I WANT TO BREAK FREE!

The Freddie Mercury Theory of Independence Referendums

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1. Introduction

It is tempting to say that referendums on independence can be described as conforming to the 'Freddie Mercury-Theory of Politics'. Secession by referendums is difficult and you have to be either 'slightly mad' or be a 'great pretender' to be able to pull them off. In this article, I will – after some historical introductions – consider when the referendums are successful – by which I mean, when they result in the establishment of a new state. I am making no value-judgement as to whether establishing a new state is a desired outcome.

2. Historical Introduction

First a few definitions. Using Weberian ideal types, one can distinguish, in the main, three types of referendums:
  a) *ad hoc referendums* (questions to solve a perceived political issue – such as David Cameron's decision to hold a referendum on UK membership of the European Union 2016);
  b) *initiatives* (votes initiated by a specified number of electors on 1) already enacted legislation, as in Switzerland, or 2) on new laws, as in Hungary); and:
  c) *constitutional referendums* (see next paragraph).

The constitutional doctrine normally distinguishes between three types of constitutional referendums: on the approval of the constitution, on its revision, and on sovereignty issues (like the foundation of a new state).

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It is important to stress that these are ideal types and that there might be borderline cases. Thus, the types are not what philosophers call 'universals' and that the concepts are approximations to real existing examples.

Overall, the number of them is comparatively small. Thus, out of the 1200 nation-wide only 62 (or 5 per cent) have pertained to independence, of which only four (or 6 per cent) have returned a 'no' vote (Quebec, in respectively, 1980 and 1995, in Scotland in 2014 and New Caledonia in 2018) – though other referendums have failed because they did not satisfy super-majority requirements (e.g. in Nevis in 1998 and in several referendums in Palau in the 1980s).

Historically the idea and the doctrine of independence referendums can be traced back to the beginning of the 17th century. No less a figure than Hugo Grotius (1583–1645) observed in *The Law of War and Peace,* "in the alienation of a part of sovereignty, it is required that the part which is alienated consent to the act".[1]

Samuel Pufendorf (1632–1694), the other great theorist of international law, was even more explicit when he stressed that "in the alienation of a part of the kingdom, there is required not only the consent of the people which continues to be with the old king, but the consent of that part too, especially, whose alienation is at stake".[2] And, the third of the great legal theorists of sovereignty, Emer de Vattel (1714–1767), roughly 100 years later, held that such fundamental changes had to be supported by the people "by a majority of votes".[3]

At the time of the French revolution, it was acknowledged, at least at the theoretical level that the people had a right of veto over territorial changes. Hence, it was not surprising that the Constituent Assembly in Paris passed a decree renouncing conquest and declaring that "the French nation renounces any war of conquest".[4] Though, in practice, the French were reluctant to put their subsequent conquests to a vote. The reasons for this were understandable. In 1802, the French organised a constitutional referendum in Switzerland. A majority of the voters voted 'no'. This unexpected outcome, perhaps, explains why the French henceforth were reluctant to organise sovereignty referendums in conquered territories.

None of these earlier referendums were free or fair, and the votes were not secret. One can, therefore, question if they are relevant for the purposes of this article.

The first referendums on independence, in the form we know today, were held in the 1860s, when the US states of Arkansas, Tennessee, Texas and Virginia, held referendums on independence following the election of Abraham Lincoln to the US presidency. All the referendums were won but no country recognised the results.[5]

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[1]   Hugo Grotius: *Grotius on the Rights of War and Peace.* Cambridge, Cambridge University Press, 1853. 108.

[2]   Pufendorf quoted in Coleman Phillipson: Samuel Pufendorf. *Journal of the Society of Comparative Legislation*, vol. 12., no. 2. (1912) 234.

[3]   Emer Vattel: *The Law of Nations.* (First edition: 1758.) Indianapolis, Liberty Fund, 2009. 118.

[4]   Jean-Baptist Duvergier (ed.): *Collection complète des lois, décrets*, vol. 1, Paris, Guyot et Scribe, 1824. 191. (Author's translation.)

[5]   Johannes Mattern: *The Employment of the Plebiscite in the Determination of Sovereignty.* Baltimore MD, Johns Hopkins University Press, 1921. 118–123.

The result of the referendum in Virginia is particularly noteworthy. Before the vote, representatives from counties in Western Virginia declared that they, in the event of a 'yes' vote for independence, would establish a new state and that the constitution of this new state would be approved by the voters in a referendum.[6]

Virginia as a whole voted for secession: 21,896 were in favour – 16,646 were against. However, in the western counties 8,375 out of the 9,758 votes cast were against secession.[7] The western counties sent delegates to a specially convened convention, which declared that the referendum in Virginia as "illegal, inoperative, null, void and without force and effect".[8] They then "passed an ordinance providing for the 'formation of a new state out of the portion of the territory of this state' [Virginia]. This ordinance was to be and was submitted to a plebiscite".[9] 18,000 voted for a new state, 781 voted against it.[10] After the American Civil War the US Supreme Court established in *Texas v. White*[11] that unilateral declarations of independence are unconstitutional, a case that was most recently used by the Alaskan Supreme Court in 2006 in *Kohlhaas v. Alaska*[12] to ban a constitutional initiative for independence for this state.

Figure 1: Referendums on Independence 1860–2018
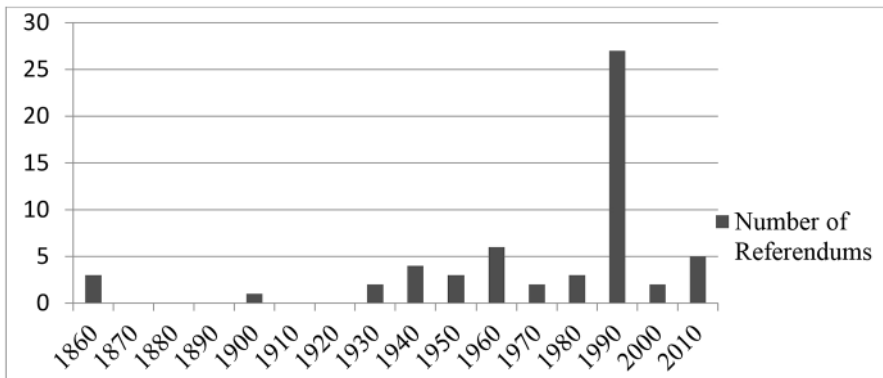
Based on the author's own research.[13] Note: This Figure does not include the four multi-option referendums in Puerto Rico (1968, 1993, 1998 and 2012), which formally included 'independence' as one of the options. However, the table includes

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6   MATTERN op. cit. 118.

7   Ibid. 120.

8   Quoted in MATTERN op. cit. 123.

9   Ibid. 123.

10   Ibid. 123.

11   *Texas v. White* 74 US 700 (1868).

12   *Kohlhaas v. Alaska* 147 P 3d 714 (2006).

13   Matt QVORTRUP: *Referendums and Ethnic Conflict.* Philadelphia, University of Pennsylvania Press, 2014. [Hereafter: QVORTRUP (2014a).]

the two-round multi-option referendum in Newfoundland in 1948 as independence was one of the choices in the run-off. The independence options lost to 'statehood' and the former British territory became a Canadian Province.[14]

After the American secession-votes there was gap of a few decades before the aforementioned Norwegian referendum, then a hiatus again until the mid 1930s when the number of independence referendums began to pick up with the unrecognised, but successful, independence referendum in Western Australia in 1933 – 68 per cent voted in favour, but the vote was ignored as the secessionist party lost the state election on the same day – and the vote for independence for the Philippines in 1935. Especially after the Second World War, the referendum was increasingly used to show popular approval for decolonization, though not all countries held plebiscites before they broke with their erstwhile colonial overlords After a drop in the 1970s, there was an explosion of independence votes in the years immediately following the fall of the Berlin Wall and the collapse of Soviet Communism.

Not all independence referendums are comparable. Different historical and legal circumstances play a role. Further subdividing the independence referendums, we can distinguish between three forms,[15] namely,

  a) *post-colonial* (e.g. Philippines 1935);
  b) *by agreement* (e.g. Montenegro and New Caledonia);
  c) *unilateral* (e.g. Catalonia, Quebec and Estonia).

So, when are those seeking to establish a new state successful?

3. Empirical Analysis

Good research, according to a much-quoted text, should "make a specific contribution to an identifiable scholarly literature by increasing our collective ability to construct verified scientific explanations of some aspect of the world".[16] This paper makes a 'specific contribution' to the study of independence referendums by analyzing the Scottish referendum in a comparative perspective. The paper does not provide a single perspective on the referendum, rather the vote is seen through different conceptual lenses; a comparative statistical one, an elite perspective and a grass-roots perspective.

There is a considerable literature on the determinants of independence referendums. Most of this is country specific and focuses on idiosyncratic factors behind a unique event.[17] While there are some studies that contrast independence

[14]   See Qvortrup (2014a) op. cit. 69.
[15]   See Ilker Gökhan Şen: *Sovereignty Referendums in International and Constitutional Law.* Heidelberg, Springer, 2017. 213.
[16]   Gary King – Robert O. Keohane – Sidney Verba: *Designing Social Inquiry: Scientific Inference in Qualitative Research.* Princeton, Princeton University Press, 1994. 15.
[17]   Richard S. Conley: Sovereignty or the Status Quo? The 1995 Pre-referendum Debate in Quebec. *Journal of Commonwealth and Comparative Politics*, vol. 35., no. 1. (1997) 67–92.

referendums, for example Quebec 1995 and Montenegro 2006.[18] There are relatively few studies devoted to the comparative study of independence referendums.[19]

A subset of this literature deals with the determinants of the vote.[20] The aim of this study is firstly to contribute to the comparative psephology of independence referendums and to determine if these votes follow a recurrent pattern? And then to look at how these factors square with the experiences of the Scottish referendum on independence 2014.

4. Methodological Considerations

It is the goal of "scientific research" to make "Causal inferences on the basis of empirical information".[21] The question is how? It is often objected that quantitative analyses fail to uncover the essential issues. However, statistical data can give us an understanding of general and recurrent patterns, which can direct us towards more qualitative data. Scholars in the broadly qualitative tradition maintain "We want social science theories to provide causal explanations of events… and to give an account of the reasons for or meanings of social action".[22]

While a statistical analysis cannot provide us with the latter it is a useful starting point for a subsequent analysis of meaning. Consequently, if we find a statistical pattern this will be subjected to a more qualitative analysis to determine if there is a congruence between the qualitative and the quantitative analysis.

Epistemologically, the two perspectives thus constitute two different aspects of a social phenomenon. It is recognised that there is no superior epistemological vantage point.[23] The quantitative analysis only provides one perspective. It will be complemented by a qualitative study. The approach used here is thus akin to that of Alison (1969),[24] in which different conceptual models are used to explain the same phenomenon or event. In Allison's words: "Although the standard frame of

18 Zoran Oklopcic: Independence Referendums and Democratic Theory in Quebec and Montenegro. *Nationalism and Ethnic Politics*, vol. 18., no. 1. (2012) 22–42.

19 Though see Stéphane Dion: Why is Secession Difficult in Well-Established Democracies? Lessons from Quebec. *British Journal of Political Science*, vol. 26., no. 2. (1996) 269–283.

20 For example Harold D. Clarke – Allan Kornberg: Choosing Canada? The 1995 Quebec Sovereignty Referendum. *PS: Political Science & Politics*, vol. 29., no. 4. (1996) 676–682. and Lawrence Leduc: Opinion Change and Voting Behaviour in Referenda. *European Journal of Political Research*, vol. 41, no. 6. (2002) 711–732.

21 King–Keohane–Verba op. cit. 7.

22 John Ferejohn: Structure and Ideology: Change in Parliament in Early Stuart England. In: Judith Goldstein – Robert O. Keohane (eds): *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change*. Ithaca, Cornell University Press, 1993. 228.

23 Donatella della Porta – Michael Keating: Comparing Approaches, Methodologies and Methods. Some Concluding Remarks. In: Donatella della Porta – Michael Keating (eds): *Approaches and Methodologies in the Social Sciences: A Pluralist Perspective*. Cambridge, Cambridge University Press, 2008. 316–322.

24 Graham T. Allison: Conceptual Models and the Cuban Missile Crisis. *American Political Science Review*, vol. 63., no. 3. (1969) 689–718.

reference has proved useful for many purposes, it is now clear that this model must be supplemented, if not supplanted, by frames of references which focus upon the detailed functioning and malfunctioning of organizations and individuals in the policy process".[25] This alternative approach will be pursued following the statistical analysis.

5. Hypotheses

Some of the previous studies make generalized claims, for example, that secession is difficult in developed societies.[26] There is, on the face of it, something to be said for this. Hence,

Hypothesis 1: Referendums are less likely to succeed in developed countries (H1).
    Independence and secession contributes to the establishment of a collective entity, a new nation. In order to succeed it is to be expected that the elites (irrespective of political ideology) share a commitment to independence. Hence,

Hypothesis 2: Support for independence is correlated with elite consensus (H2).
    Democracy is about legitimacy. A low turnout will not confer legitimacy on a momentous and irreversible decision such as independence. Hence,

Hypothesis 3: Support for independence will be correlated with higher turnouts (H3).
    Sometimes – for example in the post-soviet states – autocratic leaders desire independence in order not to be governed by a larger entity. These referendums do not meet the standards for free and fair elections. Their results may not, therefore, reflect the will of the voters. Given this we can expect,

Hypothesis 4: that the yes-vote is correlated with the level of democratization (H4).
    In the wake of the collapse of Soviet Communism several independence referendums were held. Hitherto oppressed national groups were able to appeal to ethnic sentiments. These referendums constitute a unique set of votes. Hence, we would expect,

Hypothesis 5: referendums held in post-communist societies are likely to be correlated with high-yes votes (H5).

6. Data

There is some disagreement as to what constitute independence referendums. In this present study referendums are included if an entity (a smaller part of a recognized state) held a referendum on the establishment of a potentially new international law

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[25]   Ibid. 690.

[26]   Dion op. cit.

subject. In most cases the votes have been on whether the entity in question wished to become independent. However in some cases (Philippines 1935, Malta 1964, Abkhazia 1999, Somaliland 2001 and South Ossetia 2001) the votes were formally on a new constitution for an independent country. While these referendums were not *strictu sensu* independence referendums they were *de facto* plebiscites pertaining to independence as a rejection of the proposition would have meant the continuation of the status quo ante.

Democracies figures are based on *Polity IV*,[27] as this database covers all years back to 1800. The alternative measure *Freedom House* was deemed unsuitable, as it did not cover the period prior to 1973.

Data for the individual referendums were based on own research,[28] which in turn is based on specialist assessment by country experts and data from *C2D, Zentrum für Demokratie, Aarau*.[29]

7. Statistical Findings

As Table 1 shows, there are certain patterns in how referendums on independence are decided. The model corroborates H2, there is statistically significant evidence to support the proposition that referendums are successful in entities where there is an elite consensus. And there is some support for H3, namely that yes-votes in independence referendums are correlated with high turnouts (though the referendums in Quebec and Scotland are outliers in this regard, see above).

There is some limited support for the proposition that referendums are more successful in countries with a low score on the Polity IV index, though this is only true for Model 1.

Table 1: Statistical Determinants of Yes-Votes in Independence Referendums
(Dependent variable yes-vote)

Variables	Model 1	Model 2
Turnout	.323	.350
	(.192)	(.201)**
Polity IV	-.401**	-.321
	(.190)	(.197)
Elite Consensus	18.363***	18.190***
	(4.935)	(5.312)
Post Communist	6.791	-1.628
	(4.912)	(7.181)
French		-3.359
		(7.866)

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[27] www.systemicpeace.org/polityproject.html

[28] Matt Qvortrup: Referendums Around the World. In: Matt Qvortrup (ed.): *Referendums Around the World*. New York, Palgrave Macillan – St. Martins Press, 2014. 252–299. [Hereafter: Qvortrup (2014b).]

[29] www.c2d.ch

Variables	Model 1	Model 2
Armed Conflict		6.930
		(6.375)
First World		-8.88
		(7.81)
Constant	39.051**	40.043**
	(16.25)	(16.798)
	R-Squared: 37	R-Squared: 41
	N: 60	N: 60
*: p< .1, **: p< .05, ***: p< .01		

There is no statistical support for the hypothesis that independence referendums are more successful in developing countries (H1) as suggested by Dion.[30] Nor is there support for the hypothesis that referendums on independence are more likely to have been successful in post-communist societies as hypothesized by H5.

8. Qualitative Analysis

Does this analysis shed light on the Scottish (and the Quebec) referendums? It is certainly the case that both of these referendums were characterized by the lack of elite consensus. But apart from this some of the findings are contrary to the referendums in the two entities. To wit, there was a high turn-out in Quebec in 1980 and 1995 as well as in Scotland in 2014, respectively, 85 percent, 93 percent, and 85.

Critics of the qualitative approach may suggest that the statistical pattern fails to unearth the truly significant aspects of the campaign and that we have "bleach[ed] human behaviour of the very properties that interest us before we even begin to examine [them]".[31]

To get a deeper 'understanding' (in the interpretative or *verstehen* sense) it can be useful to compare some of the salient aspects of the 1995 Quebec referendum and the Scottish 2014 poll.

In addition to the lack of elite consensus, both polls where characterized by attempts to use instability on the financial markets to influence the results and in both cases proposed changes to the future relationship between, respectively Rest of Canada (ROC) and Quebec and RUK (Rest of the UK) and Scotland, were claimed to have changed the outcome of the debate.

To get a sense of the Scottish referendum it is necessary to change tact and adopt a different ontological perspective; it is necessary to get a contextual understanding of the referendum in Scotland.

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[30]   Dion op. cit.

[31]   Clifford Geertz: *The Interpretation of Cultures: Selected Essays.* New York, Basic Books, 1973. 17.

9. The Scottish Referendum in Context: The Second Perspective

"S***, we might lose this"[32] – David Cameron was not his own affable and carefree self when he was presented with the polling data.

With little more than a week to go before the Scottish referendum on independence on the 18th of September 2014, it was dawning on the Prime Minister of the United Kingdom that he could go down in history as the last person to hold that office; Scotland might break away.

The prospect ending the more than 300 year union between England and Scotland, which has been sealed through the Act of Union in 1707, was not an issue that had troubled the seemingly relaxed David Cameron much during his hitherto four year-long premiership.

The economic crisis, the Arab Spring (of whatever was left of it!), as well as the electoral threat from UKIP had been his more immediate concerns. In October 2012, he had agreed to hold a referendum in Scotland largely because he held certain that the Scottish National Party would not be able to win. Of course, the decision to allow the Scots to hold a referendum was couched in more positive and idealistic terms: "I always wanted to show respect to the people of Scotland – they voted for a party that wanted to have a referendum, I've made that referendum possible and made sure that it is decisive, it is legal and it is fair", David Cameron told the BBC.[33]

He could afford to sound idealistic and put a democratic spin on his decision; the opinion polls suggested that only 30 percent of the Scottish voters supported independence; 58 percent were against.[34] Such a commanding lead would – under normal circumstances – be enough to secure victory. All other things being equal, referendums were easier to defeat than to win. Only a year before he agreed to hold a referendum in Scotland, he had spearheaded a campaign against the introduction of a new voting system for Westminster elections. More than sixty percent voted no in the Alternative Vote referendum in 2011. Cameron had reason to be confident. But the confidence had evaporated. All things were not equal. The Scottish National Party – in office since 2006 – showed no sign of lethargy.

Indeed, First Minister Alex Salmond had effectively governed as a social democrat and had made the most of the Scottish voters anger at the Conservative-Liberal Coalition's austerity measures, the decision to renew Trident and the so-called 'Bed-Room-Tax' (a charge for those living in public houses if they have more than one bedroom).

Since late 2013 opinion polls had begun to shift slowly but steadily towards the 'yes' camp. Interventions by George Osborne – the Chancellor of the Exchequer – had failed to deal a knock-out blow to the increasingly buoyant campaign for

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32 Cameron quoted in Anthony SELDON – Peter SNOWDON: *Cameron at 10: The Inside Story, 2010–2015*. London, William Collins, 2015. 414.

33 Andrew BLACK: Scottish Independence: Cameron and Salmond Strike Referendum Deal. *BBC*, 15th October 2012, www.bbc.co.uk/news/uk-scotland-scotland-politics-19942638

34 www.ipsos-mori.com/Assets/Docs/Scotland/SPOM_Oct12/Scotland_SPOM_Oct12_charts.pdf

independence. On the 2nd of September 2014, a *YouGov/Times* poll showed a 2 percent lead for 'Yes'.

What happened? Can the turnaround be attributed to a single main factor?

In Quebec, the appointment of Bouchard is credited with turning the seeming hopeless struggle for independence into a possible victory.[35]

Further in Canada the financial markets were, arguably, trying to use scare-tactics to get the voters to opt for a 'no-vote'.[36] Though this cannot be shown statistically, the raw polling data suggest that support for yes went up after the British finance minister suggested that the Scots would not be allowed to use the Pound post-referendum in the event of a yes-vote.

After the 'yes' poll on the 2nd of September former Prime Minister Gordon Brown (a trusted figure in his native Scotland) intervened. He effectively promised a new federal arrangement – something not unlike the 'Sovereignty Partnership', which Lachapelle suggested had an impact on the vote.[37]

Was it Brown's similar intervention that won the referendum? In fact, the polls hardly moved after Brown's speech. It is difficult to sustain the interpretation that the former Prime Minister's intervention lured a majority of the Scots to opt to stay in the United Kingdom.

There is little empirical support for the proposition that Brown's intervention was the decisive factor. So, what won the referendum? Four factors have been identified; social class, English voters, age and Scottish National Party supporters.

Table 2: Determinants of Yes-Votes

Independent Variable	Pearson's Correlation Coefficient
Out of Work Claimant	R= .81
SNP Share of Vote in Region	R= .71
Proportion born elsewhere in the UK	R= -.64
Proportion of Over-65s	R= -.41
N:900 (Fieldwork 14th September 2014)	

Source: House of Commons Library: Demographic differences and voting patterns in Scotland's independence referendum (Based on YouGov).

The most important factor was, as it can be seen, social class. Independence was a class-issue.

It was the disaffected, those out of work and on welfare that kept the Nationalists within winning distance. Many of these were mobilized to vote and contributed to this being a closer than expected run.

[35]   John Fox – Robert Andersen – Joseph Dubonnet: The Polls and the 1995 Quebec Referendum. *Canadian Journal of Sociology/Cahiers canadiens de sociologie*, vol. 24., no. 3. (1999) 411–424.

[36]   Marie-Claude Beaulieu – Jean-Claude Cosset – Naceur Essaddam: Political Uncertainty and Stock Market Returns: Evidence from the 1995 Quebec Referendum. *Canadian Journal of Economics/ Revue canadienne d'économique*, vol. 39., no. 2. (2006) 621–642.

[37]   Guy Lachapelle: The 1995 Quebec Referendum-How the Sovereignty Partnership Proposal Turned the Campaign Around. *Québec Studies*, vol. 24. (1997) 180–196.

It was perhaps one of these voters, the Guardian (a unionist newspaper) described how their reporter, encountered one of the voters. The description is worth quoting verbatim,

> "On Falkirk's High Street, a few weeks before the referendum on Scottish independence, I met a woman whose teeth told me all I thought I needed to know about her. Barely past her 20s but already the mother of five young children, she was standing outside a branch of *Greggs*, waiting for her boyfriend to fetch sausage rolls. She told me that she had registered to vote, having never done so before, and that she supported independence. When I asked why, she said she thought Scotland could do better under a Holyrood government that was more in touch with the country's needs. She added, casually: 'And of course I've read the White Paper'. All my crappy preconceptions puddled at my feet."[38]

The Problem for Alex Salmond and his fellow nationalists was that although turnout was exceptionally high (something which statistically is associated with a high yes-vote), it wasn't high enough in the areas where it counted, namely in the deprived areas around Scotland's largest city Glasgow and – to a degree – in Dundee (see Map).

Map: Turnout different areas of Scotland
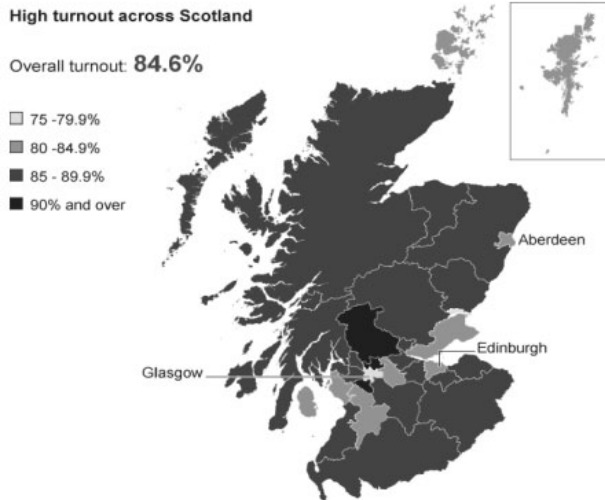
Source: At-a-Glance: Scottish Referendum Results.
BBC, 19th September 2014, www.bbc.co.uk/news/uk-scotland-29263237

If turnout had been higher in these areas Scotland would have been an independent country today.

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[38] Libby BROOKS: Why Greggs Woman is the True Spirit of Scotland's Yes Movement. *The Guardian*, 30th September 2014.

10. Last Thoughts

It might be that independence referendums are generally – that is statistically – more likely to be lost if there is no cross-party (or elite) consensus. However, apart from this general finding the Scottish referendum was an outlier (like the votes in Quebec 1980 and 1995). A high turnout was generally found to be correlated with a high-yes vote.

This was not unequivocally the case in Scotland in 2015. Turnout was exceptionally high – and public interest in the referendum was overwhelming. Still opinion moved very little. The no-side was ahead in most polls – and in most cases had a comfortable lead. Apart from a brief hick-up towards the end of the campaign, the result was never really in doubt.

However, the result was not a total defeat for those favouring independence. The Scottish National Party and their allies lost the referendum, but they won the campaign. Whether the result will be different next time the Scots vote on independence is anyone's guess.