was made legal by the adoption of the Scotland act *after* the referendum was agreed. Similarly, the Union between Norway and Sweden was dissolved in 1905 via a referendum on independence without the former having a state right to independence and thus avoided an escalation of conflict. While the first clear consensual referendum, the plebiscite held in Norway at the turn of the 20<sup>th</sup> century is not the earliest example of people being asked how and by whom they should be governed.

The few scholars that have looked at sovereignty referendums identify the plebiscite held in Avignon in 1791 as one of the first application of the principal of the will of the people establishing the nature of their political boundaries and the embodiment of its supra-authority. While only a few “citizens” where consulted (e.g. Sussman 2006, Laponce 2010, Şen 2015). Their consent was deemed needed to legitimise the transfer of population and territory from one sovereign entity (Holy See) to another (France). Since then have followed many more such consultation with a surge in the 60s and 70s during the decolonisation period, notably within the French empire notably (The British empire was not a big user of independence referendum and prefer to leave it to the supreme and final authority of the parliament), and the 1990s with the collapse (as a catalyst and consequences of) the USSR and SFRY.

Independence referendums have been and will likely remain an attractive tool for secessionist actors to gain legitimacy in their goal of statehood. Nonetheless, even when the majority of the consulted population votes in favour of independence, the principal of self-determination has its limits. The best predictor of a successful independence referendum and secession is likely to remain the consent, or the lack of opposition, of the existing sovereign state rather than the international community favouring the will of the people over the principal of territorial integrity and non-interference; although we have in recent years seen exceptions with Montenegro in 2006 or South Sudan in 2011.

#### References:

- Germann, Micha, and Fernando Mendez. 2014. "Contested Sovereignty: Mapping Referendums on the Reallocation of Sovereign Authority over Time and Space." *Paper Presented at ECPR 5*: 7.
- Laponce, J. A. 2010. *Le référendum de souveraineté: comparaisons, critiques et commentaires*. Québec: Presses de l'Université Laval.
- Şen, İlker Gökhan. 2015. *Sovereignty Referendums in International and Constitutional Law*. Cham: Springer.
- Sussman, G. 2006. "When the Demos Shapes the Polis – The Use of Referendums in Settling Sovereignty Issues." Initiative & Referendum Institute at the University of Southern California.
- Tierney, Stephen. 2009. "Constitutional Referendums: A Theoretical Enquiry." *The Modern Law Review* 72 (3): 360–83.