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Policy Making by Government Initiated Referendum: The Case of Bolivia

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Workshop:
Detlef Nolte / Augustin Ferraro
Abstract: The increased use of government initiated referendums in Latin America has raised the concern of scholars who interpret this phenomenon as the side effect of an unrelenting trend towards neopopulism. It is argued that the incorporation of these tools into constitutions facilitates a delegative and plebiscitarian government style, enables presidents to go over the head of legislatures and ‘have it their way’, and thus reinforces presidentialization to the detriment of drift towards parliamentarization of political regimes in the region. This paper casts doubt on said characterization which falls short of capturing the causal complexity rendered by empirical evidence. I claim that whether executives may use referendums for their own political gain will be a function of institutional constraints and the prevailing political game. For that purpose, in the first part of this paper, I develop a spatial model which assesses the likelihood of a president to advance his/her own policy preferences depending on the different constitutional provisions for referendums, legislator’s positions on the issue at stake, and the position of the median voter. The empirical case of analysis is the recent experience of Bolivia which offers an adequate laboratory to test said propositions, considering the difficulties President Mesa had to put forward his policy proposition in the face of intense congressional opposition and high levels of popular mobilization. Therefore, in the second part of this paper I present an analysis of the specific political and institutional constellation that led to the constitutional reform of 2003 and the convocation of a referendum on the national energy policy in 2004.

Worldwide, institutions of direct democracy have become more important over the past few decades. Provisions for direct democratic institutions have been added to a considerable number of new constitutions and policy decisions are increasingly decided on by citizens in popular votes. Advocators of direct democracy have stressed the bottom up character of such practices and referred to their potential of fostering participation and thus overcoming crisis of representation (Abromeit 2004; Schmitter 2000). However, the picture that emerges from the Latin American experience with direct democracy is a different one. Since the 1990s, provisions for institutions of direct democracy have been incorporated into most post-transitional Latin American constitutions and over the past fifteen years the occurrence of direct democratic events in the region has increased remarkably. Nonetheless, we find ourselves confronted with the apparent paradox that direct democracy remains mainly a top-down affair in the region. Although several Latin American constitutions enable citizens to directly place proposals by popular initiatives or to revoke the mandates of elected officials, government initiated referendums (GIR) are the dominant type in practice. The dominance of GIR in Latin American direct democratic practice suggests that the use of these tools is rooted in specific problems in legislative-executive interaction in the region. Largely inspired by the experience of Peru under Fujimori and Venezuela under Chávez, authors concerned with the issue have interpreted the use of referendums by Latin American presidents as epiphenomenal

1 Currently the following Latin American constitutions allow for citizen initiated direct democratic procedures: Bolivia: Art. 6; Colombia Arts. 40, 103, 170; Costa Rica Arts. 102/9, 105, 123; Ecuador Arts. 105, 109; Peru Arts. 31, 206; Uruguay Arts. 331/A, 79; Venezuela Arts. 71, 72, 73, 74.

2 I use the term ‘government’ in a generic fashion to designate both members of the executive and the legislature. According to Altman (2005) 87% of all direct democratic events which occurred on the national level on the American continent during the 20th and the first years of the 21st century were government initiated.
to an unrelenting trend towards plebiscitarian neo-populism (Barczak 2001; Ellner 2003; Hawkins 2003; Mayorga 2002; Weyland 2001). For the most part, the occurrence of executive promoted GIR is deemed to reinforce excessive presidentialism to the detriment of the drift towards parliamentarisation of political regimes in the region. The general concern is that presidents may use these instruments to skew the separation of powers and attenuate checks and balances to their own authority by circumventing party mediation and congressional deliberation. Because of their potential to short-circuit the representative system referendums have been described as key tools of personalistic and populist leaders (Taguieff 1995).

In fact, referendums do influence executive-legislative relations and it has been shown that the mere introduction of the possibility for the use of these tools into the constitution affects the outcomes of legislative politics (Hug 2004; Hug and Tsebelis 2002). However, the nature of this influence varies considerably from case to case. This paper argues that the extent to which executives are able to control the legislative agenda and obtain policies they prefer by using referendums will be a function of three independent variables: the particular constitutional provisions regulating the referendum institution, the position of legislators on the issue at stake, and the position of the median voter.

**Basic Types of Direct Democratic Instruments**

Direct democracy is a complex phenomenon consisting of diverse institutions which have their own special features implying very different consequences. The number of classifications of institutions of direct democracy almost equals the number of publications concerned with the phenomenon and as Suksi states to date “there exists no universal referendum terminology” (Suksi 1993, p.10). However, as the literature on the issue developed, two questions crystallized as central for the assessment of the influence of different political actors in direct democratic processes: Who controls the process? i.e. which actors are constitutionally entitled to convoke the popular vote; and who promotes the process? i.e. who submits a policy proposal asking for its approval and thus sets the agenda of a popular vote. Traditionally, these questions were asked mainly to detect the degree to which the different institutions shifted control over the law-making process from elected representatives to ordinary citizens so that the chief demarcation line came to be that between procedures initiated “from above” and those initiated “from below”(Altman 2005; Butler and Ranney 1994; Smith 1976; Suksi 1993; Uleri 1996).
In an innovative approach, Tsebelis and Hug (2002) picked up these questions and connected them to the theoretical framework of veto player theory. According to (Tsebelis 1995), veto players are those individual and collective actors whose consent is required to change the legislative status quo. As the number of these actors and the ideological distance between them increase, it becomes more difficult to achieve changes in the status quo. The number of veto players is determined by the constitutional provisions concerning the basic regime type and number of chambers in the legislature, and of the actual political situation (number of parties in government and ideological distances between them) Veto players and non-veto players are thus identifiable actors in any political system. If the competence to:

a) trigger a direct democratic process
b) act as the agenda setter of a direct democratic process

direct democratic process

are assigned to veto-players the classification that results of their possible combinations covers the three basic types of popular votes commonly identified in literature on direct democracy:

1) **mandatory referendums** (i.e. popular votes that must be convoked in certain situations or on certain issues explicitly stipulated in the constitution and are therefore triggered automatically);
2) **citizen initiatives** (i.e. direct democratic procedures in which organized groups of citizens – by collecting a stipulated number of signatures - may either obtain the right to present their question to the electorate, or enforce a popular vote on the abrogation of a law or decision made by government); and
3) **government initiated referendums** (i.e. popular votes promoted by either the executive, or a given majority in the legislature, or both in cooperation).

Whereas mandatory referendums introduce the electorate as additional institutional veto player into the political game (Hug and Tsebelis 2002), and citizen initiatives enable voters to either veto policies produced by the ordinary legislative process, or to act as agenda setter themselves by presenting policy proposals to the electorate, in government initiated referendums initiation authority agenda setting powers remain among the existing institutional veto players.
Institutions Regulating Government Initiated Referendums (GIR)

In this paper the focus is narrowed to the latter category of government initiated referendums. The institutional variation between GIR in presidential systems depends on the constitutional regulations concerning the allocation of those competences to the executive and the legislature. The following four combinations are conceivable:

**Figure 1**

Institutional Variations of GIR in Presidential Systems

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Following Mainwaring and Shugart (1997), one possible way to think about executive-legislative power relations in a presidential system is the exercise of power with regard to the legislative status quo. Powers that allow either one of two branches to establish – or attempt to establish – a new status quo may be termed proactive, whereas those powers that merely allow a defence of the status quo are described as reactive. This terminology is adopted here to distinguish between the different types of GIR:

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Some authors (e.g. Jung 2000 and Hug 2004) define distinctions among referendums on the basis of what government and opposition do, assuming that the government controls a stable majority in the legislature which is large enough to have its referendum proposals accepted. However, in a presidential system, where majorities may shift according to issues and divided government is more likely to occur, it seems more adequate to clearly distinguish between the legislature’s and the executive’s competences.
The **Proactive Executive Referendum** enables the president to unilaterally initiate a referendum process and ask any question he wants. It is in fact a powerful proactive instrument since an executive can use it to bypass an oppositional majority in congress and enlarge the legitimatory basis for policies of his own preference by putting them directly to popular vote. An example is Art. 104 of the Ecuadorian constitution which entitles the President to call for a popular vote on constitutional amendments or important questions for the country.

The **Proactive Legislative Referendum** reserves initiation and agenda setting authority to the legislature. In Uruguay e.g., according to art. 331/B a popular vote can be proposed and triggered by two-fifth of the National Assembly. Another example is the Costa Rican constitution where art. 105 stipulates the required majority to call for popular consultation on a parliamentary bill at two-thirds of the Legislative Assembly. Since referendum outcomes are normally binding and may not be vetoed by the president this tool may become particularly relevant under divided government. If a president does not control a majority in the legislature but enjoys sufficient support to uphold his veto against a congressional override, the oppositional majority may avail itself of this tool to submit an objected bill to the electorate for ratification, thus cancelling out the executive as a veto player.

Whereas the two abovementioned types enable the executive or the legislature to short-circuit their rival veto player and unilaterally challenge the status quo in some cases, executive-legislative coordination is required to initiate a referendum process. Here, it is necessary to distinguish between the following subtypes:

The **Reactive Executive Referendum** entitles the president to call for a referendum on a congressional bill. In Chile e.g., art. 117 stipulates that a constitutional amendment which has been approved by two thirds of both Chambers of Congress must be promulgated by the President unless he decides to consult the citizenship in a ‘plebiscite’. Again, it is obvious that such a regulation is particularly relevant under divided government. In a situation where a president lacks partisan support to sustain his veto against a hostile legislative majority the reactive executive referendum may become his last resort to defend the status quo against an unwanted change.

Finally, the **Reactive Legislative Referendum** enables oppositional majorities in the legislature to defend the status quo against presidential initiatives. This tool is found in Colombia, where according to arts. 155 and 378 an absolute majority in both chambers can call for a referendum on a constitutional amendment proposed by the government. In Costa
Rica, art. 105 states that executive referendum proposals require the approval of two-thirds of the Legislative Assembly.  

So far, we have seen that the ability of executives to control the legislative agenda by referendum will vary considerably according to a) the constitutional rules regulating this institution and b) to the prevailing political game, i.e. the partisan power balance in the legislature and legislator’s policy preferences.

Readdressing the concern that referendums enforce excessive presidentialism because politically isolated executives can use them in a delegative manner to circumvent congressional deliberation and “have it their way”, we can thus state that except for the case of the proactive executive referendum their capacity to do so will be considerably constrained by all other rules. A close analysis of referendum provisions in the Latin American constitutions casts even more doubt on the conventional impression of the referendum as a mere presidential asset: Whereas in Bolivia, Guatemala, Peru and Venezuela both the executive and the legislative power are entitled to trigger a referendum process, in Argentina, Brazil, Colombia, Costa Rica, Paraguay and Uruguay this right is reserved to the legislature. Explicit provisions for the Reactive Legislative form of the referendum exist in Costa Rica and Colombia. The Reactive Executive form appears in the Chilean constitution. Only in Ecuador it is the exclusive right of the president to call for a referendum. However, as the ongoing constitutional crisis in Ecuador demonstrates, he may have serious difficulties to make use of this competence in practice.

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4 It has to be noted though, that in practice a clear distinction between the different subtypes of GIR may be hindered by constitutional ambiguity. While constitutional texts in most cases clearly indicate which branch of government is entitled to trigger a referendum they often remain silent with respect to the authorship of the proposal. This ambiguity does not only present a theoretical problem for the categorization of these instruments but also holds considerable potential for conflict when it comes to their practical application. In Guatemala e.g., missing specifications in the constitutional art. 173 caused a polemic discussion about its proper interpretation between the executive and legislature on the occasion of the referendum on constitutional reform in 1994 (Thibaut 1998).

5 As scholars have pointed out repeatedly, the fact that a president’s party controls a majority of seats in the legislature does not guarantee him legislative support. Electoral systems often lack institutional incentives to foster internal party discipline and may induce legislators to completely ignore programmatic considerations and instead seek to gain as many advantages as possible for specific constituency interests. Legislator’s positions on specific policy issues therefore seem a more adequate indicator to evaluate a president’s ability to craft policy coalitions than the partisan power balance in the legislature. However, to accurately depict legislator’s preferences in absence of roll call voting or survey data is an extremely difficult task and I would greatly appreciate suggestions how to address this problem!!!

6 On the concept of delegative democracy in presidential systems see O’Donnell 1994.

7 A detailed list of constitutional provisions for GIR in Latin America is provided in the appendix.

8 In January 2006, the Ecuadorian Supreme Electoral Tribunal, acting under pressure of Congress, refused to organize a referendum on the convocation of a constituent assembly solicited by a decree of president Alfredo Palacio (El Universo, 3 March 2006).
Let us now turn to the third relevant variable with respect to agenda control: The position of the median voter. The empirical record of GIR makes it clear that governments cannot necessarily expect to have their policy proposals accepted in popular votes. According to Altman (2005) who analyses the outcomes of national level direct democratic events on the American continent in the 20th century, 50 per cent of the measures submitted to vote by governments in democratic regimes were actually rejected. This finding apparently contradicts Lijphart’s supposition that “when governments control the referendum, they will tend to use it only when they expect to win” (Lijphart 1984: p. 203). However, according to the mathematical models presented by Hug and Tsebelis (Hug 2004; Tsebelis and Hug 2002) the median voter’s position on a policy issue is central for the strategic choices of political actors when having to decide whether or not to make use of a referendum. The following spatial model illustrates the impact of the median voter’s position under the different referendum rules and preference distributions.\(^9\)

\(^9\) The model presented here partly draws on a model developed by Negretto 2004 who analyses to which extent constitutional decree authority capacitates executives to act as agenda setters.
Figure 2:
Disagreement about direction of policy change (executive’s and legislative majority’s most preferred policies located at opposite sides of SQ)
Let us imagine a situation where two institutional veto players, an executive and a legislature, bargain over a policy in a one-dimensional policy space \( x \) (e.g. the amount of public assets to be privatised on the way from a high tax, state-interventionist model to a more liberal model of economic governance). It is assumed that

a) the preferences of both veto players are representable by single peaked and symmetric utility functions in this dimension \((U_E \text{ and } U_L)\).

b) also voters’ utility functions \((U_M)\) are single peaked and symmetric in this dimension.

Thus, if voters are presented with a binary choice over \( x \) the outcome of majority rule will be the position of the median voter, which is the Condorcet winner (Black 1958).

c) that information is complete and symmetrically distributed, i.e. each veto player has complete information about the other players’ preferences as well as about the median voter’s most preferred policy \((X_M)\).

To start with in Figure 2 we will address a situation where the preference sets of an executive, \( P_E(SQ) \), and an oppositional majority in the legislature, \( P_L (SQ) \), are located to opposite sides of the status quo, \( SQ \), and the ideal policy of the median voter, \( X_M \), is situated inside \( P_E(SQ) \). Let us now assume that the ordinary legislative process is blocked by a situation of deadlock in which the executive does not control a majority in congress but disposes of a strong veto, requiring a qualified override, and a minority support sufficient to uphold his veto (let’s say 1/3). In such a situation, any attempt of the executive to achieve \( X_E \) by introducing a bill into congress will be turned down by the legislative majority, while any attempt of the legislature to pull \( SQ \) towards \( X_L \) would be blocked by a presidential veto. Under the Proactive Executive rule, the executive can use a referendum to break the deadlock and impose its ideal point as long as it is closer to \( X_M \) than \( SQ \). However, any \( X_E < |SQ – X_M| \) will be defeated in a referendum. By contrast, the Reactive Executive rule merely enables the president to defend the status quo. If the legislative majority proposes \( X_L \) over \( SQ \) and the president decides to trigger a referendum on this proposal, he cannot gain more from a referendum than from making use of his veto power with respect to the final policy location, i.e.: The preservation of \( SQ \). However, he may find the referendum a more attractive tool to obtain the same result because of the reputational gains involved. As for the Proactive Legislative and Reactive Legislative types of referendums, both are unlikely to occur under these conditions. In case of

\[ \text{10 In fact, situations may arise where information is distributed asymmetrically. As Hug (2004) has pointed out, this is particularly likely to occur when a government has to address a set of various issues simultaneously and is opposed by lobby groups who dispose of detailed private information in their area of specialization. In this model for the sake of simplicity, I assume that both veto players can use proxies - such as opinion poll results on the issue at stake - to calculate the position of the median voter.} \]
the first, the legislative majority would anticipate its defeat and refrain from triggering a referendum, whereas in case of the latter it would simply deny its consent to a presidential referendum proposal.

Figure 3: Disagreement about extent of policy change (executive’s and legislative majority’s most preferred policies located at same side of SQ)
Let us now assume a situation in which the institutional veto players agree on changing the status quo in the same direction but the ideal policies of the executive and the median voter lie outside the set of policies that the legislative majority prefers over SQ (Figure 3).

A complete legislative deadlock is unlikely to occur under the given preference distribution. If the legislature proposes $X_L$ over SQ there is no reason for the president to make use of his veto or trigger a referendum on this proposal since the reversionary outcome SQ would set him farther back from his ideal point. In other words: Neither the Reactive Executive nor the Proactive Legislative type of referendum are likely to occur under these conditions. However, as in the previous scenario, under the Proactive Executive rule, the president will be able to impose his preferred policy as long as $|X_E - X_M| < |X_M - SQ|$. In case that the president requires a majority in congress in order to call for a referendum, his initiative will be turned down if he proposes his ideal point $X_E$. However, he can try to act as the agenda setter of a Reactive Legislative referendum. If he locates his ballot proposal at the position where the legislative majority is indifferent between the status quo and the proposed measure, $X_L'$, it may authorize a referendum. As long as $|X_M - X_L'| < |X_M - X_L|$ the president will be able to pull the final policy closer to his preferred ideal point by means of an Reactive Legislative referendum than the policy location that would be achieved by normal legislative proceedings.

To sum up the institutional implication of this spatial analysis: A president will only be able to achieve a policy which lies outside the set of preferences of an oppositional legislative majority if he can either simultaneously formulate the ballot measure and trigger the referendum process in a Proactive Executive Referendum, or if he can act as agenda setter in a Reactive Legislative Referendum. However, his relative capacity to do so is not only a function of the constitutional rules regulating the referendum institution and preference distribution in the legislature but also of the position of the median voter on the issue at stake.
The Case of Bolivia

The recent experience of Bolivia presents an adequate laboratory to test the propositions of the model presented above considering the difficulties the president had to put forward his referendum proposal in the face of intense congressional opposition and high levels of popular mobilization and polarisation. The following section describes the specific political and institutional constellation that led to the constitutional reform 2003 and the convocation of a referendum on the national energy policy in 2004.

Social Background: Ethnic Conflict and Regional Antagonisms

The Bolivian society is divided along two major conflict lines: ethnicity and geography. The republic has two distinct regions: the high Andean plateau (departments of Potosí, La Paz, Cochabamba, and Oruro) and the eastern and southern lowlands (departments of Pando, Beni, Santa Cruz, Chuquisaca, and Tarija). Quechua and Aymara are the two predominant indigenous population groups in highland regions, while lowland Bolivia is principally mestizo. The lowlands have a diverse economy, mainly based on oil and gas production. Being Bolivia a typically Latin American centralist state, politics tended to revolve around the capital, La Paz, in the past. As population and economy grew in the eastern lowlands (especially in the capitals of Santa Cruz and Tarija), traditional regional antagonisms gained new relevance in public discourse and members of the business elite in this part of the republic increasingly began to perceive the export of natural resources by private companies as the key to greater autonomy from La Paz, with some even favouring secession from the republic (St John 2004; Centellas 2005). By contrast, the setting in the Altiplano is quite a different one: Mining has traditionally been the basic industry in the highlands. After the Movimiento Nacionalista Revolucionario (MNR) seized power in the revolution of 1952, the mines which were so far largely exploited by foreign business interests were nationalized and the new government supported indigenous efforts to forcibly recuperate communal lands. But national control over metal resources soon faded again when the lack of capital to modernize production methods forced successive governments to contract services with foreign companies for their extraction, thus setting the stage for perpetual conflict with the miners’ unions (Van Cott 2000). Meanwhile, the limits of traditional agriculture on family-sized parcels induced indigenous migration into the cities and forced the campesinos of the Altiplano to engage in the alternative cultivation of coca. The decision of the Bolivian
government to support the US State Department in its war on drugs imposed additional economic hardship in the region and fuelled social unrest. One of the consequences was the rise of the coca growers trade union, its leader, Evo Morales, and the associated political party Movimiento al Socialismo (MAS). Having made the experience that the benefits of metal exportation did not trickle down to their long marginalized region, its inhabitants doubt that they will benefit from the expected natural gas revenue.\footnote{Precedents to the conflict about the hydrocarbons issue illustrate that there is a also a cultural-religious facet to the strong aversion against capitalization of natural resources among the indigenous population. Since natural resources are perceived as gifts of nature there is an understanding that they should be freely accessible common goods. While previous neoliberal measures of the first Sánchez de Lozada administration (1993 – 1997) such as the privatization of the state airline, telephone company, and national railroad system could be implemented without major civil disturbances, a violent conflict evolved in 2001, when the government’s decision to sell the public water system of Cochabamba to a pool of British-led investors caused a massive popular uprising which came to be known as the “Cochabamba Water War” (Crabtree, John, 2005).}

**Institutional Background: Executive-Legislative Relations in a ‘Double-Hybrid’ System**

Despite this difficult social setting, Bolivia’s transition to constitutional democracy in 1982 was followed by almost two decades of regime stability which raised confidence about the prospects of democratic consolidation (Linz and Valenzuela 1994; Whitehead 2001). Scholarly optimism was mainly based on the two institutional variables that structure executive-legislation relations in Bolivia: Hybrid Presidentialism and the introduction of a Mixed Member Proportional Electoral System (MMP).

The key component to Bolivia’s model of ‘hybrid presidentialism’ (Gamarra 1997: p. 364) is encoded in Article 90 of the 1967 constitution: If no candidate obtains an absolute majority in the national elections, the president is elected in a congressional run-off among the top contenders.\footnote{Prior to the 1994 reforms members of Congress were free to choose among the three leading candidates, after 1994 the choice was restricted to the two frontrunners.} Since this feature theoretically implies majority legislative support for the president it has been regarded as an adequate approach to address one of the basic problems of democratic stability in Latin America’s political systems: The risk of minority governments and legislative deadlock that stems from the embeddedness of presidential regimes in multi-party systems (Mainwaring 1993).
Nevertheless, critical voices have argued that post-electoral bargaining to ensure legislative support was dominated by presidential patronage strategies rather than by programmatic tradeoffs and thus fostered corruption and the detachment of the political class from the demands of its electorate (Gamarra 1997; Falcoff 2004).13

In order to overcome the lack of partisan responsiveness in 1994, the traditional list-PR system was replaced by a MMP system, in which seats are allocated in two overlapping electoral tiers: Out of a constitutionally fixed number of 130, 68 deputies are chosen by first-past-the-post voting (FPTP) in single-seat-districts (SSDs), while the remainder is chosen by party list voting according to PR in the nine regional multi-member districts. The basic logic behind this is that while pure FPTP election with its winner-take-all nature bears potential conflict in extreme multi-party-systems, this problem can be alleviated when list seats are assigned in compensatory fashion, leading to proportional results. MMP electoral systems have thus been commended by scholars as a happy medium between creating incentives for closer exchanges between voters and representatives elected in SSDs and opening the opportunity for the latter’s accountability, while simultaneously assuring fair party representation on the national level (Colomer and Negretto 2005). Parallel to the reform of the electoral system, the Sanchez de Lozada administration (1993-1997) implemented the Law of Popular Participation (LPP). In order to strengthen participation on the municipal level the LPP created 311 autonomous local governments with direct elected municipal officials and a 20 percent share in government revenues. There is evidence that these reforms, which mutually reinforced the principle of regionalized politics, were successful in establishing closer ties between political parties and the electorate but at the same time encouraged party system fragmentation and radical polarization by aggravating existent ethnic and regional cleavages.14

As other deeply divided societies, Bolivia has been faced with the problem of extreme multipartism. However, between 1985 and 1993, post-electoral bargaining had produced a bipolar system that centred around a block of the three “systemic parties” (Centellas 2005): MNR, MIR, and ADN. In 1993, two populist parties - UCS and CONDEPA – which appealed directly to indigenous migrants in La Paz and El Alto entered the electoral arena. The first elections after the introduction of MMP in 1997, were marked by two key developments:

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13 Surveys carried out during the 1990s illustrate the disjuncture between citizenry and the political elite: In a 1992 survey 53% of the respondents thought that politicians were not concerned with people’s problems. In survey conducted in 1996 74% of the respondents stated that in their opinion parties did not keep the promises they made (Mayorga, 2001b).

14 For an in-depth analysis of the 1994 electoral system reforms’ consequences see Centellas 2005, Mayorga 2001a, and Mayorga 2001b. Altman and Lalander (2003) provide a comprehensive overview over the implementation and effects of the LPP.
First, small parties that were either previously marginalized like FRI, or which were new products of municipal politics like NFR gained district seats and thus the necessary coalition potential to act as allies of major parties. Second, the syndicate of coca-growing peasants led by Evo Morales, in the Chapare region campaigned under the label of the Izquierda Unida (IU)\textsuperscript{15} and managed to win the region’s four SSD district seats. These developments were reflected in a 47.85 per cent increase in the effective number of parties which rose from 3.72 in 1993 to 5.50 in 1997 (see Table 1). The subsequent 2002 elections brought about the final breakdown of the old bipolar system. The ADN’s vote share dropped from 22.3 per cent to 3.4 per cent, whereas the second place fell for the first time to a non-systemic party, the MAS, which obtained 20.94 per cent of the total vote.\textsuperscript{16} With this new regionalist dynamic injected into the electoral system, moderate coalition bargaining became extremely difficult. Finally, a broad coalition including MNR, MIR, ADN, and UCS was stitched together and parliament chose the front runner, MNR’s Sánchez de Lozada, in the congressional runoff who took office with his running mate Carlos Mesa Gisbert as vice-president.

\textsuperscript{15} The IU was subsequently renamed into Movimiento al Socialismo (MAS)
\textsuperscript{16} The surprising performance of the MAS can partly be attributed to unintended campaign assistance from the US embassy: The announcement that the US would not support a MAS presidency and the threat to cut off $75 million in economic assistance and $48 million in counter narcotic aid in case of Morales election, caused a public outrage and boosted his popularity enormously.
### Table 1: Lower Chamber Composition and Party System Characteristics in Bolivia 1985 – 2002

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1. ADN, NFR and PDC
2. MNR and MRTKL
3. MNR and MBL
4. MIR and FRI
5. CONDEPA and MP
6. UCS and FSB
7. Effective Number of Parties according to (Laakso and Taagepera 1979) based on parties’ seat shares
8. Deviation from ENP in previous election
Positions on the Contentious Hydrocarbon Issue and the Way to Constitutional Reform

The first Sánchez de Lozada Administration (1993 – 1997) carried out a series of reforms that intended to pave the way from a state interventionist economy to a neoliberal model of economic governance. Among them was the implementation of law 1689 of April 1996, which set the legal base for the capitalization of the national hydrocarbon resources. The law prescribed state ownership of all subsoil hydrocarbon deposits. However, it stipulated that the national oil and gas company, Yacimientos Petrolíferos Fiscales Bolivianos (YPFB), could contract out with national or foreign individuals or companies for the exploration, exploitation and trade of hydrocarbons, thus guaranteeing the free commercialisation and export of natural gas by private enterprise. In December 1996, Enron & Shell International Gas Ltd. were named the winning bidders in the capitalization of the transportation segment of YPFB by the Bolivian government. By 2003, 94 per cent of the Bolivian gas reserves were under control of foreign investors, with the Brazilian Petrobras Oil Company (41.4 per cent) and the Spanish-Argentinian Repsol-YPF (24.7 per cent) holding the biggest shares in gas production (La Prensa 2003).

In September 2003, President Sánchez de Lozada’s backing for the $5 billion plan of a consortium led by Repsol-YPF to export natural gas to California sparked increasingly violent anti-government protests, paralysing the capital, La Paz. As pressure from the street mounted, Sánchez de Lozada sought to strengthen his position by including the populist NFR17 into the governing coalition but in practice ended up weakening internal relationships amongst the coalition members. At the peak of civil unrests, Sánchez de Lozada made a final attempt to stabilize his feeble position and regain legitimacy by announcing a referendum on the use of the national resources of hydrocarbons. However, when his offer failed to contain popular mobilization he opted to quell the riots with the help of the armed forces causing the deaths of 80 protesters. The broad coalition of relatively un-programmatic parties proved unable to cope with the crisis. Government finally collapsed when vice-president Mesa and two of the most prominent cabinet members withdrew their support for Sánchez de Lozada, citing differences in how the president was dealing with the unrest. Sánchez de Lozada was forced to resign and Mesa was sworn in by congress in his stead.

17 The NFR appeals directly to indigenous immigrants in El Alto and La Paz and has been able to capitalise the urban discontent of many former voters of ADN.
After Sánchez de Lozada’s demission, attempts to govern with majority parliamentary support continued to fail. Being a historian and journalist without previous party career, Mesa did not dispose of a real power base within the MNR which would have enabled him to negotiate congressional support and forge an ad hoc alliance. Against this background, he opted for a strategy to appeal directly to the electorate and develop the public image of a ‘caretaker president’ right from the start of his administration (Andean Group Report 2003). Instead of reflecting inter party balance of power in congress, the composition of his transition cabinet sought to pay tribute to the ethnic and regional cleavages that threatened democratic stability. The decision to form a government without parties was in his own words “not an attempt to deny the essential importance of party institutions in a democracy, but an inescapable response to the fact that the parties have entered into a severe crisis, not only with the State, but above all with society.” (Mesa in La Razón, 20 September 2003). In his accession speech, Mesa reiterated the offer to hold a referendum on hydrocarbons law.

Mesas decision to initiate the reform process for the adoption of the referendum was catalysed by several factors. Certainly the most pressing one was the political legacy left by his predecessor: Sánchez de Lozada’s announcement to submit the controversial hydrocarbons issue to referendum had raised popular expectations which Mesa couldn’t afford to ignore if he wanted to prevent further escalation of the political situation.

His lack of a stable partisan support basis made it unlikely that he would be able to implement energy policies consistent with his own preferences by working down the ordinary political route in congress. The congressional majority favoured the maintenance of the status quo set by the law 1689. On the other hand, the blueprint of the MAS for a new hydrocarbons law based on the principle of full recovery of state ownership of the YPFB and the processing of gas inside Bolivia in order to generate added value and employment sources. Meanwhile, Mesa’s own preferences were shaped by the challenge of mediating between the demands of an impoverished electorate and the requirements to keep international lending organisations, such as the IMF, on board. He was thus more inclined to win over the gas industry’s critics by postulating the export of surplus gas production and a tax increase on foreign energy companies operating inside Bolivia. At the same time, his

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18 Personal communication with Dr. Luis Verdesoto (ILDIS), external consultant to the Comisión de Constitución, Justicia y Policía Judicial, August 11, 2005.
19 Especially legislators of the MNR, whose electoral strongholds lie in the gas and oil producing departments of Tarija, Santa Cruz, Pando and Beni, voiced strong opposition against the abrogation of law 1689 by referendum, emphasizing the country’s lack of financial and technical means to efficiently exploit its gas resources without foreign assistance (Correo del Sur 2004; La Razón 2004).
proposal to abrogate law 1689 aimed at restructuring the YPFB in an effort to return it to its former role as a dominant player in the gas industry. Another crucial factor was Mesa’s lack of a direct popular mandate. Although his assumption of office complied with constitutional regulations, having been Sánchez de Lozada’s co-runner in the 2002 elections he did not dispose of independent and direct popular legitimation and needed to distance himself from his unpopular predecessor.

In fact, tendencies in public opinion polls delivered good prospects for him to achieve his policy goal and turn the referendum into a vote of confidence on his person: In an opinion poll carried out in January 2004, 78 per cent of the respondents considered a re-definition of the national energy policy as important, with 79 per cent stating that the new policy should be ratified by a binding referendum. In the same survey, 59 per cent of the respondents approved the export of excess gas reserves while only 39 per cent opposed selling natural gas abroad (Figures 4.1 – 4.3).
Popular Attitudes Towards Referendum on National Energy Policy, January 2004

Figure 4.1: Necessity of Definition of National Gas Policy*

*Es importante que Bolivia defina una Política de Estado en relación al tema del gas?

Figure 4.2: Policy Approval by Binding Referendum*

*Está de acuerdo con que la aprobación de esa política se realice mediante un referéndum vinculante?

Figure 4.3: Export of Surplus Gas Reserves*

*Suponga que el referéndum se realiza hoy: Ud. cree que Bolivia debe exportar el excedente de gas, o no?

A citizen perception poll conducted by the Ministry of Mines and Hydrocarbons in April 2004, produced even more favourable results with 61 per cent of the population approving natural gas exports and only 4 per cent opposing. Tarija, with 94 per cent, and Santa Cruz, with 72 per cent, stood out nationwide as the regions with the highest approval rates, followed by Cochabamba with 69 per cent. Rejection concentrated in the cities of La Paz and El Alto with 46 per cent and 42 per cent of the population opposing exports.\textsuperscript{21} Meanwhile, Mesa’s personal approval rates maintained extraordinarily high from October 2003 through to June 2004, with 82 per cent at the peak and 67 per cent at the lowest level. During the same period, the highest rate of respondents’ preferences obtained by his key opponent, MAS leader Morales, lay at 35 per cent. Citizen evaluation of the oppositional performance in general was even less favourable with maximum approval rates of 28 per cent and minimum rates of 17 per cent (Figure 5).

\textsuperscript{21} Survey conducted by the Ministry de Minería y Hidrocarburos including 3539 people in the nine departments. Data released in Los Tiempos, Cochabamba, 21 April 2004.
The Agenda of the Constitutional Reform Process

The way for the institutionalisation of the referendum opened, when a constitutional reform package presented by Mesa was approved by majorities in both houses of congress in late February 2004. Key component of this package was the amendment of Article 4 which previously confined popular deliberation to the three powers of the state, and now extended this faculty to the constituent assembly, citizens’ legislative initiatives and the referendum. Another essential feature of the reform package was the reformulation of Articles 22 and 61 which regulate the requirements for candidates running for public office. Whereas constitution prior to reform stated that popular representation is exercised through political parties or coalitions formed by parties and reserved the right to put forth candidates to parties possessing legal status, the reform extended this right to citizen groups and indigenous associations.

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* En general, diría Ud. que aprueba la gestión de…?

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23 Another essential feature of the reform package was the reformulation of Articles 22 and 61 which regulate the requirements for candidates running for public office. Whereas constitution prior to reform stated that popular representation is exercised through political parties or coalitions formed by parties and reserved the right to put forth candidates to parties possessing legal status, the reform extended this right to citizen groups and indigenous associations.
representation, took up work on the development of a legislative framework for the implementation of the referendum. The commission elaborated five distinct draft versions, altering the original proposal which had been introduced to congress by Mesa. The final version of the Ley del Referéndum, which differed considerably from the version offered by the executive, was debated and approved by Congress in June 2004.

A major criticism raised against the original executive bill consisted in the fact that it sought to establish a law for the exclusive regulation of a referendum on the contentious gas issue. The commission argued that a procedure requiring the sanctioning of any required referendum by a specific law was insufficient since it would obstruct the adequate use of this tool in the future, and that the development of a proper legislative framework regulating the implementation of the referendum would be necessary. One of the first steps consisted in the development of a classification differentiating referendum types based on the criterion of initiation authority (Verdesoto 2004). In the realm of government initiated referendums, initiation authority was conceded to both the executive, as well as the legislative power, the latter requiring a two thirds majority of congress’ present members for passage. The actual political background of the reform process was reflected in the work of the commission by a discussion about the incorporation of a “joint initiative” (convocatoria conjunta) between legislative and executive branch, corresponding to the institution of the reactive legislative referendum as defined in section I of this paper. It was proposed to prescribe an obligatory use of this device for referendums concerning the use of natural resources. In such a case, an executive referendum proposal would have required approbation by an absolute majority in congress. However, in the end the commission chose to reject the reactive referendum type and included only the proactive type. Another major concern was the potential for a populist-manipulative misuse inherent in direct democratic instruments. In order to reduce this risk, the commission established a number of restrictions and regulations, absent in the original executive proposal, including judiciary control, binding character of the result, frequency restrictions, as well as thematic restrictions concerning fiscal issues, security issues, and

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24 Being elected by the plenary the commission was theoretically open to members of all parliamentary parties. However, its work was dominated by the MNR who controlled most executive positions of the Commission and whose members participated most actively in the formulation of the proposal (Personal communication with Dr. Luis Verdesoto)  
26 Prior to popular consultation, any referendum proposal has to be submitted to the constitutional court which will decide on its constitutionality. However, it is noteworthy that while the draft versions prepared by the commission stated that the Constitutional Court would also be responsible for assuring a “clear and unequivocal” formulation of the questions this remark was left out in the final version of the law. As will be illustrated below, this omission should prove fatal in the case of the hydrocarbons referendum since the ambiguity of the question hindered a consensual transformation of the results into legislation.
decisions on political and administrative division. The National Electoral Court was endowed with the exclusive right to conduct referendum information campaigns whereas any form of partisan or private propaganda was prohibited.

**Developments in the Aftermath of the Referendum**

On 18 July 2004, President Mesa convoked a referendum consisting of five questions, formulated by himself and his cabinet, which read as follows:

1. Do you agree on the abrogation of the Law on Hydrocarbons No. 1689 promulgated by Gonzalo Sánchez de Lozada?
2. Do you agree on the repatriation of all property of hydrocarbons at wellhead?
3. Do you agree on the re-foundation of the YPFB by restoring state ownership of the Bolivian peoples’ stakes in capitalized oil companies, in order to participate in the entire chain of production of hydrocarbons?
4. Do you agree with President Mesa in using the national gas policy as a strategic recourse to achieve a useful and sovereign route of access to the Pacific Ocean?
5. Do you agree that Bolivia should export gas as part of a national framework which ensures to cover the gas consumption of the Bolivian people; fosters the industrialization of gas inside the national territory; levies taxes and/or royalties on oil companies of up to 50% of the production value of oil and gas for the Nation’s benefit; employs revenues from the export and industrialization of gas mainly for education, health, roads, and employment?

The result of the referendum - presenting approval rates of up to 92 per cent on the national level - was widely regarded as a solid vote of confidence in Mesa by the national and international media.
Table 2: Referendum Results by Department

<table>
<thead>
<tr>
<th>Question</th>
<th>Chuquisaca</th>
<th>La Paz</th>
<th>Cochabamba</th>
<th>Oruro</th>
<th>Potosi</th>
<th>Tarija</th>
<th>Sta. Cruz</th>
<th>Beni</th>
<th>Pando</th>
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<td>88.54%</td>
<td>87.45%</td>
<td>88.60%</td>
<td>89.54%</td>
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<td>85.43%</td>
<td>87.10%</td>
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<td>93.04%</td>
<td>92.87%</td>
<td>93.59%</td>
<td>93.97%</td>
<td>95.24%</td>
<td>87.78%</td>
<td>92.06%</td>
<td>93.20%</td>
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</tr>
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<td>Question 3</td>
<td>91.95%</td>
<td>87.61%</td>
<td>90.06%</td>
<td>90.47%</td>
<td>91.56%</td>
<td>92.82%</td>
<td>79.56%</td>
<td>86.09%</td>
<td>90.93%</td>
<td>87.31%</td>
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<td>54.23%</td>
<td>51.03%</td>
<td>48.20%</td>
<td>39.85%</td>
<td>78.91%</td>
<td>56.69%</td>
<td>72.53%</td>
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<td>54.79%</td>
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<td>44.91%</td>
<td>85.58%</td>
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However, what seemed to be a resounding victory over his opponents at first instance, should prove to stand on shaky ground. The principal difficulty however, consisted in a consensual interpretation of the referendum’s result and its transformation into legislation: The vague formulation and complexity of the referendum questions made a translation of the public will into a clear cut instruction to the executive impossible. Mesa’s assumption that he could rely on the deliberately equivocal formulation and assume the referendum result as a mandate which would enable him to unilaterally tailor the national energy policy should turn out to be a major strategic mistake.

His law proposal consisted in leaving oil royalties for existent contracts untouched at 18 per cent and slapping a 32 per cent tax on new exploitation contracts. While this proposal found the approval of the MNR and MIR, the MAS, with Morales at the forefront, pressed for a straight 50 per cent royalty rate he considered endorsed by the referendum. In May 2005, the presidential bill for the new hydrocarbons law was approved in the chamber of deputies with a narrow majority of 59 votes to 48. However, it prompted fierce extra-parliamentary opposition. The popular bases of MAS,28 the COB, and the CSUTCB threatened with the organisation of road blocks, arguing that Mesa had ruled out the key demand of the October 2003 “Gas War”: The option of completely nationalising the country’s gas resources. At the same time, the civic committees of Santa Cruz and Tarija, who deemed the strengthened role of the YPFB as a straitjacket for the future economic development of their regions, threatened

27 Source: Corte Nacional Electoral. It has to be noted that abstention rates were extremely high. The Bolivian trade union federation (COB) and the confederation of peasants’ union (CSUTCB) headed by Felipe Quispe, had campaigned heavily among their members to boycott the referendum in the run-up to the election. In the end, 60.07 per cent of Bolivians registered in the national electoral roll stayed at home on the polling day.

28 In the course of the debate over the new hydrocarbons law, Morales himself had adopted a more moderate position, generally supporting Mesa’s proposal and distancing himself from the claim of complete nationalization but insisting on the 50 per cent royalty rate. This conciliatory attitude earned him incriminations as a traitor by spokesmen of the more radical popular sectors and even deputies of his own party.
to unilaterally adopt autonomous governments in case Mesa shouldn’t prevent final passage of the law by submitting a veto against his own bill (Latin American Weekly Report 2005). However, Mesa chose to let the ten day objection term pass without taking action and the law was promulgated by congress. As the wave of collective protest mounted to the extent of the 2003 unrests, Mesa announced his resignation on 6 June 2005 in a nationally televised address, explaining that the civil unrests had made the country completely ungovernable. In an extraordinary session held in Sucre on 10 June, the legislature accepted his resignation and swore in the president of the supreme court, Eduardo Rodriguez Veltze, as his transitional successor.

Conclusions

The case of Bolivia represents an instructive example which sheds some light on a) the constellations under which presidents may choose to convoke a referendum and b) the contingent conditions they require to successfully impose their policy preferences by doing so.

First, president Mesa’s decision to initiate the reform process that led to the institutionalisation - and subsequent application – of the referendum took place under the institutional constraints which have long been identified as critical for the stability of multiparty presidential democracies: Especially in highly fragmented party systems, probabilities are high that a president who lacks support in the legislature will find himself in a situation were he is unable to accomplish even a minimal policy agenda by working through ordinary congressional proceedings (Mainwaring 1993). Under such conditions, the use of a proactive executive referendum may appear as an attractive option to an isolated head of government to break legislative deadlock and push through policies of his own preference by appealing directly to the electorate. Whereas the use of executive triggered referendums has so far mainly been interpreted as one facet of an alleged regional trend towards neopopulism, the Bolivian experience suggests an alternative interpretation: The adoption and use of this device should be regarded as a logical consequence of the difficult institutional combination of presidentialism and multipartism.

Second, the Bolivian case confirms some of the assumptions of our theoretical model. The constitutional regulations and the political situation complied with the requirements which have been established as necessary for a successful executive challenge of the status quo: Since the constitutional reform provided him with the tool of the proactive executive
referendum, Mesa was able to go over the head of the legislature and unilaterally tailor the agenda of the hydrocarbons referendum. At the risk of creating counterfactuals, it can be argued that under the given partisan constellation he would have hardly been able to put forward his referendum proposal had he required the approval of a congressional majority for its passage. At the same time, as the final referendum results and the survey data presented illustrate, his success was only possible because his conciliatory position - which lay halfway between maintenance of the neoliberal status quo and the radical claim for re-nationalization of the gas industry – complied with the preferences of the median voter.

Finally, a third and very important lesson regarding the relation between government initiated referendums and democratic stability can be learned from the developments in the aftermath of Mesa’s phryric victory: The decision to solve the conflict on the national energy policy by submitting the issue to popular consultation was undoubtedly spurred by the high level of mobilization of traditionally marginalized indigenous interests. However, the referendum’s failure to produce the intended ‘pressure valve’ effect and avert the early interruption of Mesa’s presidency, suggests that hopes about the possibility of enhancing governability and democratic stability by supplementing representative structures with elements of direct democracy shouldn’t be raised to high: The Bolivian case illustrates that a unilateral top-down instrument like the proactive executive referendum is an ill-suited instrument to enhance mutual horizontal control, resolve conflicts between state functions, and obtain the (re-) legitimation of authorities or positions, since the obtained popular acceptance is ephemeral and may easily be reversed.
Appendix

Compilation of Constitutional Provisions for GIR in Latin America

Argentina:

Art. 40 entitles Congress, by initiative of the Chamber of Deputies, to submit a legislative project to popular vote.

Bolivia

According to Art. 4 the public deliberates and governs by means of its representatives, the Constituent Assembly, citizen legislative initiatives and the constitutional referendum.

Art. 5 a) and b) of the Referendum Law confer the right to trigger a national referendum to the president or the National Congress with a majority of two thirds of its present members. Fiscal matters, issues of internal and external security, as well as the political and administrative division of the Republic may not be subject to referendums. A turnout of 50 per cent and a simple majority of valid votes are required for approbation of the measure submitted.

Brazil:

Art. 14 establishes the plebiscite, the referendum and the popular initiative  
Art. 49 declares the exclusive competence of the National Congress to authorize a referendum and call for a plebiscite.

Chile:

According to Art. 117 a constitutional amendment which has been approved by two thirds of both Chambers of Congress must be promulgated by the President unless he decides to consult the citizenship by a plebiscite. The modalities of the process are specified in Art. 119.

Colombia:

According to Art. 155 and 378 an absolute majority in both chambers can call for a referendum on a constitutional amendment proposed by the government. The amendment will be effected upon an affirmative vote of more than 50% of the voters if the number of voters participating exceeds 25% of the national electorate.

Costa Rica:

Art. 105 establishes that two thirds of the Legislative Assembly may initiate a referendum. A presidential referendum proposal requires the approval of two thirds of the Legislative Assembly. Budgetary, tributary, fiscal and monetary issues are explicitly foreclosed as well as

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29 Source: Political Database of the Americas. Georgetown University and own research.
the approbation of government loans and policies concerning pensions, security and administrative acts.

**Ecuador:**

According to Art 104 the President can call for a popular vote on constitutional amendments or important questions for the country.

Art. 103 establishes that a measure submitted to popular vote will be adopted upon an affirmative vote of the absolute majority of voters.

**Guatemala**

Art. 173 Political decisions of special transcendence need to be submitted to popular vote. The popular vote will be convoked by the Supreme Electoral Tribunal on proposal of either President or the Congress who will precisely formulate the questions to be submitted to the citizens.

**Nicaragua**

Art. 168 establishes the plebiscite and the referendum without further specifying the modalities.

The Electoral Law (Ley Electoral de 1988) defines the plebiscite as a direct popular consultation on measures of transcendence which fundamentally affect the interests of the nation (Art. 159) and the referendum as an act of directly submitting laws, legislative reforms and/or constitutional reforms to popular vote for ratification (Art. 160). The referendum or plebiscite will be convoked by a legislative decree containing the entire text of the law or political decision concerned, as well as the exact wording of the question that will submitted to the citizens (Art. 161). Public funding for information campaigns is explicitly foreclosed (Art. 162). A plurality of affirmative votes is required for ratification (Art. 163). Initiating authority and authorship remain unspecified.

**Paraguay:**

Art 121, 122 establish a legislative referendum of either binding or non-binding character. Excluded subject matters are: international treaties; expropriations; national defence; limitation of real estate property rights; budgetary, fiscal and monetary issues; national departmental and municipal elections.

Art. 260 of the Electoral Code entitles the executive, five senators or ten deputies to formulate proposals for a popular consultation. The right to trigger the process, however, is reserved to Congress.

**Uruguay:**

According to Art. 331/B a popular vote can be proposed and triggered by two-fifth of the National Assembly. A quorum of 35 % of the citizens inscribed in the National Civil Register is required for the amendment to be effected.
Venezuela:

According to art. 71 the President or two-thirds of the National Assembly may call for a referendum on questions of special transcendence for the nation. Art. 73 stipulates that legislative projects under discussion in the National Assembly will be submitted to referendum upon request of two-thirds of the Assembly. The project will be passed as law upon affirmative vote if a turn out of 25% of the national electorate has been achieved. Referendums on the conclusion of international treaties affecting national sovereignty or entering of supranational organisms can be triggered either by the President or two-thirds of the National Assembly.
Table 3: Opinion Poll on Executive Ballot Proposal, June 2004

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