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Can Referendums Foster Citizen Deliberation? The Experience of Canada and the United Kingdom

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I Introduction

Despite their recent proliferation, referendums, addressed in the longue durée, are something of a rarity in both Canada and United Kingdom. At the national level only three have been held in the UK (in 1975, 2011 and 2016: Table 1), while in Canada the referendum on the 1992 draft Charlottetown Accord is the only recent example (Table 2). Referendums are in fact more common at the provincial/sub-state level where the issue of secession has been bound up with direct democracy in each country. There have also been referendums on electoral reform at the sub-state level in Canada and on AV at national level in the UK. This chapter compares the 'sovereignty' referendums held in Quebec, particularly that in 1995, with the Scottish 'independence' referendum of 2014.

Reviewing the processes of each of these referendums, we address the issue of citizen deliberation in theory and practice. The theoretical problem posed is how to integrate participation and deliberation within referendum processes. Referendums tend to carry a negative connotation within political and constitutional theory. The charge is that they are open to manipulation by political elites and are therefore not capable of facilitating the meaningful deliberation of citizens. Far from being an asset to democratic decision-making, referendums are seen as a risk to an otherwise healthy constitutional system (Haskell 2001).The democratic deficiencies associated with referendums are in large part issues of practice rather than principle and these can be surmounted by way of carefully-tailored regulation of the referendum process (Tierney 2012). To this end the recent turn in political theory and democratic practice towards deliberative democracy is an aid to process construction; it offers insights as to how theory and practice can come together to inform rule-making through which a referendum can be shaped to help engage citizens, and thereby produce a meaningful act of republican deliberation (Tierney 2009).

In Part II we will lay out the theoretical framework, before turning to an empirical account of the practice of Quebec and Scottish referendums. This will begin with a discussion of how the referendums in each country were designed, assessing which elements of each served either to promote or frustrate effective citizen deliberation before the referendum, as well as satisfaction with the process afterwards.

Part III will address a second empirical dimension. It is one thing to design a process which, prima facie, appears to offer the opportunity for good deliberation, it is quite another for this to take place within the actual lived experience of the referendum campaign. It is here that we turn to political science with which we can test how effective this design was in terms of nurturing citizen satisfaction with democracy.

Losers' consent may in the end be unattainable; this is politics after all, and politics is about conflict (Crick). But losers' *assent* may be achievable: a preparedness by losers to agree *to* if not *with* the result of a referendum. We will explore what evidence exists in relation to each of our case studies.

II Designing the Referendum Process

Can referendums be deliberative? Referendums may seem to represent an ideal model of participatory democracy. The voters are engaged directly in constitutional decision-making,

speaking together as one unified people, with the power to determine the issue at stake. What, within the classical ideal of popular government, could be more democratic? In this vignette the republican promise of democracy is seemingly fulfilled; political equality, expressed in a way unmediated by politicians, gives effect to a collective expression of popular sovereignty (Bogdanor 1981, 93). But for others the referendum is in fact a threat to democracy. This can only be safeguarded by way of professional politicians, whose decision-making is both informed by expertise and carefully structured by way of constitutional design to prevent the triumph of populism and transient majorities; the task of democratic constitutionalism is to construct institutions which will contain and balance the popular will, rather than give effect to it in an unqualified way.

There are three main objections that inform scepticism of direct democracy: that referendums lend themselves, by definition, to elite control and hence to manipulation by the organisers of the referendum ('the elite control syndrome'); that there is an inherent a tendency of the referendum process merely to aggregate pre-formed opinions rather than to facilitate meaningful deliberation ('the deliberation deficit'); and that referendums consolidate and indeed promote simple majoritarian decision-making at the expense of minority and individual interests ('the majoritarian danger') (Tierney 2012).

In this paper we address each of these criticisms. The elite control syndrome is the most common criticism of referendums. The charge is that that referendums promise popular power, including control by the people over elites, but are themselves so open to manipulation by elites as to belie that promise. In other words, even if popular influence on constitutional processes is a republican good, referendums fail to deliver by that marker. Supporting this critique is the presupposition that the executive is able to shape the referendum process in a way that suits its objectives. Among the tools that are frequently assumed to be at the disposal of elites are: the initial decision to stage the referendum, the power unilaterally to frame the question, and the capacity to determine the process rules by which the referendum will be conducted, rules which can then be shaped to play to the government's strengths, for example by manipulating funding and spending regulations or rules about thresholds for support. According to this criticism, the government is in effect able to produce its desired result. As the Arend Lijphart (1984, 203) famously put it, 'most referendums are both controlled and pro-hegemonic' (see also Qvortrup 2000).

The second objection flows from the first. It asserts that public reasoning is absent from referendum processes. Representative government is an infinitely preferable model of decision-making because it is designed in a way that causes elected politicians to cooperate with each other, allowing them only to arrive at decisions having offered convincing reasons for their views. By contrast, such informed reflection upon, and discussion of, the issues at stake are neither required nor facilitated in referendum processes, and are accordingly absent.

What we find undergirding these critiques, however, are a number of assumptions which are themselves often based upon stereotypes: referendums are often held quickly, based upon a short-term political calculation made by government; voters are faced with an issue which they have not had time to learn about or debate; voter confusion can be exacerbated by a deliberately obscure question which in many cases pushes responses in a particular direction; and citizens with busy lives lack the time and incentive to engage with the issue and even the ability to understand it. The overall picture is one in which turnout is often low, and those who do vote often do so without much information and with little reflection, deliberation or public discussion, largely following the cues set by those who have staged the referendum.

Despite the force of these criticisms it does seem that referendums are often held to a very different standard from that used to assess the democratic efficacy of representative democracy, which can also be a crude device for promoting a plurality of interests. (Tierney 2012, 40-41). But the point we will focus upon is that these concerns with referendums can in large part be overcome by way of good process design, (Tierney 2012, 285-303) which if well-constructed can help promote a range of positive outcomes.

Referendums can also be evaluated in terms of the ways that citizens judge the process, and in particular the way that they engage those who are on the losing side. To function well, democratic systems must engender among participants positive attitudes to the democratic regime. This reserve of goodwill among citizens is characterised by feelings of trust, efficacy, satisfaction or confidence and is integral to the perceived legitimacy of the political system. We know that the presence or absence of such goodwill varies by state and can be affected by the structure of political system or the extent to which participation is facilitated. We know too that within political systems reserves of goodwill vary across the population. The challenge of any democratic system is to generate these reserves of goodwill not just within the electorate as a whole but among those who back losing options in democratic contests. Within elections, there are certain factors that can help to generate losers' consent. These include measures of proportional representation so that governments reflect the wishes of the electorate as a whole, regular elections (giving losers another chance to influence government formation) as well as governments activing in the interests of all not just their own supporters (Anderson et a 2005, Anderson and Guillory 1997, Anderson and Lo Tempio 2002, Blais and Gélineau 2007, Henderson 2008, Esaiasson 2011).

Referendums, by their very nature, pose challenges to losers' consent. The issues on which referendums are held can be polity shaping (Clarke, Kornberg and Stewart 2004) and emotive, where the stakes are seen to be higher, the results more permanent than for elections. They are more often to be binary and potentially more divisive than elections, particularly in multi-party systems. Not all referendums are similar. Some are on well-known issues, where the electorate has clearly formed opinions. Others are on newer issues where attitudes are more malleable. The range of referendums offers different contexts in which voters can engage, learn about and evaluate options and have differing levels of attitudinal volatility (Leduc 2002). We would therefore expect referendums on binary issues to pose more challenges for losers' consent, just as referendums on older, more emotive issues to pose more challenges than those on less salient issues. In such a contest, attitudes to the referendum process can exert a decisive role (Henderson 2012). This sets the context for an evaluation of referendums in Quebec and Scotland, in particular the 1995 referendum on sovereignty partnership and the 2014 referendum on independence. Both, arguably, offered referendums in which losers' consent was likely to be difficult to generate but with sufficient variation in process that we can determine what impact this had on satisfaction.

III Evaluating the 1995 and 2014 referendums

Who controls the process?

Canada, unlike the United Kingdom, lacks a national referendum law capable of forming the basis of an agreed process for referendums across the country. The United Kingdom, by contrast, has the highly detailed Political Parties, Elections and Referendums Act 2000 (PPERA), which sets out detailed rules on question-setting, funding and spending etc. and which also created an independent regulatory body, the Electoral Commission, to oversee referendum (and other electoral) processes.

One example of how much less fraught this made the Scottish than the Quebec process is over question-setting. This was a significant issue in both Canadian referendums. Both sovereignty referendums were run by the Directeur generale des elections du Québec (DGE-Q).   While the DGE-Q has authority to regulate spending, the framing of the question was solely a matter for the provincial government. The questions asked in both 1980 and 1995 were arguably convoluted. It is not unreasonable to think that they would have encouraged people to believe they were voting for an outcome, association[1] or partnership[2] with Canada, that would fall short of independent statehood. The questions were long, referring to other pieces of legislation, and sought to identify what sovereignty means. The 1980 question referred to the prospect of another referendum following negotiations. The 1995 question implied that sovereignty partnership, if not achieved, would result in independence. Although advocates of change argued that a Yes vote was clearly a vote for more power, in 1995 in particular it was not clear whether Yes voters expected sovereignty partnership or independence to be the likely result were they to win the referendum. By contrast, in the Scottish referendum, the referendum was preceded by an agreement between both levels of government on the referendum process, buttressed by PPERA, which allows for independent oversight of referendum questions. Key too was the decision of the Scottish Government, to ask a short, clear question which would allow it to focus on the substantive content of the independence proposal.

In relation to the question itself, the Edinburgh Agreement provided:

> 'Both governments agree that the referendum question must be fair, easy to understand and capable of producing a result that is accepted and commands confidence.'[3]

One duty of the Electoral Commission under PPERA is to assess and comment upon the 'intelligibility' of proposed referendum questions.[4] Notably the Electoral Commission goes about this task by convening focus groups etc. to test the question empirically, assessing how well it is understood by people etc.[5] The initial question proposed by the Scottish

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[1] The question posed in 1980 was:

"The Government of Quebec has made public its proposal to negotiate a new agreement with the rest of Canada, based on the equality of nations; this agreement would enable Quebec to acquire the exclusive power to make its laws, levy its taxes and establish relations abroad — in other words, sovereignty — and at the same time to maintain with Canada an economic association including a common currency; any change in political status resulting from these negotiations will only be implemented with popular approval through another referendum; on these terms, do you give the Government of Quebec the mandate to negotiate the proposed agreement between Quebec and Canada?"

[2] The question posed in 1995 was:

"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?".

The reference to two external documents was arguably confusing for voters.

[3] *Agreement between the United Kingdom Government and the Scottish Government on a referendum on independence for Scotland*, para 5.

[4] Political Parties, Elections and Referendums Act 2000, c.41, s.104(2).

[5] Electoral Commission, 'Referendum on the UK Parliamentary Voting System: Report of views of the Electoral Commission on the proposed referendum question', (The Electoral Commission, 2010),

Government was: 'Do you agree that Scotland should be an independent country? Yes/No'. The Electoral Commission took the view that

> 'based on our research and taking into account what we heard from people and organisations who submitted their views on the question, we consider that the proposed question is not neutral because the phrase 'Do you agree …?' could lead people towards voting 'yes'.'

It therefore recommended the following alternative question: 'Should Scotland be an independent country? Yes/No'.[6] This was accepted by the Scottish Government and this was the question included in the Scottish Independence Referendum Act,[7] and ultimately put to the voters.

The contrast with the two Quebec referendums is clear. The Edinburgh Agreement allowed for UK involvement in the referendum process, as well as oversight by a mutually acceptable independent national regulator who would have a role in reviewing the wording of the question. Notably the Scottish Government in 2012 suggested the establishment of a Scottish Referendum Commission to regulate the process, but this was dropped as part of the Edinburgh Agreement. In Quebec there was no involvement for the Canadian government in the process, nor did the DGE-Q have a role in regulating the question. It oversaw the fairness of the process more broadly, but not the question itself.

Deliberation Deficit

In Scotland therefore we saw that elite control was dispersed: both the UK and Scottish governments were party to the Edinburgh Agreement and beyond this the process was subject to law and independent oversight. But it is one thing for elite control to be constrained, it is another to facilitate deliberation. Here again the Scottish process demonstrates prima facie strengths. For example, PPERA again set the benchmark for strict and fair funding and spending rules, regulation of advertising etc. which helped to create a level playing field. These were given specific guarantees in the Scottish Independence Referendum Act 2013.

In Quebec there were also efforts to ensure that voters were provided with balanced in formation. In 1980, for example, the DGE distributed a pamphlet with arguments for the Yes and No campaigns. The DGE also had responsibility for regulating spending. Following the 1995 referendum in particular it investigated several complaints about the practices of organisations such as Via Rail and post-secondary institutions for funding travel of Canadians outside Quebec to attend the Montreal unity rally shortly before the referendum.

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http://www.electoralcommission.org.uk/__data/assets/pdf_file/0006/102696/PVSC-Bill-QA-Report.pdf; Electoral Commission, Referendum on independence for Scotland: Advice of the Electoral Commission on the proposed referendum question, (The Electoral Commission, 2013) http://www.electoralcommission.org.uk/__data/assets/pdf_file/0007/153691/Referendum-on-independence-for-Scotland-our-advice-on-referendum-question.pdf

[6] 'Referendum on independence for Scotland: Advice of the Electoral Commission on the proposed referendum question', (The Electoral Commission, 2013) http://www.electoralcommission.org.uk/__data/assets/pdf_file/0007/153691/Referendum-on-independence-for-Scotland-our-advice-on-referendum-question.pdf.

[7] Scottish Independence Referendum Act 2013, s.1(2). See also, 'Scottish independence: SNP accepts call to change referendum question', BBC News, 30 January 2013. http://www.bbc.co.uk/news/uk-scotland-scotland-politics-21245701

However, another advantage of the Edinburgh Agreement process is that it also served to legitimise the referendum outcome. In the Scottish process the quid pro quo to the Scottish Government's acceptance of this regulatory model was a concession that the UK Government would accept the result of the referendum. The Agreement ended with this paragraph on cooperation:

> 'The United Kingdom and Scottish Governments are committed, through the Memorandum of Understanding between them and others, to working together on matters of mutual interest and to the principles of good communication and mutual respect. The two governments have reached this agreement in that spirit. They look forward to a referendum that is legal and fair producing a decisive and respected outcome. The two governments are committed to continue to work together constructively in the light of the outcome, whatever it is, in the best interests of the people of Scotland and of the rest of the United Kingdom.'[8]

This stage was never reached in Canada in either 1980 or in 1995, a point made clear by the circumstances surrounding the *Secession Reference* brought to the Supreme Court of Canada by the Canadian government, the very premise of which was the federal government's refusal to countenance Quebec's right to secede.

And of course, the difference in legal regimes did not exempt either from criticisms by different actors or organisations. In Scotland, the BBC was perceived by some Yes voters to be biased towards the Better Together campaign. The late intervention of the party leaders of the three largest UK political parties, committing to some form of unspecified institutional change in the event of a No vote, was also seen as confusing to voters. In Quebec, the DGE investigated not only funding irregularities, particularly around the unity rally, but also instances of voter fraud and the high proportion of rejected ballots in a limited number of constitutions.

In the end the independence referendum in Scotland passed off smoothly with no disputes over any of the key process issues, including the funding and spending rules which were also established by the Edinburgh Agreement.[9] This is particularly telling given the change to the franchise rules, extending the right to vote in the referendum for 16 and 17 year olds. The upshot was that both sides in the referendum campaign, and therefore citizens themselves, were able to focus upon the substantive issues at stake without being distracted by whether or not the referendum was lawful or whether the UK Government would accept the result of a majority Yes vote. This was fundamentally important to the process and a key condition which allowed the Scottish process to be seen as a genuine moment of citizen deliberation.

The Scottish referendum also enjoyed high participation levels. The turnout of 84.65% was the highest for any UK electoral event since the introduction of universal suffrage, and compares very well to the 65.1% who voted in the 2010 UK general election and the 50.6% who turned out for the 2011 Scottish parliamentary elections. Another feature of the referendum was that the Scottish Parliament extended the franchise to those aged 16 and 17.[10]

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[8] *Agreement between the United Kingdom Government and the Scottish Government on a referendum on independence for Scotland*, para 30.

[9] *Agreement between the United Kingdom Government and the Scottish Government on a referendum on independence for Scotland*, paras 24-28.

[10] Scottish Independence Referendum (Franchise) Act 2013, s.2(1)(a).

This was a radical departure; never before have people under the age of 18 been entitled to vote in a major British election or referendum.[11] This makes the turnout even more remarkable when we consider the significant logistical task involved in registering new voters and in mobilising so many young people to engage with an electoral campaign for the first time.[12]

But turnout is only part of the picture. Evidence has emerged of the extent to which people sought out information about the issue at stake and engaged vociferously with one another at home, in the workplace and other public spaces, and, to an unprecedented degree in British politics, on social media.[13]

This leads us to a discussion of referendum features designed to facilitate losers' consent.

Majoritarian Danger

Interestingly, the issue of the size of majority required to validate a referendum vote for independence was never a topic of dispute in Scotland in 2014, the way it was in Quebec, particularly in 1995. The fact that it was not even mentioned in the Edinburgh Agreement illustrates the implicit acceptance that 50% plus one of those voting would decide the referendum. This had been the requirement in 1997 for devolution, although the 1979 devolution referendum had required a threshold of 40% of the electorate to secure success.

To a Canadian audience it may well seem odd that the UK Government agreed to a process which could have, in effect, broken up the country by way of one simple majority vote. This was of course a concern for the Supreme Court of Canada in the *Secession Reference*, where one of the constitutional principles to which it referred was 'respect for minority rights'.[14] And in the Reference the court made clear that the interests of minorities would be very important to the constitutional permissibility of any secession process.[15] It also announced that the validity of any future referendum on secession would depend upon a 'clear majority', a term upon which it did not elaborate.

The contrast with the UK does not appear to be mainly one of constitutional principle, but rather a consequence of very different demographics. Quebec is a francophone province but

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[11] Representation of the People Act 1983, c.2, s.1(d).

[12] Scottish Independence Referendum (Franchise) Act 2013, s.9. Although the extension of the vote to younger voters can be seen as a strategic move by the SNP Government to enfranchise those who might prove to be independence supporters, it should also be noted that such a move has long been SNP policy and that the referendum was the first opportunity the SNP government had to make such a change. It now has the power to change the franchise for the 2016 Scottish parliamentary elections and is indeed seeking to extend the vote to young people for this process: Scottish Elections (Reduction of Voting Age) Bill, Scottish Parliament, 2 April 2015. It is also the case that the UK Government accepted the former franchise extension in the Edinburgh Agreement and has since then extended the Scottish Parliament the power to introduce a general extension for Scottish Parliament elections: Scotland Act 1998 (Modification of Schedules 4 and 5 and Transfer of Functions to the Scottish Ministers etc.) Order 2015.

[13] https://www.aqmen.ac.uk/project/socialmedia; and Ailsa Henderson, Liam Delaney and Robert Liñeira, 'Risk and Attitudes to Constitutional Change', ESRC Scottish Centre on Constitutional Change Risk and Constitutional Attitudes Survey, 16 August 2014.

[14] *Reference Re Secession of Quebec,* para 49.

[15] *Reference Re Secession of Quebec,* paras 77, 88, 81 and 90-93.

one that is home to a long-established Anglophone minority and many indigenous peoples. It is in defending the interests of these people that the Secession Reference seems primarily to be concerned, rather than the more general minority of voters who might find themselves on the losing side. Scotland, by contrast, does not have territorial minorities in the same sense.

That said, there is also a divergence on the point of constitutional principle as to whether or not fundamental constitutional decisions should be made by way of simple majority. This is less of an issue in the UK where Parliament can change the constitution by way of ordinary legislation. But it is no surprise that a 'supermajority' argument emerged in relation to the Quebec referendum in a country where qualified majority (and in some cases unanimous) provincial consent is needed for constitutional change.

To conclude, it is clear that elite control was constrained in Scotland and that the organisational context in general was propitious for fostering of healthy deliberation. Furthermore, the process was also not over-shadowed about arguments concerning the appropriate threshold for the result. But what evidence is there for actual voter engagement in both the Scottish and Quebec referendums?

IV Citizen Evaluations of the 1995 and 2014 Referendum Process

We can gauge the level of voter engagement with referendum arguments by examining levels of knowledge. Obviously, examining the extent to which voters were aware of the outcomes of independence or a No vote takes us into the realm of risk perception rather than knowledge. In other instances, we can evaluate knowledge of what the various Yes campaigns were advocating. Here we can see evaluations are variable across policy areas. We see also different trends across votes in Scotland and Quebec. In Quebec, No voters tended to perceive fewer links between an independent Quebec and Canada than Yes voters. In Scotland, the reverse is true for some questions.

Table 1: Knowledge and perception, Quebec 1995 and Scotland 2014, % agreeing

	Yes	No
Sovereign Quebec will send MPs to Ottawa	25	20
Independent Scotland would send MPs to Westminster	29	39
Sovereign Quebec will be protected by Canadian army	55	31
Independent Scotland would be protected by the UK army	20	30
Canadian government will not block Quebec access to NAFTA	79	50
Scotland would be able to retain membership of the EU on the same terms as the UK	63	8
Sovereign Quebec will use Canadian dollar	85	45
The UK government would allow Scotland to keep the pound	70	15

The questions are not always equivalent. The 1995 Yes campaign advocated a sovereign Quebec using the Canadian dollar, just as the 2014 Yes campaign advocated using the pound sterling. The question asks for knowledge of a campaign policy in Quebec, but asks about its

likelihood in the case of Scotland. In both cases we see the greatest divergence between Yes and No voters on issues of currency and wider continental arrangements (NAFTA in the case of Quebec, EU membership in the case of Scotland).

Another method by which we can evaluate a referendum is by the presence of losers' consent (or assent). In general, voters were satisfied with the process, or rather some voters were. Results from the Scottish Referendum Study, conducted before and after the 2014 referendum, as well as the Quebec Referendum Study, conducted after the 1995 vote, show a majority of referendum winners were satisfied with the way democracy was working. They show also that winners were more likely to be satisfied than losers.

Table 2: Post-Referendum satisfaction with democracy in Quebec 1995 and Scotland 2014, %

	Quebec	Scotland
Winners	60.7	63.0
Losers	46.3	15.2

Table 2 reports the percentage of winners and losers satisfied with the way democracy is working. A clear majority of winners are satisfied and a minority of losers are satisfied. While much of the evidence suggests that the regulation and conduct of the referendum in Scotland offered an example of best practice, losers were significantly less satisfied with the way democracy was working than they were in Quebec. There are three caveats to this. First, the post-referendum satisfaction should be viewed in light of pre-referendum satisfaction. As the Quebec survey was only conducted after the referendum we have no way to evaluate the post-referendum satisfaction against a pre-referendum benchmark. In Scotland, however, we do. Here we find that 'only' 19.2% of eventual referendum losers (i.e. Yes voters) were satisfied with the way democracy was working. Second, in Scotland we have data from one year after the referendum to examine whether this sheds light on losers' consent. Here we find that satisfaction with UK democracy among losers had decreased to 14.1% but had also decreased among winners to 55.4%. Third, the satisfaction with democracy question is the standard indicator to gauge losers' consent, but the question itself can be tied to referendum preferences. One might reasonably expect someone advocating independence for Scotland to be dissatisfied with the way democracy works in the United Kingdom. The September 2015 figure could well be tapping dissatisfaction with the 2015 UK general election result. The gap is narrower (and overall levels are higher) when we ask about satisfaction with democracy in Scotland. Indeed here we find the opposite of what we would expect, evidence of a possible issue with winners consent rather than losers' consent.

Table 3: Pre and post-referendum satisfaction with democracy in Scotland

	Yes voters	No voters
Pre-referendum	71.6	56.8
Post-referendum (Sept 2014)	63.6	62.5
Post-referendum (Sept 2015)	70.7	43.0

Despite the degree of popular participation in the Scottish process, it is still notable that while citizens played a full role in the referendum campaign itself and voted in high numbers, their role prior to this was largely passive. The decision to hold a referendum was taken by the Scottish Government, while the Edinburgh Agreement determined that the referendum could

be held only on the issue of independence and not on any other model of constitutional change.

This raises a serious democratic concern about the overall process. In the course of 2012 it became clear that a substantial majority of citizens in Scotland were in favour of constitutional change, but not of full independence. The Scottish Government tapped into this sentiment and revived an earlier suggestion of a third option on the ballot – some formulation of further devolution.[16] The United Kingdom government reacted strongly to this. Its key political goal in consenting to the Edinburgh Agreement was to ensure that the referendum would contain only two options – independence and the status quo – since it was confident that it could defeat the independence proposal. To that end the Agreement, while enabling the Scottish Parliament to legislate for a referendum, made clear that it could do so only 'with one question on independence'.[17] While the Edinburgh Agreement was a positive step in avoiding hostility between the two campaigns over the process, it was also an elite deal which constrained the options which were presented to voters. In short, it was a trade-off between the political goals of the SNP on the one hand – to acquire the legal authority to manage the process rules - and, on the other hand, a political calculation made by the UK government that it could win a referendum on independence but would probably lose a referendum which promised more – and potentially open-ended - powers to the Scottish Parliament.

V Conclusion

What was missing from the Scottish referendum design process, therefore, was a step which would ensure that citizens were in fact able to vote for the most popular constitutional option. This is not to single out the Scottish referendum as particularly deficient. The typical story of referendums is one in which elites are able to set the agenda. The process rules, the length of a campaign, and the question that is set are typically in the hands of the executive, albeit subject to parliamentary approval; constitutionally guaranteed opportunities for citizens or other deliberative bodies to influence the process are invariably lacking.

The Scottish referendum is in general an instance of good referendum design in which the process rules were agreed by both sides allowing the debate to focus upon issues of substance. This contrasts with the two Quebec referendums where so much of the debate was side-tracked by procedural matters. However, it is also clear that a good setting for popular deliberation is not in itself enough to bring that about. Much depends upon the appetite of the electorate to gain knowledge of the issues, whether the issues with which they are presented seem important to them and whether the political system and civil society are sufficiently healthy to help impart information in an objective way. A broader assessment may be that while a contested process can deeply damage the democratic engagement of citizens and their faith in the system as the Quebec experience shows, agreed formal processes are of themselves insufficient to engender deep citizen engagement.

Appendix

Referendums in the United Kingdom

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[16] Scotland's Future: Draft Referendum (Scotland) Bill Consultation Paper, 2010.

[17] *Agreement between the United Kingdom Government and the Scottish Government on a referendum on independence for Scotland*, para 6.

Place	Date	Issue	Result
Northern Ireland	8 March 1973	Remain part of the UK	Approved: 98.9
Northern Ireland	22 May 1998	Belfast Agreement	Approved: 71.1
Scotland	1 March 1979	Creation of a Scottish Assembly	Approved: 52 (did not meet threshold)
Wales	1 March 1979	Creation of a Welsh Assembly	Not approved: 79.7
Scotland	11 September 1997	1. Creation of a Scottish Parliament. 2. Devolution of limited tax-varying powers	1. Approved: 74.3 2. Approved: 63.5
Scotland	18 September 2015	Independence	Not Approved: 55.3
Wales	18 September 1997	Creation of a National Assembly	Approved: 50.3
England (London)	7 May 1998	GLA and Mayor	Approved: 72
England (North East)	4 November 2004	North East England regional assembly	Not approved: 78
Wales	3 March 2011	Devolution of further powers to the National Assembly	Approved: 63.5
Scotland	18 September 2014	Independence	Not approved: 55.3
United Kingdom	5 June 1975	Continued EC membership	Approved: 67.2
United Kingdom	5 May 2011	Electoral System: Alternative Vote	Not approved: 67.9

Table 1

Referendums in Canada

Place	Date	Issue	Result

Canada	29 September 1898	Prohibition of alcohol	Approved: 51.2
Canada	27 April 1942	Conscription	Approved: 64.5
Canada	26 October 1992	Constitutional renewal (Charlottetown Accord)	Not approved: 54.3
Quebec	April 10 1919	Legalization of sale of alcohol	Approved: 78.62
Quebec	20 May 1980	Sovereignty Association	Not approved: 59.6
Quebec	30 October 1995	Sovereignty and Partnership	Not approved: 50.6
Ontario	23 October 1924	Continuation of prohibition statute Limited sale of alcohol	Approved: 51.5 Not approved: 51.5
Ontario	10 October 2007	Electoral Reform	Not approved: 63
Newfoundland	3 June 1948	Constitutional Status	Inconclusive: 44.6% for restoration of dominion status, 41.1% for confederation with Canada, 14.3% for continuing the Commission of Government
Newfoundland	22 July 1948	Confederation	Approved: 52.3
Newfoundland and Labrador	5 September 1995	Non-Denominational School System	Approved: 54.4
Newfoundland and Labrador	2 September 1997	Non-Denominational Schools	Approved: 73
New Brunswick	14 May 2001	Retain Video Lottery Terminals	Approved: 53.1
Nova Scotia	October 16 2004	Allow Sunday shopping	Not approved: 54.9

British Columbia	August 30, 1972	Time settings	Not Approved: 63.4
British Columbia	October 17, 1991	Recall of elected officials Introduction of Initiative Referendum	Recall approved 80.9 Initiative approved 83
British Columbia (postal referendum)	15 May 2002	First Nations Treaty Rights	Over 80% approval on the eight principles asked about
British Columbia	17 May 2005	Electoral Reform	Not approved: support of 57% of voters but failed to meet 'supermajority' threshold of 60%
British Columbia	12 May 2009	Electoral Reform	Not approved: 60.9%
British Columbia	13 June – 5 August 2011 (postal referendum)	Sales Tax discontinuation	Approved: 55
Prince Edward Island	January 18, 1988	Confederation Bridge	Approved: 59.4 in favour of the fixed link
Prince Edward Island	28 November 2005	Electoral Reform	Not approved: 64
Northwest Territories	April 14, 1982	division plebiscite	Approved: 56.48 %
Northwest Territories	4 May 1992	Jurisdictional boundaries	Approved: 54
Alberta	August 17, 1948	Electrification plebiscite The ballot offered two options on electricity regulation, asking if the province should create a Crown corporation to manage electricity, or leave the electricity industry in the hands of the companies currently	Option A: Approved 50.03% Option B: Not approved 49.97%

		in the business.	
Alberta	May 23, 1967	Daylight Saving Time plebiscite	Not approved: 51.25
Alberta	August 30, 1971	Daylight Saving Time	Approved: 61.5
Nunavut	11 December 1995	Nunavut capital	Approved: 60
Nunavut	26 May 1997	Equal representation	Not approved: 57.4

Table 2[18]

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[18] There have been many provincial referendums since 1892 on the prohibition of alcohol. For reasons of space we have not listed these, but see Donovan, 132-135.

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