

## **A problem or a solution? The referendum as a mechanism for citizens' participation in constitution-making**

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This chapter explores a constitutional referendum that is not well-recognized and rarely discussed in the academic literature, a type of referendum that is far from democratic and in which citizens' votes are used instrumentally to alter the constitution to boost the power and authority of incumbent leaders. Far from being rare, this type of referendum is actually very common in authoritarian and semi-authoritarian settings. I refer to it as a “power consolidation referendum”.

That referendums are not always about participatory democracy, but can instead be about the manipulation of power has been commented upon by a number of observers. LeDuc argues that referendums do not always provide the high quality of democracy that they appear to promise. He observes that “governments sometimes call referendums ... to advance their own political agendas” and the referendum can be “a favoured tool of tyrants and dictators seeking to legitimize and sustain their rule” (LeDuc 2003: 46). Similarly Hamon (1995) identifies a subtype of referendum that he calls a “referendum as the recourse of the prince”, which he contrasts with the “referendum as the recourse of citizens” and the “referendum as the recourse of the parties” and which is implemented by a ruler to obtain public endorsement of a person, regime or programme (Hanon 1995: 197). The term “referendum as a political weapon” was coined by Ugglå (2008) to refer to instruments for the consolidation of presidential power, by parties in conflict, or by opponents as a weapon against the government. Although he does not define the term explicitly, he argues that such instruments often go beyond constitutional limits.

I define a “power consolidation referendum” as a referendum that satisfies the following two criteria. First, the referendum must transfer power from one branch of government to another. As such it must involve a change to the constitution (or constitutional convention if no written constitution exists). Second, referendum is elite-initiated or “top-down” and the *de facto* initiator of the referendum is the very same actor that is set to accrue power. In most cases nowadays that actor is the president.

In this chapter I argue that power consolidation referendums typically occur in the years following a period of civil war, revolution or other form of political turbulence. Following such a period, the new leadership initially has a rather tenuous grip on power and is often forced to share power,

formally or informally, with potential “spoilers”. It then works on consolidating power and gradually weakening its rivals until it senses an opportunity to make a bid for full hegemonic control over the polity. As soon as a window of opportunity opens, a power consolidation referendum, if successful, can change the rules of the game to make the uncontested exercise of power far more feasible. Using the referendum as a legitimising tool to do this helps convince actors both inside and outside the polity that the new status quo has the support of the people, despite any irregularities in the way in which the referendum is held. In this way, the new regime can become fixed, durable and more resistant to external shocks.

A referendum is therefore often used as a tactic to out-manoeuvre opposition from within the political elite. In a number of cases, this opposition comes from a parliament that jealously guards its sphere of influence against perceived encroachments from the president. Having gained control of most of the media and the election administration, a referendum is a relatively low-risk strategy used by the president and the presidential administration to win a power struggle with parliament. Lacking the capacity to organise autonomously and challenge the dominant narrative of the referendum, citizens are used instrumentally as a weapon in this power struggle.

As I argue later on in this chapter, the “bid for hegemonic control” is not always successful. If “spoilers” within the political elite still have access to sufficient levers of power they can scupper the referendum and either prevent it from taking place or prevent its outcome from entering into force. Similarly, if civil society can prove an effective counter-weight to the ambitions of the executive, by instigating and framing a public debate around the proposals and by performing a watchdog function against fraud and voter manipulation, it can ensure that the proposal to increase the powers of the executive are defeated by the people.

Instances of the “power consolidation referendum” have been observed across the world and in various epochs of time. Probably the best-known prototypes of the power consolidation referendum are the two constitutional referendums called by Napoleon in 1802 and 1804, the first of which made him High Consul and the second Emperor. In more recent years, as Europe gradually consolidated democracy, this type of referendum has become much rarer. It is also rare in most consolidated democracies in Latin America, although it still occurs sporadically in Latin American countries that have yet to fully consolidate democracy. Of this more will be said later in the chapter.

Power consolidation referendums are far more common in the authoritarian and semi-authoritarian states of the former Soviet Union and sub-Saharan Africa. Out of 140 referendums held in sub-

Saharan Africa after independence thirty-four can be considered as power consolidation referendums, while in the former Soviet Union after the break-up of the USSR, sixteen out of forty can be considered as such (Wheatley 2013b).<sup>1</sup> Details of all these referendums can be found in the Appendix. What most of them had in common was that, according to the official result, either the percentage of voters supporting the motion being put to a referendum or the turnout was sufficiently high as to suggest that the referendum was neither free nor fair. The Napoleonic prototypes were trailblazers in this sense; purportedly 99.76 and 99.93 percent of French voters voted for motions “promoting” the future emperor in 1802 and 1804 respectively. In most cases the power consolidation referendum led to a further consolidation of power by existing power-holders.

This chapter focusses first and foremost on power consolidation referendums in the former Soviet Union and sub-Saharan Africa during, but then goes on to explore the extent to which this mechanism is used in Latin America and whether it is used in the same way. The rest of the chapter will proceed as follows. First I look at the sort of regimes and circumstances in which power consolidation referendums tend to occur, first by considering the extent to which democracy has (or has not) been established in the country in question and then by looking at the contextual background in which the event takes place. Second, I develop a number of hypotheses as to the circumstances in which power referendums either do not occur, do not come into force, or are defeated, making reference to both the configurations of the political elite and to the strength of civil society. I argue that power consolidation referendums are more likely to be thwarted: a) if political society is fragmented and b) if civil society has developed the capacity to resist power grabs by political elites and that this capacity is at least on the way towards becoming institutionalised. I also argue that the (formal) institutional frameworks that determine the limits of executive power do not play the main role in determining whether power consolidation referendums occur. I illustrate these hypotheses with a few “mini case studies” both from sub-Saharan Africa and from the former Soviet Union. I go on to explore the extent to which such referendums play a role in Latin America. I end the chapter with a short conclusion.

### *Under What Conditions do Power Consolidation Referendums Occur and are Successful?*

Following on from the earlier discussion, we would expect power consolidation referendums to be held and to achieve their aim of reinforcing the power of the executive in circumstances in which

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<sup>1</sup> In this chapter I exclude two examples that I included in Wheatley (2013b), referendums held in 1995 in both Kazakhstan and Uzbekistan, to extend the term of the president, because they did not involve amendments to the constitution. However, I include the referendum to adopt the 1993 Constitution of the Russian Federation, which is not included in Wheatley (2013b), on the grounds that it represented a concentration of power over and above the constitutional provisions enshrined in the Basic Law of 1992.

the balance of power, both amongst the political elite and amongst social forces, favours the incumbent elite. In other words, a power consolidation referendum is likely to be held and to be successful where pluralism is low, and where civil society is too weak to act as an effective check on the executive. Hence these referendums should occur more often in authoritarian and semi-authoritarian settings. This indeed seems to be the case. During the period between 1972 and 2012, on average new constitutions that were adopted by means of a referendum seem to have occurred in slightly less democratic settings than in cases where a new constitution was passed without a referendum. Drawing from data provided by the Comparative Constitutions Project (FN) to identify constitutional replacements and summing the Freedom House (FH) scores for Political Rights (PR) and Civil Liberties (CL) in the country concerned for the year in which the new constitution is adopted, we find that the average FH score was 9.92 if a referendum was held (N=101), and 8.95 if a referendum was not held (N=149). As both PR and CL scores range from 1 (most democratic) to 7 (most authoritarian), our composite score ranges from 2 (most democratic) to 14 (most authoritarian).

Of course, only quite a small subset of power consolidation referendums occur in the context of full replacement of the constitution. Far more often, such referendums seek to recalibrate the separation of powers through constitutional amendments. It is beyond the scope of this chapter to identify all constitutional amendments that were associated with a redistribution of power in favour of the executive and compare cases in which a referendum was held to approve these amendments with cases in which a referendum was not held. Instead I look at the context in which power consolidation referendums were held in two regions of the world where they are particularly common: sub-Saharan Africa and the former Soviet Union. In both regions we see that the context was markedly undemocratic.

In sub-Saharan Africa since 1972, power consolidation referendums have been held when, on average, the FH index was 5.93 for political rights and 5.25 for civil liberties. In all cases the referendum passed and the constitutional changes were adopted. In the former Soviet Union the corresponding figures are 5.25 and 5.06, although if we discount the two cases in which the power consolidation referendum proved unsuccessful (Moldova in 1999 and Ukraine in 2000) the figures are 5.57 and 5.21. In almost fifty percent of African cases (fourteen out of twenty-nine cases for which data was available) and in eight out of fourteen former Soviet cases (excluding the two “unsuccessful” cases), the official turnout was 90 percent or over (see Appendix), casting credible

doubt over whether such referendums were free and fair. Overall, the power consolidation referendum is a formal democratic procedure implemented in an undemocratic context to achieve an undemocratic end.

The most common circumstances in which such a referendum is held is a certain time after a coup, period of conflict or major political upheaval. Initially constrained to co-opt rivals or potential spoilers, the executive often opts for a (formal or informal) power-sharing solution or even a form of limited democracy. However, over time, as the executive gradually begins to consolidate power, the power-sharing arrangement begins to feel like an unnecessary constraint. Keen to break free from earlier compromises with now enfeebled rivals, the executive spots a window of opportunity and initiates a constitutional change to cement its authority.

I will briefly illustrate how this works by focussing on a number of cases from sub-Saharan Africa and the former Soviet Union: Congo Brazzaville, Cameroon, Tajikistan and Belarus.

In Congo-Brazzaville, a National Conference was set up in 1991 to oversee democratic reform. The Conference soon declared itself sovereign, stripping dictator Denis Sassou Nguesso of his executive powers. A new democratic constitution was passed in March 1992 and both parliamentary and presidential elections were held that year, leading to Sassou Nguesso's defeat and to victory for rival candidate Pascal Lissouba. However, Lissouba's presidency was marked by instability after an uprising by another rival in the 1992 presidential elections, Bernard Kolelas, left many dead. After a brief exile in Paris, Sassou Nguesso returned to Congo in May 1997 to contest the forthcoming presidential elections, but was promptly arrested. However, his forces rallied around him culminating in a brief civil war, from which Sassou Nguesso's forces emerged victorious by the end of the year with the help of Angolan troops and other foreign forces, and Sassou Nguesso was sworn in as president. Initially he promised to return to democracy within a three-year transition period. However, another round of fighting derailed the process and as soon as government forces once again gained the upper hand, Sassou Nguesso began to consolidate power. On 20 January 2002, he held a referendum on a new constitution that would extend the president's term of office from five to seven years, allow him to appoint and dismiss ministers and remove the post of prime minister. The referendum was passed with 88 percent of the vote amidst allegations of vote-rigging. Two months later Sassou Nguesso won presidential elections after his main rivals were disqualified. Although the 2002 constitution allowed the president just two seven-year terms in office, in October 2015 he won a further referendum (supposedly with 92 percent of the vote) to amend the

constitution and allow him to run for a third consecutive term as president, albeit once again reduced to five years.<sup>2</sup>

An earlier example is that of Cameroon. After independence from France in January 1960, French Cameroon (Cameroun) was led by President Ahmadou Ahidjo. In November 1961, the former British colony of the Southern Cameroons voted to join Cameroun, but retained an autonomous status (as West Cameroun) under prime minister John Ngu Foncha, who served as vice president under Ahidjo. Ahidjo was unable to consolidate power for a long time both as a result of West Cameroun autonomy and because of an insurgency by the Union des Populations du Cameroun (UPC), who had previously fought the French. The insurgency lasted until the arrest of UPC leader Ernest Ouandié in August 1970. After having Ouandié shot in January 1971 Ahidjo was able to consolidate power. The new constitution that was passed in a power consolidation referendum in April 1972 was supposedly approved by 99.99 percent of voters on a turnout of 98.2 percent, figures that stretch the limits of credulity. It effectively abolished West Cameroun's autonomy, established a centralized state and gave extensive new powers to the president, including making him head of State, commander-in-chief, and allowing him to govern by decree.

Tajikistan is an example of a similar process in the former Soviet Union. Following the collapse of the USSR, Tajikistan became embroiled in a bloody civil war in which the main protagonists were “government” forces, mainly former communist elites from the cities of Khujand (Leninabad) and Kulyab region (in the West), and an opposition consisting of liberal reformers and Islamists from the Garm and Gorno-Badakhshan regions (in the centre and southeast of the country respectively). The war lasted from 1992 until a UN-sponsored amnesty was brokered in 1997. The peace deal envisaged the incorporation of the United Tajik Opposition into the armed forces and government, but was short on specifics. This allowed the government forces, who anyway had the upper hand during the later stages of the war, thanks in part to support from Russia and Uzbekistan, to make good their advantage. Emomali Rahmon, a former communist apparatchik from the Kulyab region who had been nominal head of state since 1992 and president since 1994 won the presidential elections of 1999 with 97.6 percent of the vote amid claims of voting irregularities, including multiple voting. While a constitutional reform, passed by referendum shortly before the elections, gave the president a single seven-year term of instead of two five-year terms, in 2003 a second referendum on constitutional reform increased this to two seven-year terms and discounted both the

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Philon Bondenga, “Congo votes by landslide to allow third presidential term”, *Reuters*, at <<http://www.reuters.com/article/2015/10/27/us-congo-politics-idUSKCN0SL0JW20151027#wgsdweLhMq5DVZjZ.97>>, accessed 30 November 2015.

current and previous terms, effectively allowing Rahmon to remain in power until 2020. According to official results 93.82 percent of voters supported the motion on a barely credible 96.38 percent turnout.

Of course, it does not always require an event as dramatic as a coup or an armed conflict to begin the chain of events leading to a power consolidation referendum. Following the collapse of the former Soviet Union, it was common for established—or even occasionally new—power brokers to seize the reins of power in the newly-independent republics with relatively little resistance and to give their position “democratic” legitimacy by means of a referendum, while re-establishing the informal authoritarian dynamic of power that had been prevalent during the Soviet period. Such a scenario played out in both Kazakhstan and Uzbekistan where in 1995 presidents Nursultan Nazarbayev and Islam Karimov, both of whom had been first secretaries of the Communist Party in their republics prior to the dissolution of the USSR, held referendums to prolong their presidential terms for five years without the need for elections. In both cases both turnout and the “yes” vote exceeded 90 percent (in Uzbekistan both ostensibly exceeded 99 percent). This was followed up in Kazakhstan by a second referendum the same year on a new constitution that provided for enhanced presidential powers, and in Uzbekistan a new referendum was held in 2002 extending the presidential term from five to seven years. According to official figures, both referendums were won with both a “yes” vote and a turnout of more than 90 percent. Both presidents remained in power at the time of writing.

In some cases consolidation of power can occur with barely even a struggle. In Belarus a relative outsider, former collective farm boss Alexander Lukashenko, won the second round of the 1994 presidential elections on a populist anti-corruption mandate and immediately began to consolidate his authority with little resistance from other actors. In May 1995 he held a consultative referendum on a number of issues including restoring Soviet-era symbols and giving the president the power to dissolve parliament. After the parliament had half-heartedly tried to impeach him in the summer of 1996, he held (in November 1996) a more significant (and binding) referendum on another bundle of issues that included constitutional changes establishing a bicameral parliament, transferring many of the powers previously invested in the parliament to the president, including the appointment of key public officials, and allowing the president to serve a complete five-year term from the date these amendments were passed, in practice extending Lukashenko's current term of office from five to seven years. According to official figures he won this referendum with 88 percent of the vote on an 84 percent turnout. In 2004 he forced through a referendum on further constitutional changes allowing the president an unlimited number of terms of office, this time with 89 percent of the vote

on a 90 percent turnout (according to official figures). For Gel'man, the critical factor in Lukashenko's consolidation of power was that the elite in Belarus was atomised without an organizational structure, rendering it incapable of resisting a power grab by the new president (Gel'man 2008: 168).

In the Central Asian and Belarusian cases described above, the (generally weak) resistance to the expansion of presidential powers came from the parliament. This was a common pattern in a number of former Soviet republics, including Russia. Following the collapse of the Communist Party of the USSR in many republics it was unclear who or what was the supreme political authority. Newly elected presidents therefore faced resistance from the parliament over who should control the main levers of government, such as local administrations, election commissions and courts. This led to an often bitter power struggle between president and parliament. In Russia, the Soviet era 1978 constitution was amended several times during 1992 (the year after independence) and provided strong parliamentary control over presidential appointments. President Boris Yeltsin fought to loosen these shackles and attempted to reframe his power struggle with parliament as a struggle between “reformers” (the president) and “hardline communists” (the parliament). This narrative appeared to win over most western powers, as the West's support for Yeltsin in his power struggle against the Russian parliament in 1993 clearly shows. It also seemed to win over a significant section of the electorate; in the referendum held in December that year to approve a new constitution that enhanced presidential powers, official results suggested that over 58 percent of voters supported the constitution. These figures need to be treated with a degree of scepticism given credible reports of manipulation (Sakwa 2008: 64).

If the logic for adopting a referendum as a means for consolidating power is to circumvent resistance from the legislature, the referendum is more frequently observed when the president lacks a “ruling party” to ensure the loyalty of parliamentarians. Lacking a lever to ensure the loyalty of parliamentarians, which a party structure provides, presidents tend to turn to voters to confirm their new authority and undermine that of parliament. If at a later date they can once again count on a loyal parliament, by means of a new “ruling party” to which most MPs are loyal, they are often able to dispense with a referendum in order to make constitutional changes. The case of the Russian Federation is a clear example of this. Faced with a hostile parliament, President Boris Yeltsin used a power consolidation referendum to force through a new constitutional order that bolstered presidential authority. However, in 2008 President Dmitri Medvedev, backed by the then prime minister Vladimir Putin, persuaded parliament to back a constitutional amendment that increased the presidential term from four to six years without a popular referendum. The amendments were



passed by the required two-thirds majority thanks to the authority that the pro-government party United Russia had over the legislature. The amendment allowed Putin to return to the post of president in 2012 (a post he had vacated earlier in 2008) for a possible two further six-year terms.

*... And Under What Conditions are Power Consolidation Referendums Thwarted?*

The Belarussian, Kazakh and Uzbek cases illustrates how under certain circumstances leaders can consolidate power rather quickly if they lack coherent rivals within the elite or, in Gel'man's words, the elite is "atomised". By the same token, it is more problematic to consolidate power either by a referendum or by other means if one's rivals' power remain undiminished. Under such circumstances a power consolidation referendum is likely to end in failure. A paradigmatic example here is that of Moldova. On 23 May 1999 a consultative referendum was held on the introduction of a presidential form of government in Moldova in which President Petru Lucinschi would have the right to form and lead the government. The referendum was held against a backdrop of growing conflict between the parliament and president. The former was dominated by the Communist Party, which controlled 40 out of 101 seats and which had been resisting the president's nominees for prime minister. The 1994 Constitution had defined a mixed system of government that gave the president broad powers over matters of national defence, but made the government responsible to the parliament, which could pass a motion of no-confidence in it. In the referendum a majority (64%) of those casting a valid ballot (58% of registered voters) voted in favour of the president's proposal. However, as it was a consultative referendum it still required a two-thirds majority in parliament to confirm it. Such a majority was not forthcoming; instead parliamentarians from the Communist Party joined forces with other political factions and elaborated their own proposal for a parliamentary system of government with a president elected by members of parliament. On 5 July 2000 parliament approved a law on constitutional reform based on these proposals. Although the bill was vetoed by the president, on 21 July parliament was able to overturn the veto by a massive majority of 87 votes to six.<sup>3</sup> Lucinschi's bid to consolidate power had failed and he left office in 2001 after the Communist Party won the 2001 election and Communist parliamentarians elected their own president.

But it is not only rivals within the political elite that can derail a bid for consolidation of power; if civil society is strong enough to defend constitutional limits of executive power it can also put a stop to such attempts. Barry Weingast argues that if citizens can reach a consensus on the limits of state power and can coordinate their actions to defend these limits then they can depose any leader

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<sup>3</sup> RFE/RL Newline, 21 July 2000, at <<http://www.rferl.org/content/article/1142200.html>>, accessed 30 November 2015.

who violates them (Weingast 1997). Leaders and governments will then be bound to respect these limits as violations will be punished by citizens. Such limits could prevent leaders from concentrating power in their own hands in the manner described in this chapter.

A recent example of citizens defending constitutional limits on executive power is that of Senegal in 2012. In 2010, Senegal's president Abdoulaye Wade was coming towards the end of his second constitutionally mandated five-year term of office (due to expire in 2012) and began to lobby for a third term. The following year he proposed reducing the electoral barrier for a run-off to allow first-placed presidential candidates to win the election with only 25% of the vote. He also sought to establish the post of vice president, a post many observers thought to be earmarked for his son Karim. In June 2011 these moves triggered widespread protests with civil society groups such as *Touche Pas à Ma Constitution!* (Don't Touch My Constitution!) and *Y'en a marre* (Fed Up with It) forming an umbrella protest group called the "June 23 Movement" (M23) and taking to the streets against the proposed constitutional amendments. The protests led Wade to retract his proposals, but in January 2012 he managed to cajole the Constitutional Court (made up mostly of his own supporters) into allowing him to stand for a third term on the grounds that the constitution had been amended since he was elected and the two-term limit only applied from the date of the amendment, rather than from the beginning of his first term. This led to a further wave of protests, which failed to reverse the Court's decision, but helped generate a wave of dissatisfaction towards Wade, who lost the elections to opposition candidate Macky Sall in a run-off held on 23 March 2012. In the end, civil society played a major role in preventing authoritarian entrenchment in the hands of Wade and his son.

Weingast (1997) argues limits on government become self-enforcing when a basic consensus exists over what these limits are. Normally, in mature consolidated democracies, the sort of protests that we saw in Senegal are not necessary to ensure that a president complies with constitutional norms because there is an internalised set of norms and understandings that make such a scenario unthinkable. Irrespective of the character or ambition of the president of, say, France or the USA or Uruguay, we simply could not envisage in these countries today a situation in which he or she contemplated the kind of power grab that Abdoulaye Wade attempted.

However, it is not only in those countries that are normally assumed to be mature, consolidated democracies in which a set of norms that are shared by both political elites and society can prevent a leader from consolidating power. An interesting case in this respect is that of Benin, where a National Conference sat for ten days in February 1990 to oversee a transition to democracy and set clear constitutional limits on executive power. The Conference derived its legitimacy from the

participation of diverse sectors of society including central and regional administrations, trade unions, churches, academia, political parties, the army, human rights associations and women's groups. The Conference provided broad legitimacy to the constitution, which set a maximum of two consecutive five-year terms for the president and high thresholds for constitutional amendments<sup>4</sup>. The constitution has not been amended since then, despite rumours that two incumbent presidents, former dictator Mathieu Kérékou and his successor Thomas Boni Yayi, were seeking to amend the constitution to give themselves a third term in office shortly before their second terms were due to end in 2006 and 2016 respectively. However, these rumours did not materialise into concrete actions, perhaps because of the sensitivities involved in amending a constitution that is seen to be a reflection of the will of the people as expressed in the National Conference.

The status of the Beninois constitution as somehow sacrosanct was underlined by a decision made by the Constitutional Court in 2006 overruling a vote by members of parliament, who had mustered the required four-fifths majority to amend the constitution to extend their mandates from four to five years. In their ruling the Constitutional Court judges decided that the constitutional article that limited parliamentary mandate to four years was “the result of a national consensus arrived at by the Conference of the bone and sinew of the nation in February 1990” and that parliamentarians' attempt to amend it represented an attempt at “power confiscation” that did not conform to the principles embodied in the constitution (Wheatley 2013a: 82).

The Beninois case shows that it is not the *letter* of the constitution that counts, but rather the *symbolism* (or “mystique”) than embeds it. That the framing of the constitution as a document does not always provide a guarantee against power usurpation is illustrated by the case of Niger in 2009. The 1999 constitution of Niger, drafted to mark the return to democracy after a period of stability and civil war, contained within it an article that prevented the amendment of another constitutional article that determined that the president could serve a maximum of two five-year terms. However, this did not prevent Nigerien president Mamadou Tandja in May 2009 from attempting to amend the constitution in order to remain in office after his term expired later that year. After having his petition rejected by the Constitutional Court, Tandja dissolved the National Assembly, took to ruling by decree and announced a referendum that envisaged far-reaching constitutional amendments, including the removal of term limits for the president. His proposals were approved by the referendum, according to official results, but Tandja was deposed by a military coup the following year.

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4 A three-quarters majority in parliament followed by a referendum or a four-fifths majority without a referendum.

## *The Power Consolidation Referendum in Latin America*

While power referendums are rare in consolidated democracies, they are not confined to the former Soviet Union and sub-Saharan Africa. Several such instances occurred in Latin America even after the so-called Third Wave of democratisation that engulfed the continent during the late 1970s and 1980s. The classic Latin American case was the so called “auto-coup” (*autogolpe*) staged by Peruvian president Alberto Fujimori in April 1992 in which he dissolved the Congress of the Republic and used the military to arrest a number of opposition politicians. Having ruled by decree for a year, he put a new constitutional blueprint to a referendum in 1993, which he won. The new constitution centralised power through a new unicameral Congress (replacing the old bicameral parliament) and allowed the president to remain in office for two five-year terms (instead of one). Fujimori subsequently argued that this rule could not be applied to his first term as the old constitution was still in force when he was first elected and instead his two terms should begin from his re-election in 1995. With backing from the Constitutional Court he therefore stood for re-election again in 2000 (effectively for a third term) and won, allegedly with the help of electoral fraud. However, by the end of the year he had lost the support of Congress and was forced to resign.

A second example of a power consolidation referendums were those observed in Venezuela in 2007 and 2009. Both were motivated by a desire on behalf of President Hugo Chávez to modify the constitution to abolish term limits for the president and both were *mandatory referendums* insofar as the existing constitution required any constitutional changes to be approved by a referendum. Chávez lost the 2007 referendum by a narrow margin, but remained determined to continue in his attempt and proposed further reforms, this time to remove term limits for *all* significant elected posts (including, of course, the presidency). In order to circumvent the constitutional requirement that a second constitutional reform cannot be submitted during a single legislative term (Article 345), Chávez presented this new modification as a constitutional *amendment*, rather than a reform. On this second occasion, he won the referendum with 55 percent of the vote on a turnout of 70 percent and ensured the abolition of term limits.

The 2007 Venezuelan referendum is neither the first nor the only case of a power consolidation referendum failing to pass. In 1980, the Uruguayan military sought to consolidate the newly-established dictatorship by holding an *ad hoc* constitutional referendum to give more powers, as well as immunity from prosecution, to the military and to weaken the powers of the General Assembly and political parties. However the proposal was defeated, with only 41.86 percent in favour of the changes and 55.95 percent against. Despite later attempts by the military to strengthen

its powers irrespective of the vote, these attempts were ultimately unsuccessful. As Welp and Ruth point out in Chapter 7, the vote set the scene for a transition to democracy that came into being with the Uruguayan Club Naval Pact just four years later.

A much more recent example of a power consolidation referendum failing is that of Bolivia. On 21 February 2016 a mandatory referendum was held on the initiative of the governing party, the Movement Towards Socialism–Political Instrument for the Sovereignty of the Peoples (Movimiento al Socialismo–Instrumento Político por la Soberanía de los Pueblos, MAS-IPSP), in order to amend Article 168 of the Bolivian constitution, which allows an incumbent president only to be re-elected once. The aim was to ensure that President Evo Morales would be able to stand for an extra term in office when his mandate was due to expire in 2019. However, in a closely fought contest Morales and MAS-IPSP lost the referendum, garnering just 48.7 percent of the vote [at time of writing].

These examples show that in Latin America, as in the former Soviet Union and sub-Saharan Africa, power consolidation referendums occur either in authoritarian regimes or in hybrid regimes where democracy is unconsolidated or deconsolidated. Venezuela in 2007 and 2009 and Bolivia in 2016 can best be described as hybrid regimes, with composite FH scores of 8, 9 and 6<sup>5</sup> respectively, while both Uruguay in 1980 and Peru in 1993 can best be described as authoritarian with a composite FH score of 10.

However, there are two features that stand out about power consolidation referendums in Latin America that distinguish these events from many (but not all) similar events in the former Soviet Union and sub-Saharan Africa. The first is that formal institutions and the rule of law matter. Even figures such as Hugo Chávez and Evo Morales have to play by the rules enshrined in the existing constitution. Thus, they were unable to bypass these rules by ignoring the constitution and using their overwhelming majorities in their respective parliaments to push through the changes without a referendum. Contrast this with the case of Niger, where although Tandja used a referendum to pass his new constitution, he did so by effectively tearing up the existing constitution.

The second is that in Latin America, holding a referendum is a high-risk strategy. Of all the power consolidation referendums held in sub-Saharan Africa and the former Soviet Union, not a single one has failed because of a rejection by voters. In the two (post-Soviet) cases (Moldova and Ukraine) where efforts at consolidating power failed, the failure was not because the referendum motion was unable to garner a majority of votes, but because a powerful section of the elite was able to thwart

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5 In Bolivia figures for 2015 are taken as the 2016 index was not available at the time of writing.

the attempt. In Latin America, despite the fact that power consolidation referendums, in recent years at least, have been few and far between, we can observe three cases in which the executive's proposal has been defeated in the ballot box. Probably the closest parallel in Africa is the above-mentioned case of Senegal, where President Wade was able to circumvent the need for a referendum by cajoling the Constitutional Court to accept his proposed constitutional amendments but was defeated by the people at the ballot box when he stood for a third term. In most of Latin America, as in a few isolated pockets in sub-Saharan Africa and the former Soviet Union, it is civil society that provides the main obstacle to power consolidation and can mobilise to defend the limits on executive power, and to ensure that any referendum is conducted freely and fairly. Much of Latin America, including Uruguay, Peru, Venezuela and Bolivia have a history of social activism both through labour mobilisation and through social movements led by indigenous communities. In such a setting it can prove problematic even for the most dominant president to frame the referendum debate according to his or her narrative and win over a majority of voters.

Overall, therefore, due to the relative strength of civil society, consolidation of authoritarian control is a lot more difficult to achieve in Latin America than in the former Soviet Union and sub-Saharan Africa, even in countries such as Peru, Venezuela and Bolivia where democratic rule is not consolidated. It is noteworthy that within four months of being sworn in for his cherished third term, Fujimori was forced from office by his opponents in Congress. Moreover, the Uruguayan military in 1980, Chavez in 2007 and Morales in 2016 *failed* to get their way in the respective referendums, although Chávez succeeded late in a second attempt and only barely succeeded in the second. Strong opposition to his rule and to that of his successor, Nicolás Maduro, from within Venezuelan society has continued unabated to this day and the opposition even gained control of the National Assembly in elections held in December 2015. Contrast this with the situation in Belarus or Congo-Brazzaville, where there appears to be no significant threat to the rule of the respective strongmen in the foreseeable future.

### *Conclusion*

Using a series of mini-case studies to illustrate, this chapter has identified a type of constitutional referendum, the power consolidation referendum, that, despite being dressed up as an opportunity for citizens to decide their future, has nothing to do with democracy. Most often, the power consolidation referendum is used to approve proposals to augment the power of the president and the presidential administration at the expense of the legislative body. Frequently it is a defining moment in a power struggle between the president and parliament. This type of referendum is often

marred by electoral fraud—especially to artificially inflate turnout figures—and very little time is devoted to public consultation for voters to consider the proposals they are voting on. It is particularly common in the former Soviet Union and sub-Saharan Africa but has been noted also in parts of Latin America. It tends to occur—or fails—in authoritarian regimes or hybrid regimes in which democracy is yet to be consolidated. It tends *not* to occur either if the political elite is fragmented so that the leader lacks the authority to bring potential spoilers on board and unite most political, military and economic actors behind him/her, or if there is broad consent both amongst the political elites and across civil society on the desired limits of executive power and a capacity to mobilise in the event that those limits are breached.

This discussion has implications for the role of popular participation in constitution-making. “One shot” participation in a referendum to approve constitutional changes that have already been proposed by a powerful political elite is neither an indicator of democracy nor a guarantee that limits on executive power will be observed. On the contrary, it is more often a sign of democratic malaise and an abusive relationship between rulers and ruled. Scholars should therefore be very wary of treating the constitutional referendum *per se* as an instrument of direct democracy. For citizens' participation in a constitution-making process to be meaningful it needs to be an ongoing process that generates broad consent amongst citizens as to what the limits of executive power are as well as a willingness to defend those limits. It is not even necessary that this ongoing process manifests itself as a formal constitution-making process, although in certain cases constitution-making may be a part of it, as the Beninois case illustrates. More often, however, it is an incremental process in which limits—formal and informal—on executive power gradually become internalised amongst citizens and political elites. This is what we mean by the consolidation of democracy.

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## Appendix: National Referendums in the CIS and sub-Saharan Africa

Country	Date	Initiative	Issue	“Yes” vote/ Turnout
Azerbaijan	24 Aug. 2002	President/presidential administration	Constitutional change vesting the prime minister, rather than the chairman of parliament, with the power of acting president in the event of the current president’s resignation (clearly favouring the president's son, Ilham Aliev, who was appointed prime minister the following year)	96.79/ 88.47
Azerbaijan	18 Mar. 2009	New Azerbaijan Party (ruling party)	Twenty-nine proposals to amend the constitution, including a proposal to abolish the constitutional provision that a president can only be elected for two terms.	91.76/ 70.82
Belarus	24 Nov. 1996	President	Amending the constitution to bring about a significant shift in the balance of power from the Supreme Soviet to the president.	88.24/ 84.14
Belarus	17 Oct. 2004	President/presidential administration	Constitutional changes to remove term restrictions for presidential office.	88.91/ 90.28
Benin	31 Mar. 1968	Military Junta	New constitution introducing a presidential system in which the president could be re-elected an indefinite number of times.	92.21/ 81.88
Burundi	18 Nov. 1981	President Jean-Baptiste Bagaza and the ruling party UPRONA	New constitution establishing a presidential republic	99.28/ 94.25
Cameroon	20 May 1972	President	Constitutional changes marking transition from a federation to a centralised State and increased presidential powers.	99.99/ 98.25
Central African Republic	21 Nov. 1986	President	Constitution changes to make General Kolingba President for six years	92.22/ 87.61
Chad	10 Dec. 1989	President/ National Consultative Council	Constitution introducing a presidential republic, with a 7-years term of office for the president and unlimited reeligibility	99.94 /93.04
Chad	6 Jun. 2005	President	Constitutional reform abolishing restrictions for the presidential term.	65.75/ 57.81
Congo, Dem. Rep. of	16 Jun. 1967	President	New constitution with strong presidential system	98.44/ unknown
Congo, Rep. of	8 Jul. 1979	President/ Military Committee of the Party	New constitution with strong presidential system	96.95/ 90.30
Congo, Rep. of	20 Jan. 2002	President	New constitution with strong presidential system	88.19/ 77.98
Congo, Rep. of	25 Oct. 2015	President	Constitutional amendment to allow an extra presidential term	92.27/ 72.44
Côte d'Ivoire	24 Jul. 2000	President	New constitution with a specific article to disqualify an opponent as a potential presidential candidate	86.58/ 55.97
Equatorial Guinea	29 Jul. 1993	President	New constitution enshrining a presidential republic and a one-party state	99.00/ Unknown
Equatorial Guinea	15 Aug. 1982	President	New constitution establishing presidential republic and appointing President Obiang as president for seven years.	95.79/ 93.47
Equatorial Guinea	13 Nov. 2011	President	Constitutional reform allowing the president a maximum of incumbent for a maximum of two more seven-year terms and the right to appoint a vice-president	97.73/ 91.79
Ghana	31 Jan. 1964	President	Constitutional amendment to establish of a one-party state and allowing the president to nominate and dismiss judges	99.91/ unknown
Guinea	11 Nov. 2001	President	Constitutional amendments allowing President Lansana Conte to run for a third term in office.	98.36/ 91.28
Kazakhstan	30 Aug. 1995	President/presidential administration	New constitution that gave significantly more powers to the president than the previous constitution.	90.01/ 90.58
Kyrgyzstan	22 Oct. 1994	President/presidential administration	Constitutional changes to introduce a bicameral parliament,	88.11/ 86.00
Kyrgyzstan	10 Feb. 1996	President/presidential administration	Constitutional changes to increase president’s power.	98.56/ 96.62
Kyrgyzstan	17 Oct. 1998	President/presidential administration	Package of constitutional changes. The proposals included stripping the parliament of the right to discuss budgetary spending without government approval and allow deputies to be stripped of immunity in some cases.	95.38/ 96.44
Kyrgyzstan	21 Oct. 2007	President/presidential administration	Constitutional amendments giving the president the right to appoint and dismiss the heads of local administration, National Security Council, judges, prosecutors, board of directors of the National Bank and electoral commission.	95.44/ 81.58
Madagascar	8 Oct. 1972	Prime minister	Interim constitution with unrestricted powers for Prime Minister Ramanantsoa.	96.43/ 84.29
Madagascar	21 Dec. 1975	Supreme Revolutionary Council	New Constitution with a seven-year term as president for Captain Didier Ratsiraka.	95.57/ 91.77
Madagascar	17 Sep. 1995	President	Constitutional amendments allowing President to appoint new Prime Minister.	63.56/ 65.39
Madagascar	15 Mar. 1998	President	Constitutional amendments giving more powers to the president.	50.96/ 70.28
Madagascar	4 Apr. 2007	President	Constitutional amendments including one that would allow the President to govern by decree in a state of emergency.	75.33/ 43.68
Madagascar	17 Nov. 2011	President of the "Haute Autorité de la	Constitutional amendments for a centralized state and reducing the age limit for the president to allow President of the "Haute	74.19/ 52.61

		Transition" (HAT)	Autorité de la Transition" (HAT) to assume the post.	
<b>Mali</b>	2Jun. 1974	President	A new constitution with a president with a five year term who can be re-elected only once and a single-chamber parliament with restricted powers.	99.66/ 92.21
<b>Mauritania</b>	12. Jul. 1991	President	Constitution with unlimited re-eligibility of the President.	97.94/ 85.35
<b>Moldova</b>	23 May 1999	President/presidential administration	Constitutional amendments proposed to introduce a presidential form of government. Subject to approval by the constitutional court and of two-thirds of members of parliament.	64.20/ 58.33
<b>Niger</b>	24 Sep. 1989	President/ Supreme Military Council	New constitution based on a one-party presidential regime with two terms of seven years.	99.28/ 95.08
<b>Niger</b>	12 May 1996	Coup leader and later president Ibrahim Baré Maïnassara	New constitution based on presidential Republic	92.00/ 35.00
<b>Niger</b>	8 Aug. 2009	President	New constitution allowing extended term for president	92.50/ 68.26
<b>Russian Federation</b>	12 Dec. 1993	President	New constitution establishing a presidential republic	58.43/54.37
<b>Rwanda</b>	17 Dec. 1978	President	New constitution for a presidential republic with no term limits for the president.	89.00/ Unknown
<b>Senegal</b>	3 Mar. 1963	Parliament/ president	Abolition of the position of Prime Minister from the constitution	99.45/ 94.29
<b>Sierra Leone</b>	12 Jun. 1978	Parliament/ president	New constitution to provide a one-party Republican Constitution with a strong presidency	97.15/ 99.13
<b>Somalia</b>	25 Aug. 1979	President/Somali Revolutionary Socialist Party	Constitution based on a socialist one-party State with a presidential system of government.	99.78/ Unknown
<b>Tajikistan</b>	26 Sep. 1999	Mandated by the peace deal, determined by presidential consent	Constitutional amendments creating a bicameral parliament, extending the president's term in office from five to seven years, and allowing the formation of religious-based political parties.	75.32/ 92.54
<b>Tajikistan</b>	22 June 2003	President/presidential administration	Constitutional changes including allowing the president to stand for two more 7-year terms.	93.82/ 96.38
<b>Togo</b>	9 Apr. 1961	Prime minister (later president)	Presidential constitution along the lines of the French Constitution.	99.62/ 89.95
<b>Togo</b>	5 May 1963	Military	New constitution with a presidential republic and unicameral parliament.	98.53/ 91.05
<b>Togo</b>	30 Dec. 1979	President/military	New constitution with a presidential republic and a one-party system	99.87/99.36
<b>Turkmenistan</b>	15 Jan. 1994	Parliament, under the direction of the president	Amendment to the constitution to extend President Niyazov's term to 2002.	99.99/ 99.90
<b>Ukraine</b>	16 Apr. 2000	De jure, popular initiative. De facto, the initiative belonged to the president/presidential administration	Constitutional amendment to give the president the right to dissolve parliament.	85.92/ 81.08
<b>Uzbekistan</b>	27 Jan. 2002	Parliamentary majority	Constitutional amendments proposed to (i) establish a bicameral parliament, (ii) extend the presidential term to from 5 to 7 years. Supposedly approved by over 91% of those voting.	91.78/ 91.58