

3 Referendums about Presidential Mandates

Deviations or Correctives?

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Introduction

Traditional constitutional theory, and proceduralist conceptions of democracy, are preoccupied with insulating civil authorities from direct exposure to the unfiltered pressures of fickle public opinion and avoiding the dangers of ‘mob rule’. The Federalist Papers have been treated as a canonical text precisely because the US Founders made these concerns so explicit, notably in opposition to ‘anti-federalist’ arguments that had gained traction during the American War of Independence and that they aimed to counter. A succession of subsequent controversies raged across the Americas throughout the nineteenth century, generally resulting in ‘rules of the game’ to stabilise political hierarchies and to marginalise demands from below perceived as dangerous for the status quo. Bottom-up Mechanisms of Direct Democracy (MDDs) were accordingly rendered suspect, and presidential authority was legally privileged (although coups, assassinations, and elite conspiracies were all too common anyway). Plebiscites from above were also perceived as dangerous but for the opposite reason, as triggers of power concentration by one man. The resulting models of constitutional presidentialism granted that rulership should be term limited, and accepted the need for structures of alternation and accountability that would leave some space for legitimate criticism and dissent. However, these deviations from hereditary rule and *lèse-majesté* were carefully limited and channelled into approved pathways, for fear that otherwise the entire project of republican government founded on the theory of popular sovereignty would be destroyed either by anarchy and disorder or by dictatorship.

After the 1970s most Latin American presidential regimes developed (or reconfigured) more or less structured party systems (Mainwaring and Scully 1995; Alcántara and Freidenberg 2001) that provided organised intermediation between the popular impulses of the masses and the elite intrigues and bargains that largely characterised routine presidential palace politics. Occasional eruptions from below (the 1989 Caracazo, various other Andean outbursts, and the 2002 ‘Que se vayan todos’ in Buenos Aires) punctuated this formula, and other sources of instability (sovereign defaults, geopolitical intrusions, etc.) also interrupted the regular flow of

periodic political adjustments governed by the calendar of each electoral representation system. But it was only quite recently that MDDs spread and gained traction, modifying prior understandings of the role of the people in political affairs. It was still more recently that diverse referendums, citizen initiatives, and recall votes have spread so widely (Ruth et al., 2017; Welp and Whitehead, 2020). Presidential recall elections are even more recent and incipient.

What accounts for these innovations, and have they much further still to go? The decline of traditional agriculture, the massification of education, urbanisation, and the spread of digital media and related processes of modernisation all tend to produce a more extensive and politically engaged citizenry (Inglehart and Welzel, 2005). Extended experience of electoral routines, party alternation, and parliamentary deliberation also school the bulk of the population into a participatory political mind-set. Public policies concerning health, housing, transport and so forth cumulatively engage ever-larger sectors of the community and elicit organised responses from below. All these slow but persistent extensions of governmentality tend to stimulate mass citizen engagement and the desire for collective voice on matters of public concern, creating demands for more direct avenues of political expression by the people as a whole. These very broad and general social trends advance at various rhythms and in diverse forms across the western hemisphere. Each political system responds in accordance with its own history and structure.

Since the turn of the century, clear evidence has also emerged of a widespread crisis of representation. This phenomenon has gained momentum in mature as well as in more recent democracies. It has become particularly pronounced in many parts of Latin America, spurring demands for political reform, notably for more deliberative and direct forms of democratic expression. One recurrent feature has been low and declining trust in key democratic political institutions of representation such as parties and legislatures. Another common pattern has been the growing success of ‘populist’ candidates and ‘outsider’ challengers. Pressures for decentralisation have also intensified, bringing decisions about politically relevant public policies closer to the people, and prompting claims for more direct access to decision-making (e.g. through participatory budgeting). Despite the diversity of these responses a common feature has been the growing embrace of a variety of MDDs that are expected to work as correctives to the perceived failings of standard democratic representation. There is a longstanding regional tradition of resort to referendums to validate changes in the fundamental rules regulating political competition (usually ratifying new, or amendment of, constitutional texts). More recently the crisis of representation has reinforced this tendency.

In this chapter, we study all MDDs initiatives aimed at altering the (constitutionally fixed) presidential mandate between 1990 and 2022. These include referendums to prolong the mandates, and recalls to shorten them as well as referendums to legitimise new nominations after interruptions.

Thus, for example, the 2016 Colombian referendum on the Peace Accord, or the 2022 Uruguayan referendum on the scope of governmental policy reforms are not addressed here. Our concern is solely with referendums that affect the tenure of a country's head of state and chief executive.

With the strengthening of constitutionalism and of electoral procedures and monitoring, the disorderly and often violent premature ousting of past presidents have been replaced by more institutionalised processes, e.g. impeachments, voluntary departures ahead of schedule, other legal procedures. There is also a strand of constitutionalism allowing for carefully controlled recourse to an early recall election, in which a challenged officeholder has the chance to reaffirm the mandate and thus complete the existing term of office. There has been a marked increase in the availability of such recall processes at the subnational level since the beginning of the present century (see Whitehead, 2018; Welp and Whitehead, 2020). As the drive for MDDs and recall processes has gained momentum and spread across more countries it began to produce a higher level of impact, and even to be considered at the national leadership level in a few cases.

This chapter focuses on a precise and sensitive issue that reflects both civil society claims and expectations of increasing accountability and responsiveness, together with the claims of senior incumbent officeholders to serve out their mandates. Remaining in power is invariably a highly contentious political topic, made more provocative in much of Latin America by the *de facto* unpredictability of presidential terms. This instability shows up both in attempts to displace authorities before the end of their term ('interrupted presidencies'), and in recurrent presidential bids to remain in power beyond the constitutionally established term limits, mostly by authorising one extra term for the incumbent, but also – in extremis – through 'indefinite re-election'.

So, the crisis of representation has stimulated a wide variety of procedural revisions intended to provide orderly means of either extending or curtailing the terms of elected officeholders (including presidents) and thus averting the more disruptive possibilities of violent ousters and institutional breakdowns. Surprisingly, however, until now the literature has dealt with the two variants (i.e. referendums on term limits and on presidential recall) in separate silos. For example, the major compendium on presidential term limits (Baturio and Elgie, 2019) contains extensive coverage of Latin America (including separate chapters on Bolivia and Mexico), but makes no reference to any provisions for the recall of elected officeholders. By contrast this chapter draws attention to the clear commonalities between these two variants, and the consequent importance of considering them jointly when introducing proposals for improved institutional design. It reviews all episodes since 1990 (including unsuccessful attempts (failed or blocked) intended to interrupt and/or change the terms of a presidential mandate. These include votes solely concerned with presidential term rules, but also reform packages in which the issue of the presidential term was at stake, even if other features were more prominent. For

each case, it identifies the actors concerned, the processes involved and the eventual outcomes. Under what conditions have these attempts succeeded, and with what consequences? Are there common patterns? Do variations arise according to who triggers the popular consultation process? Among the range of options considered, we draw attention to the potentialities of *indirect* recall referendums. These arise when, although it is the Congress that votes through the removal of a President, the decision requires ratification by the whole electorate. This could in principle provide the legitimacy that a purely legislative political impeachment may lack.

In what follows, we first provide our analytical framing, then offer an overview of the cases selected, after which we move to the more specific study of recall referendums. Direct democracy practices in Latin America are often faulted for the excessive role played by presidents in promoting referendums (Ruth et al., 2017). The main criticism is that this perverts the citizenry's agency in the steering of public affairs. The remarkable Mexican recall process of April 2022 receives special attention. This was the most exemplary of the recalls considered here, not only because Mexico is more influential than Bolivia, Ecuador, or even Venezuela, but also because there was no background political emergency prompting its activation. Instead, the procedure was calmly adopted as an extension of the precedent set by the Mexico City constitution, and was implemented more or less as pre-announced in the programme of reforms billed as the republic's 'Fourth Transformation'. From an official standpoint this constitutional reform sets a standard for leadership accountability to the people, and provides a bar against corrupt *partidocracia* that should stand the test of time and offer a model for all progressive presidents to consider. As regards Mexico's specific characteristics, there has been no interruption, extension or foreshortening of presidential terms for over 80 years, but the single six-year tenure might benefit from a validity check after the first half. So in principle this might have proved a reassuringly meliorist innovation. In practice, however, as recorded below, this bold experiment served a populist agenda and did not deliver the structural improvements to accountability that some backers had anticipated. In view of this unexpected first round outcome the long run consequences of the reform must be in doubt, and meanwhile the Mexican case requires close attention, both for its own sake and because of its comparative implications.

Presidential Mandates, Presidential Breakdowns and Popular Votes

In the 1980s, during the transition to democracy in Latin America, most constitutions contained restrictions on presidential term limits, banning re-election, either entirely (as still happens in Mexico, Guatemala, Paraguay and after a brief interruption under Alvaro Uribe, also in Colombia) or consecutively (as happens in many countries excepting the ones introducing indefinite re-election, such as Venezuela, from 2009, Bolivia, from 2017 and Nicaragua, from 2014).

In principle there is a big distinction between altering the constitution to improve the rules concerning term limits for *future* presidents (as, e.g. proposed in the defeated Chilean constitutional referendum of 2022, which would not have applied to the sitting President), and the introduction of an additional term that would benefit the current incumbent (a combination of self-interest and purported public benefit adopted, e.g. by President Cardoso in Brazil in 1996). This study covering Latin America over the period 1990–2022 contains no successful revisions of the first (disinterested) type. We deal solely with attempted term limit changes affecting the chief executive. Many incumbent presidents have used this method to pursue their own re-election, often precipitating power struggles (Llanos and Heyl, 2022). According to Corrales (2016) when the incumbent is popular presidents generally succeed in expanding their terms, despite multiple forms of objection and resistance. However, Corrales also reported some exceptions in which presidents without such high approval rating managed to expand term limits, and others in which they did not manage to do so despite their popularity.

Various types of MDDs can be used to alter presidential terms. Referendums may be triggered from the top-down (quite often called plebiscites); or from the bottom-up (popular initiatives). Voters can propose to amend the constitution including re-election; while recall referendums (direct if triggered by signature collection, or indirect if invoked to ratify or reject a legislative removal) can be used to remove a chief executive before the end of her or his term. All these MDDs involve a popular vote. On the opposite side, presidential breakdowns tend to be the product of inter-elite bargains (even those that do also enjoy substantial popular support). The availability of direct democracy mechanisms provides a peaceful and orderly channel for such demands from below either for the continuation or for the removal of an incumbent chief executive (Negretto 2017, Welp 2022). The essence of such procedures is that they include the people in the decision-making process. This contrasts with most of the impeachment exercises that have become increasingly common, and quite often have the effect of eroding democratic legitimacy (e.g. in the cases against Dilma Rousseff in Brazil in 2015, and against Fernando Lugo in Paraguay in 2012). Mass discontent against an incumbent ruler can be processed and channelled through a recall procedure, perhaps resolving a potentially explosive political confrontation without open resort to a violent trial of strength – as happened in Venezuela in 2004 (Hugo Chávez was ratified in his position, see McCoy 2006).

Mandatory referendums could discourage a president with a tame parliament from forcing through an extension of mandate without popular ratification. However, Bolivia in 2016 provides a controversial case in this regard, since although the vote did not ratify Morales's proposal for re-election, and ran again for office anyway in 2019, given that in 2017 a co-opted Plurinational Constitutional Tribunal ruled that all elected officials could run for office indefinitely, regardless of constitutional prohibitions

and the negative outcome of the previous year's referendum. When an incumbent president promotes his own re-election, a referendum proposal may also open up a space for the intervention of other actors, such as a constitutional court (as in Colombia in 2009, when the Court ruled against Uribe's plan to call a referendum); or the political opposition (as in Argentina in 1993) or even a civic military *coup* – as in Honduras in 2009 (against Zelaya).

Latin America has long been characterised by recurrent presidential breakdowns, and this remains a possibility despite the frequent acceptance of term limit changes (Marsteintredet and Malamud 2020). In recent decades, presidents such as de la Rúa, Sanchez de Lozada, Zelaya and Morales have all been removed from office before the completion of their terms by extra-constitutional means that have included mass protests, elite conspiracies, and even threats of insurrection or *golpes*. Some have resigned early or fled abroad. Before the 1980s such interruptions were typically conducted by traditional *coup d'états*. In our period of analysis, they have rather been characterised by power struggles that have assumed more diverse forms, ranging from indirect versions of military intervention (Honduras 2009, Bolivia 2019); to impeachments (Paraguay 2012, Brazil 2016); also resignations forced by social and or political pressure (Argentina 1989 and 2001, Bolivia 1985, 2002; Ecuador 1995, 1999, 2005; Governor of Puerto Rico 2019). Scholarly research has tackled this pattern of 'interrupted presidencies' or 'presidential breakdown' by considering both institutional and non-institutional factors and, particularly, by focusing on the role of oppositions (and situations of divided government) and social mobilisation in contexts of crisis (Hochstetler, 2011; Pérez Liñán, 2009; Marsteintredet et al., 2013). Twenty-one governments interrupted by political crisis were registered between 1985 and 2021 in nine countries (see more on the topic in Chapter 2 of this volume).

Ecuador in 1997 is the only case in which after the congressional ousting of a president there was a popular vote providing some form of formal legitimation to the presidential removal, although this also involved the approval of some other governmental measures. In February 1997, President Bucaram was ousted when Congress declared him mentally unfit to govern, in the context of strong social protests. Bucaram's successor, interim President Alarcón, called for a referendum to amend the constitution, which also introduced recall procedures at the local level. A new constitution was approved including recall among other mechanisms of citizen control and participation – but only at the local level (Welp and Castellanos 2020, Breuer 2007).

In general (notably in the case of impeachments) after a presidential removal the successor is selected in accordance with established rules. But with the exception of Ecuador in 1997 this substitution has lacked the legitimation of a direct popular vote, so most replacements have diminished electoral legitimacy. This helps to explain the recent rise of presidential recall elections (an overview of this trend is provided in Welp

and Whitehead 2020). Although still rare, this innovation is acquiring a track record and there is now some comparative evidence from Ecuador, Venezuela, Bolivia and Mexico that begins to provide empirical evidence on the promise and pitfalls involved.

Popular Votes and Presidential Term Limits

Legal provisions to activate MDDs, including recall elections, have spread in the Latin American region over recent decades. Table 3.1 covers all proposed or actual votes since 1990 that affected presidential mandates, whether by curtailing, removing or extending the constitutional term. Such exercises have occasioned mobilisation and considerable dispute in a substantial number of Latin American presidential systems over the past three decades, even though the vote has frequently been cancelled or blocked. Such activism reflects, on the one hand, the recurrent dissatisfaction of Latin American voters with the performance and legitimacy of presidential incumbents (also demonstrated by the high incidence of impeachments and mass protests leading to resignations and ousters) and, on the other hand, the weak institutionalisation of these new mechanisms and the ability of incumbents to co-opt institutions in charge of activating such procedures (Tuesta and Welp, 2020).

In addition to their extensive constitutional powers many ruling presidents also exercise what has been called ‘meta-constitutional’ forms of authority, meaning the reinforced dominance through the governing political party, their federal capacity to intervene against subnational office holders, their ultimate authority over the judiciary, and (at least in the classic Mexican case) the absence of a Vice-Presidential alternate. Such considerations mean that to defenestrate a president during his tenure of office is to risk pitching the entire political system into a systemic crisis of unmanageable proportions.

As noted earlier, a referendum can also be used as a threat to open a process of negotiation. Far from producing a pre-determined result, the outcome may be conditioned by the strength of institutions and the ability of partisan leaders to negotiate (or not), as illustrated by Argentina 1993, Colombia 2009, and Honduras 2009. In the three cases, a controversial president enjoying considerable popular support signed a decree calling for a referendum and, in all three cases, the vote was cancelled. But this encompassed completely different outcomes. In Argentina, the senate approved the proposed constitutional reform and, in October 1993, President Menem authorised a non-binding popular consultation for citizens on the constitutional proposal to be held on November 21, 1993. Polls indicated at the time that a large majority would support the reform. However, the consultation did not take place after the president reached an agreement with the leader of the opposition, former President Alfonsín, which led to endorse a modified reform containing Menem’s re-election, among other provisions. In Colombia, popular President Uribe proposed a

Table 3.1 Referendums/recall elections addressed to presidential terms (1990–2022)

<i>Goal</i>	<i>Country/year</i>	<i>President</i>	<i>Promoter</i>	<i>Results of referendum</i>	<i>Term limits changed</i>
Ratification of a Constitutional replacement/re-election	Peru, 1993	Alberto Fujimori	President/assembly	Motion approved	Yes
Constitutional reform/Introduce re-election	Argentina, 1993	Carlos Menem	President, ad hoc	Cancelled	(Yes)
Constitutional reform/Introduce re-election	Panama, 1998	Ernesto Pérez Balladares	President	Rejected	No
Constitutional reform/Introduce re-election	Venezuela, 2007	Hugo Chávez	Mandatory referendum	Rejected	(not immediately)
Constitutional reform/Introduce re-election	Honduras, 2009	Juan Manuel Zelaya	Popular consultation, ad hoc	Cancelled	No
Introduce re-election	Bolivia, 2016	Evo Morales	Mandatory referendum	Rejected	(Yes)
Introduce re-election	Colombia, 2009	Alvaro Uribe	President	Cancelled	No
Introduce re-election	Ecuador, 1994	Sixto Durán Ballen	President	Approved	
Introduce re-election	Venezuela, 2009	Hugo Chávez	Mandatory referendum	Approved	Yes
Ratify removal/confirm in office	Ecuador, 1997	Fabian Alarcon (interin)	President	Approved	No
Confidence vote	Bolivia, 2008	Evo Morales	President	Confirmed in office	No
Presidential Recall (first attempt)	Ecuador, 2014	Rafael Correa	Civil society actor	Cancelled/blocked	No
Presidential Recall	Ecuador, 2014 (second attempt)	Rafael Correa	Civil society actor	Cancelled/blocked	No
Presidential Recall	Venezuela, 2004	Hugo Chávez	Opposition/civil society	Rejected	No
Presidential Recall	Venezuela, 2016	Nicolás Maduro	Opposition/civil society	Blocked	No
Presidential Recall	Venezuela, 2022	Nicolás Maduro	Opposition/civil society	Blocked	No
Presidential recall/Ratification referendum	Mexico, 2022	Andrés Manuel López Obrador	Civil society organization connected to the president's party	Confirmed (but not valid, threshold not reached)	No
Derogate a law/Avoid re-election	Peru, 1998	Alberto Fujimori	Civil society actor	Cancelled	
Eliminate unlimited re-election	Ecuador, 2018	Lenín Moreno	Popular consultation	Approved	Yes

Source: Own dataset.

referendum to approve a constitutional reform that among other provisions would introduce the possibility of his re-election. The Constitutional Court annulled the decree and the referendum never took place (Boesten, 2022). In Honduras, the less clearly popular President Zelaya was removed from office after a military coup, prompted by the claim (or pretext) that he was seeking to amend the constitution so that he could serve for a second term.

In Peru in 1993 and Ecuador in 1994, presidents succeeded in introducing re-election through an amendment ratified by a popular vote. But not all referendums initiated by the president to introduce re-election succeed, as shown by the case of Panama in 1998, where the proposal was defeated (Giannareas 2020). In Bolivia the constitutional crisis of 2008 was resolved without the regionally divided country collapsing into a civil war when the Morales government responded by convening an impromptu referendum allowing the recall of both the president and eight of the nine regional governors. The opposition accepted this process although it was not in the constitution, and the incumbent emerged strengthened with a 67% positive vote, enabling him to promote the entirely new constitution that was adopted in 2009, and that institutionalised the ‘revocación de mandatos’. Subsequent developments enabled Morales to achieve further extensions of his term and, as mentioned earlier, even his defeat in the 2016 referendum (asking for support for a successive presidential term) did not prevent him from standing again in 2019, but may have helped to precipitate the protests that led to his ouster in 2019. However, as for a ruling of the constitutional court, since 2017 Bolivia has no legal presidential term limit. On the opposite, a civil society attempt of derogating the law allowing Fujimori of Peru to run for office again was not submitted to a vote despite having completed the procedures (signatures collected) in 1998.

Careful readers of the above summaries of presidential succession processes in Bolivia, Colombia, Ecuador, Honduras and so on can reconstruct the complexities and nuances of these episodes, but not everyone has the patience or interest to grapple with these intricacies, and it is in any case a challenge for the neutral observer to summarise such polemical and partisan processes without ambiguity or over-simplification. In other words, there are major problems of ‘coding’ each national experience according to a standardised and impartial template. These are highly contentious matters that concern core issues of popular choice and legitimate rule. Just as US society is riven by disputes over the true results of the 2020 presidential election, so also are these Latin American cases contested. We stand by the presentations in this chapter, but it is important to alert readers to the polemics and imprecisions that colour these judgements. In particular, there are still unresolved questions that may demand further revisions.

In 2004, a recall referendum was activated against President Hugo Chávez by the Democratic Coordinator (*Coordinadora Democrática*) with the support of the business sector as well as several opposition parties. After a long and controversial process, the referendum took place and Chávez was ratified with 59% of the votes. With this only one exception (Venezuela

2004), when a recall referendum is activated by opposition parties and or civil society the possibility of having a vote is quite uncertain. The procedure can be perverted if the agency in charge of evaluating the recall does not perform as a technical and therefore neutral arbiter on such questions. The most recent experience of Venezuela, where in October 2016 and January 2022 the recalls of president Nicolás Maduro were blocked by a co-opted National Electoral Council, provides a cautionary example. Also, in Ecuador the attempts to initiate two recall referendums against Correa were blocked from the very beginning (the collection of signatures was not approved by the electoral agency).

Thus, there is an agreement on the deficits of MDDs when activated top-down, by presidents, as well as a broad consensus on the potential of recall to channelise discontent and avoid violent conflicts (this would have been the case of Venezuela in 2004). The main challenge seems to be the co-optation of the institutions in charge of allowing such initiatives. Mexico offers a unique case to show that the challenges are broader than that. The Mexican Constitution has been revised to include recall referendums in a similar sense to Bolivia, Ecuador and Venezuela. Thus, by 2022 Latin America has provided the world with the first four examples of how this may operate at the presidential level (although the idea and the practice of recall is not new, see Welp and Whitehead, 2020). In this chapter we focus on the fourth of these experiments, both because it is the most important and so far least studied example of presidential recall, and because at least in its first application it provides a remarkably vivid demonstration of how the inherent pitfalls of the recall process can be magnified when extended to the level of a powerful presidency, and when thrown open to manipulation and indeed perversion by the inconstancy of the accompanying constitutional guardrails that are supposed to preserve electoral integrity.

It is important to stress at the outset that each of these experiments needs to be assessed on its own terms, since the political systems in question are each highly specific, and the functioning of a recall depends very heavily on detailed regulations. To take one critical example, whereas Venezuela and Bolivia permit the re-election of an incumbent, Mexico does not. Moreover, ever since 1913 Mexico has differed from all other presidential systems – excepting Chile – in that it makes no provision for a Vice President (Whitehead, 2011; Marsteinredet and Ugglå, 2019).

Presidential Recall in Mexico: A Model of the Pitfalls

A century after the adoption of the iconic 1917 Constitution Mexico introduced a provision for presidential recall. This modified a fundamental aspect of the ‘rules of the game’ regulating electoral politics in Mexico and grafted a mechanism that already existed in certain subnational jurisdictions (notably the governance of Mexico City) onto the nation’s most powerful and distinctive institution, the federal executive. This was essentially a leap in the dark, since over the previous century there had only

been two attempts to activate recall at the subnational level (both declared unconstitutional by the Supreme Court), and the authors of the constitutional amendment paid scant attention to the available lessons from abroad (such as Venezuela, or Bolivia, let alone California). In any case, Mexican presidentialism differed markedly from such external comparators, so any inferences drawn from other cases would have been unreliable.

Mexico's constitution contained no provision for a Vice-President, but it was founded on the virtually sacred principle of no re-election – both of these being revolutionary commitments derived from the Porfiriato and the Huerta coup. In addition, since 1934, the country had experienced an unbroken succession of one-term six-year presidencies. The sexennial calendar had become internalised as a fundamental feature of the electoral cycle. Moreover, under the one-party Partido Revolucionario Institucional (PRI) regime that prevailed up to the end of the last century, the incumbent president had accumulated an extensive range of meta-constitutional powers which had elevated his (they were all male) effective authority above the courts, the Congress, the state Governors, and the other organs of what might be termed Mexico's 'deep state' (military, public sector and regulatory agencies, etc. See Carpizo, 2002). While such executive prerogatives were subsequently curbed under multi-party competition, the legacy of hyper-presidentialism lingered on during the first three democratic *sexenios* and has proven easy to revive since 2018. Some support for the recall provision came from those seeking an additional check on excessive personalist domination of the political scene. But the bulk of the impetus for this innovation came from the new majority party (MORENA) and its founder, Andres Manuel Lopez Obrador (henceforth AMLO), who argued that recall would have countered the previous *mafia del poder* in their abuses of power. This assertion of popular accountability was driven from the presidency by a new incumbent committed to what he termed the 'Fourth Transformation' in Mexican history that purported to establish irreversible democratic control over the *res publica*. In other words, a reform that seemed on the face of it to be power-constraining was in fact embraced by a new power contender bent on advancing an irreversible agenda of structural change (an inherently power-accumulating project).

This Janus-faced nature of the provision for presidential recall went on full display by the time of the mid-term congressional elections of 2021. The constitution was amended in 2019 in accordance with MORENA's promised platform. The amendment provided for the recall of both President and state Governors half-way through their six-year terms. However, the recall of Governors would be subject to rules adopted in each state constitution, and by mid-2022 only 12 out of the 32 states had made such provisions, and the prescribed terms are highly variable. In principle federal Senators might also be subject to recall after three years had elapsed, but so far this provision has yet to be elaborated.

Presidential recall would be triggered, if requested, in a petition signed by at least 3% of the relevant electoral roll (including at least 17 states of

the federation), and once the validity of these signatures had been verified by the *Instituto Nacional Electoral*. A belated transitory law specified that in the case of the AMLO presidency the period for signature collection would begin in November 2021, and close by December 15. By that date 2,805,854 valid signatures were required – and the counting stopped once that threshold was reached (many more names remained to be checked at that stage). The delayed transitory law also specified that the resulting presidential recall vote would take place on April 8, 2022. A bare majority of votes cast would be required to affect the recall, but this would only be effective if at least 40% of the electorate (i.e. about 37 million voters) took part – a high threshold given that no other election was scheduled at the same time. A majority for recall would result in an interim 30-day presidency by the head of the Congress, during which the (MORENA dominated) legislature would elect someone to complete the sexennial term.

In the event, only 17.77% of the electorate took part (16,502,636) and 93.5% rejected the recall proposal. In other words, whereas in 2018 AMLO was elected by over 30 million votes, in 2022 barely half that number turned out to reject his recall or to actively support his ratification. In round numbers Lopez Obrador's coalition secured 30 million votes in 2018, but only 22 million in the 2021 mid-term election (when the governing coalition lost its two thirds-majority in Congress and so could no longer unilaterally amend the constitution), and under 15 and a half million votes in April 2022. Much of this fall off in support can be explained by reduced voter participation, but in any case the record is clearly one of falling enthusiasm for the incumbent (the standard pattern across all Mexican presidential terms). But even more striking was the weakness of the positive vote to have him recalled – whereas around 3 million (perhaps more) had signed the petition triggering the procedure, little more than 1 million had voted to curtail his mandate for loss of confidence in him.

In fact, there was very little interest in pressing the recall case against the President. The overwhelming preference of his critics was for him to complete his term and then leave office without demur. So, they nearly all stayed away from the polls. To participate would be to raise the turnout, making his inevitable ratification look more legitimate. In the extremely improbable case of his being recalled there would be heightened turmoil and policy uncertainty until a successor emerged, and the Congress would undoubtedly opt for a hardliner who would not only continue AMLO's policies but quite likely aggravate them. Worse still for the opposition to AMLO, with MORENA no longer overshadowed by the succession issue opponents of the dominant coalition would confront a potentially dangerous fresh incumbent who might aspire to run again in 2024.

So if the recall offered no attractions to AMLO's critics, why did the process go ahead, and who would support it, with what objectives? Contrary to the accountability case for recall the only advocates of this exercise were those ostensibly at risk of sanction from it. Indeed, from the launch of the recall process it was the presidency that took the

initiative and worked overtime to bend the exercise to its advantage. The majority in Congress took various steps to shape both the timing and the format of the consultation so that the voters would understand it not as a recall procedure but as a ratification exercise (Aristegui Noticias, April 17, 2021).

This intention was revealed by the haggling over the precise wording of the question posed to the electorate. In July 2021, the leader of MORENA in Congress formulated the question as *Está de acuerdo con que se concluya de manera anticipada el desempeño del cargo de la persona titular de la Presidencia de la República, a partir de la pérdida de confianza?* But the Presidency objected to this wording, and in August the governing party unexpectedly changed the proposal to *Está o no de acuerdo con que el presidente continúe al frente del Ejecutivo federal?* It soon became clear that this version would be contested by the opposition parties, and could be invalidated as unconstitutional by the Supreme Court (since it omitted the name of the incumbent, the positive option of revocation, or any reason why that might be called for). A leading constitutionalist argued that the correct wording should simply be *Quiere Vd destituir al Presidente de la República o no?* It was not until September 3rd that consensus was reached on *Estás de acuerdo en que a Andres Manuel Lopez Obrador, presidente de los Estados Unidos Mexicanos, se le revoque el mandato por pérdida de confianza o siga en la Presidencia de la Republica hasta que se termine su período?* (Proceso, August 15, 2021).

Even after official efforts to recast the question as a ratification had been rebuffed, the authorities continued with a systematic policy of pressure and interference that sought to undermine confidence in the electoral authorities (INE), and to present the courts with the dilemma of either turning a blind eye to unconstitutional government activities, or becoming entangled in an electoral process where they would be accused of siding with the opposition. Once the INE had validated the necessary signatures, it was confronted by the obligation to organise an additional national election for which it was not funded. As a result, it could not afford to set up the full inventory of polling places that would be opened in a regular election, and so it was attacked for undermining the recall process. In addition, although the law clearly banned partisan activity by the authorities during the campaign, both the President in person and leading members of his party continuously overstepped such limits and disregarded institutional appeals for restraint. No sooner had the result been announced than MORENA launched a ‘political reform’ agenda designed to hamper Mexico’s electoral integrity system. But since the ruling coalition does not have a two thirds majority in Congress this initiative is only likely to stir public distrust in prevailing institutions, without achieving its stated objectives. Meanwhile, the Constitution now enshrines a right to presidential recalls that can be triggered by a signature collection procedure that may cast a long shadow over future heads of state, with unpredictable and possibly highly disruptive consequences.

Variable Term Limits and Recall Experiment

Latin America's republics have operated under a variety of presidential regimes for about two centuries. The range of variation between countries and over time has been considerable, and yet as a set these presidencies also share a certain number of common features that differentiate them markedly from the monarchies, empires and parliamentary systems that have predominated in the rest of the world. In principle every president is a time-limited officeholder. Other sources of legality and public authority are supposed to operate under his (almost invariably male, until very recently) supervision. Over the past half-century these pluralist features of political organisation have generally become more stable, more authoritative and more of a counterbalance to executive arbitrariness. The citizenry has developed more elaborate forms of monitoring and even loosely 'democratic' capacity. Such developments can underpin a restrained version of presidential rule and tend to clash with the caesaristic variant.

But recently, in many republics, the initial positive aura of democratisation has faded. This is attributed to widespread corruption, unaccountable parties, the spread of public insecurity and so on. Even presidents that came to office with strong electoral mandates have frequently seen their popularity plummet to dismal levels that wreck their authority and leave them incapable of governing effectively. In such a climate, it can seem tempting to change the 'rules of the game' so that people have a voice and a vote on public matters, in particular on the duration of mandates.

However, our evidence suggests such changes operate more as deviations than as durable remedies to the problems of democratic deficits. 19 referendum attempts (only eleven of which ended in votes, the rest were cancelled or blocked) display no single path but have in common a lack of genuinely autonomous leadership from the citizenry. Regarding recall referendums, of the six attempts to use it to produce accountability only two took place (Venezuela 2004 and Mexico 2022). There was a better rate of success when presidents take the lead, but even then, the outcome is not linear or automatic. And the cancellation of the vote does not necessarily represent a failure to achieve the promoter's goals. Instead, the prospect of a referendum can be used to open a process of negotiation, as in Argentina in 1993. Sometimes a presidential initiative does get thwarted, as shown by the case of Colombia 2009, where the Constitutional Court annulled the decree and the referendum never took place. The outcome can also be a constitutional rupture, as in the case of Honduras where the result was to interrupt democracy through a military coup. With two exceptions, referendums initiated by signature collection were blocked. The exceptions were the recall in Venezuela and the Mexican recall vote of 2022. Despite being activated by signature collection, the latter was really a top-down initiative.

Presidential recalls like that of Mexico are not what they claim to be. Such exercises need to be situated within an overall analysis of executive powers and their constitutional limitations. For example, if a constitution

grants 'emergency powers' such as the proclamation of a state of siege to a president, how might that interact with parallel provisions for his/her recall? The whole debate on varieties of presidentialism (and semi-presidentialism) as well as presidential breakdowns in Latin America needs to be incorporated into the analysis of this particular procedural innovation. Recall presents a special case in which dissatisfied voters are given the chance to renew the head of state early. However, such an extension of the recall logic that has been spreading at lower levels of representation is a drastic step. It should only be contemplated as carefully orchestrated procedure, since there is no higher political authority than the head of state, and the business of the nation (including its physical security and financial stability) could be jeopardised by a vacuum of power. Indeed, the convening of a recall process inherently distracts the attention of any elected officeholder from some of the tasks inherent in their public role, and this is all the more of a danger when the highest office in the land is in question. However, if this is a concern when presidential recall is the issue, it is even more of a danger when other threats to the completion of a constitutional term (*golpes*, rebellions, forced ousters, and even impeachments) are in play. In principle, recall procedures could also serve a restraining function in situations where incumbent presidents are tempted to stay on beyond their initial terms of office, or even to *eternizarse en el poder*. But again, as the Mexico example demonstrates, this would only strengthen democratic guardrails if the incumbent could be blocked from manipulating the process to turn a recall vote into a ratification exercise.

From the standpoint of institutional stability, the best arrangement would be that all presidents serve out their prescribed terms, no more and no less. This becomes indispensable in a system such as that of the United States, where no provision exists for a referendum that might legitimise a different result. But also in much of Latin America where (i) experience provides the citizenry with far less societal confidence in the certainty of the electoral calendar, and (ii) the referendum is an established procedure for authorising a political reform. Here popular votes on presidential mandates correspond to a wider tradition – the general approach to referendums on other issues. Political elites with the power to influence legislation through the institutions of representative democracy may habitually bring the electorate into decision-making processes that regulate the rules of the political game. Framed in a positive way, this involves giving the citizens a say in the most important changes concerning their political systems. On the negative side, however, it can open the way to elite and incumbent manipulation of the popular will to serve their vested interests. Furthermore, even when MDDs do give citizens a say on highly controversial or polarising topics it cannot always be assumed that their choices will necessarily be respected (consider what happened in Bolivia following the referendum of 2016).

There are also signs that such presidential recall procedures may become more widespread. Beyond Latin America this provision is already in place

in Taiwan, and the idea has been floated elsewhere – e.g. by the left in France. In well-functioning presidential systems recall provisions may provide a useful safety valve with limited risks attached as they are more likely to attract support in a context of weak institutionality, high politicisation and a disillusioned electorate. These are precisely the conditions that could tempt political reformers to ‘relegitimise’ the system by adopting a drastic new form of political accountability. But they also provide the most perilous of settings for a successful re-stabilisation of the democratic system. It is therefore critical that such changes in institutional design are realistically assessed and carefully calibrated. It would be a dangerous error to opt for presidential recall on the basis that under ideal conditions it could work well. Only the most well-chosen provisions taking into account all available theory and comparative experience stand any chance of working out favourably. And so far the four available regional examples highlight not the benefits, but rather the destructive potential, of this drastic MDD innovation.

But balancing such dangers against the equally risky consequences of refusing institutional reforms regardless of the gravity of the crisis of representation there are some contemporary situations in the region where orderly recall provisions might serve to ward off worse forms of institutional instability and breakdown. One possibility that would bridge the divide between congressional and direct democracy mechanisms for foreshortening a presidential term would be to require that when a presidential impeachment process has succeeded in the legislature it should then be passed on to the electorate for ratification in a referendum. However, although this would improve the legitimacy of such a recall process it would also extend the period of uncertainty over the exercise of presidential authority, and it could prove disastrous if the electorate rejected the verdict of the Congress. We are reluctant to go that far for several reasons. First, the existing stock of examples is too restricted to support such a sweeping conclusion. Second, in at least a few cases (such as contemporary Peru) the performance of the fixed term system is so bad that drastic remedies are in order, and all plausible options need to be considered. Third, once recall has been constitutionalised it is most unlikely to be openly annulled. So, there is in any case a need to consider how best to improve the system in those cases where it cannot be overturned. As with other experiments with the ‘rules of the electoral game’, first movers are prone to commit errors that later practitioners can study, and therefore guard against.

Overall, the stability of presidential term limits in the Americas depends upon the frame of mind of the citizens in each nation, and as we have seen that is a social construct rather than an unquestionable certainty. Recent experiences such as the January 6, 2021 assault on the US Congress, and Mexico’s current ‘Fourth Transformation’ show that even in countries with the most rooted commitment to fixed term limits, long-embedded procedures can be disrupted and undermined. Such rules and timetables are not automatically self-enforcing. Their reproduction over time depends

upon renewing the allegiance of successive citizen cohorts. In most Latin American countries, such allegiances are more fragile, and behavioural norms include both foreshortening and extending the mandates of incumbent presidents. So, across the whole region there can be no one unique right answers equally applicable to all presidential systems. There may be a trade-off between a predictable timetable and an impotent or dysfunctional executive. Periodic experiments with altered term limits can therefore provide a safety valve, even though each innovation will itself carry risks and generate further demands for adjustments. Provisional and second-best solutions are not ideal, but they may be the lesser of evils, and can be crafted to benefit from comparative experience.

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