

Arrested Development: The Slow Start to Mexican Direct Democracy

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On March 2014, Mexico adopted laws outlining the use of direct democracy. Direct democracy promised to give citizens greater control of government by reducing the gap between citizens and government. However, the first four referendums were not proposed by citizens but one each by the four major parties. Using process tracing, I examine the congressional debate of direct democracy and demonstrate that its design and rules leave little room for citizens to use the process but allow large organizations, like parties, ample room to use it. The lesson is that direct democracy should not be studied independently from the political parties that adopt it.

En marzo de 2014, México aprobó leyes que delineaban el uso de la democracia directa. Ésta prometía otorgar a los ciudadanos un mayor control sobre el gobierno reduciendo la distancia entre ciudadanos y gobernantes. Sin embargo, los cuatro primeros referendos no fueron propuestos por ciudadanos, sino por cada uno de los cuatro partidos principales. Mediante el seguimiento de procesos, analizo el debate del Congreso en torno a la democracia directa y demuestro que el diseño y las reglas dejan poco espacio para que los ciudadanos hagan uso del procedimiento, y sin embargo, permiten que organizaciones como los partidos tengan amplio margen para utilizarlo. La lección es que la democracia directa no debe estudiarse independientemente de los partidos políticos que la adoptan.

Key words: Congressional debate, direct democracy, Mexico, political development, political parties.

Palabras clave: Debate parlamentario, democracia directa, desarrollo político, México, partidos políticos.

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Introduction

On March 2014, one and one-half years after direct democracy was added to the Mexican constitution, Congress approved secondary legislation specifying the rules to hold national popular consultations.¹ The new institutions of direct democracy sought to accomplish two main goals: 1. allow citizens to directly decide issues fundamental to the national livelihood; and 2. open new institutional paths for citizens to hold representatives accountable. As Deputy Alfredo Rivadeneyra Hernández argued, direct democracy would increase citizen access to government and force Congress to adopt policy with greater precision and responsibility (Cámara de Diputados 2014). In the chambers of Congress, direct democracy received support from all political parties and public opinion polls captured widespread citizen support: in 2009, 79 percent of citizens believed that they should have the right to propose referendums for popular consultation.² In all, direct democracy promised to improve Mexico's political system by developing a more informed and active citizenry; increasing participation; and reducing the space between legislators and citizens.

As the June 2015 national elections neared, proposals for four referendums gained national attention: two sought to stop the privatization of *Petróleos Mexicanos* (PEMEX), one looked to reduce the number of federal deputies and senators, and a final proposal sought to increase the national minimum wage. The proposals, however, were not initiated by citizens but one each by the four major parties: the *Partido de la Revolución Democrática* (PRD), the *Movimiento Regeneración Nacional* (MORENA), the *Partido Revolucionario*

1. Throughout the article, I use the term “popular consultation” interchangeably with “direct democracy.” This is the language used in the law and it encompasses referendums (laws placed on the ballot by governments) and initiatives (laws placed on the ballot by citizens). The terms used vary by country. The earliest evidence of direct democracy at the national level in Mexico is from the nineteenth century. In 1854, citizens were consulted on whether General Santa Anna should continue to hold the office of the presidency after assuming power in 1853 with special presidential powers. Another consultation occurred in 1863 when Archduke Maximilian accepted the Crown after a consultation demonstrated his approval. Later, in 1867, President Benito Juárez called a referendum to approve the *Leyes de Reforma*, a set of laws outlining his rule (Bonilla Gómez, 2014). While these instances are important for understanding the political development of Mexico, they occurred under non-democratic rule or under different constitutions, so they are not discussed here.

2. *Parametría* (an organization dedicated to collecting public opinion on social issues in Mexico) conducted the poll between December 17 and 21, 2009. It included 1,200 respondents. The margin of error was (+/-) 2.8 percent. See: http://www.parametría.com.mx/carta_parametría.php?cp=4193.

Institucional (PRI), and the Partido Acción Nacional (PAN), respectively. Beginning on October 29, 2014—and after the gathering of millions of signatures—the Suprema Corte de Justicia de la Nación (SCJN) declared all four referendums unconstitutional. As these events unfolded, citizens and politicians expressed concerns about the future of direct democracy in Mexico.

This article expands on these events and asks a crucial question: in the short time that direct democracy has existed, has it delivered on its promises to increase citizen participation and provide greater control of representatives? To answer this overarching question, I pose the following secondary questions: What explains the design of direct democracy in Mexico? How does the design explain their actual use? Why have parties, and not citizens, taken the lead on direct democracy? And, given the high support for the direct democracy process by both citizens and politicians, why did no referendums appear on the June 2015 election ballot? Answering these questions not only requires examining the regulative design of popular consultations; it also requires understanding how direct democracy came to be adopted in the first place. This—the politics of adoption—is fundamental because it reveals how parties designed institutions they were planning to use all along. Understanding both causal arrows (how politics affected the design of direct democracy and how direct democracy is affecting politics) paints a more complete picture of the direct democracy experience in Mexico.

To accomplish these tasks, I use process tracing methodology to examine three elements: 1) the legislative debate; 2) the design of direct democracy; and 3) the attempt by political parties to use the process once adopted. Process tracing is particularly useful when examining the *development* of a variable. As such, it places key importance on the changes of the variable over time (Collier 2011, 824). To grasp the unfolding of events requires detailed description of occurrences and situations at several points in time and their effects on subsequent changes (Collier 2011). Process tracing methodology helps grasp three critical aspects of direct democracy: the design, the context where it occurs, and the interaction between the two (Altman 2011, 190). The discussions, debates, disagreements, concessions, and trade-offs among political parties all affected the design of direct democracy. In turn, the design—its barriers and rules—determines how popular consultations are used.

To foreshadow my findings, I argue that the adoption of direct democracy has not served its purported objectives—to give citizens greater control of government by reducing the gap between citizens and government. Instead of being an additional tool of the masses,

popular consultations are beginning to take shape as a tool of political parties which use them to serve their own objectives while not empowering citizens. Process tracing reveals that the design of popular consultations has been influenced by divisions among political parties and that the subsequent design (its barriers and rules) determines who can use the new tools. Organizations with substantial resources—like political parties—are more able to use the process but the barriers and challenges of qualifying popular consultations make it difficult for citizens to participate meaningfully in the process. This argument suggests that direct democracy is endogenous; we cannot conceive of it independent of the powers (parties) that created it.

To expand on these points, I utilize legislative records including votes, debates, and discussions that shaped the design of direct democracy, as well as news articles and interviews given by legislators before and after the adoption process. This paper is organized as follows. The first section traces the politics of adopting direct democracy. Here, two pieces of legislation are critical: the addition of Section VIII to Article 35 to the national constitution and the *Ley Federal de Consulta Popular* (Federal Law on Popular Consultations). The next section discusses the actual design of the new law (its rules, limitations, and barriers) followed by a section comparing it to other cases of Latin American direct democracy. I then discuss the first four proposals for referendums and their subsequent demise. The final section outlines my contributions and concludes by suggesting future research paths.

Political Reform: Adopting Popular Consultations

The most important modification to the Mexican constitution in adopting direct democracy involved the addition of Section VIII to Article 35. The section grants citizens, Congress, and the executive the right to propose national popular consultations where citizens are the final voters. The addition of Section VIII to Article 35 was part of the broad *Reforma Política*—an agreement among Mexico's main political parties at the state and federal level to modify political and economic institutions to strengthen Mexico's democracy and the rights of citizens. While Article 35, Section VIII (signed by President Felipe Calderón on August 9, 2012) provides the right to use popular consultations, secondary legislation outlining their design and rules appears in the *Ley Federal de Consulta Popular* (signed by President Enrique Peña Nieto on March 16, 2014). The *Ley Federal de Consulta Popular* was a direct consequence of the *Pacto Por México*—an

agreement by Mexico's PRI, PRD, and PAN to improve the state of democracy in Mexico, signed on December 2, 2012. Adopting direct democracy involved the arduous debate over Section VIII, Article 35 and the Ley Federal de Consulta Popular. The debates and disagreements among parties are pivotal in understanding the design and functioning of direct democracy.

Adopting Section VIII, Article 35

Section VIII first appeared on the agenda of the Chamber of Senators as part of the Reforma Política. The section provides the right for citizens to vote on popular consultations that involve issues of national transcendence. Section VIII was debated on April 27, 2011 in the Chamber of Senators and was added with 94 Yes, 5 No, and 8 Abstentions. The approval sent the legislation to the Chamber of Deputies where it was discussed for five days. On the final day—November 4, 2011—a debate about the particulars resulted in the omission of direct democracy. Section VIII of Article 35 failed to garner enough support (215 Yes, 180 No). Opposition to direct democracy was led by members of the PRD and PAN, which—according to legislative records—they saw as only simulations of the real thing and as an imposition by the PRI, who they believed would use it to pursue party goals, including the re-election of legislators. Article 35 was returned to the Chamber of Senators without Section VIII.³

In their chamber, Senators revised Article 35 and reinstated Section VIII which they saw as pivotal to Mexican democracy.⁴ The changes were approved with 95 Yes, 0 No, and 0 Abstentions. When it was returned to the Chamber of Deputies, Article 35 with Section VIII was approved with 279 Yes, 19 No, and 3 Abstentions on April 19, 2012. Positions by previously skeptical parties like the PRD and PAN changed after clauses for national re-election were deleted. Finally, on August 9, 2012, President Felipe Calderón signed the changes to Article 35 and Mexico became the latest country in Latin America to incorporate mechanisms of direct democracy to its national constitution. After Article 35 was adopted, focus turned to developing its secondary legislation—the Ley Federal de Consulta Popular. Table 1 summarizes the key events in adopting Section VIII.

3. For more details on this vote see: <http://expansion.mx/nacional/2011/11/04/los-diputados-del-pan-y-prd-rechazan-consulta-popular-en-reforma-politica>.

4. See: <http://expansion.mx/nacional/2011/12/13/el-senado-reincorpora-la-reeleccion-legislativa-a-la-reforma-politica>.

Table 1. Article 35, Section VIII: Timeline and Key Events.

Source: Mexican Legislative Records.

Branch	Date	Key Development
Chamber of Senators	April 27, 2011	Sec. VIII is added and Art. 35 is approved: 94 Yes, 5 No, 8 Abstentions
Chamber of Deputies	Nov 4, 2011	Sec. VIII is deleted due to lack of support: 215 Yes, 180 No, 0 Abstentions
Chamber of Senators	Dec 13, 2011	Sec. VIII is reinstated and Art. 35 is approved: 95 Yes, 0 No, 0 Abstentions
Chamber of Deputies	April 19, 2012	Sec. VIII along with the rest of Art. 35 is approved: 279 Yes, 19 No, 3 Abstentions
Executive	Aug 9, 2012	President Calderón signs Article 35 into law

Adopting the Ley Federal de Consulta Popular

The Ley Federal de Consulta Popular (LFCP) details the design and rules for popular consultations. On December 2013, the Chamber of Deputies received its first draft and approved it on December 10. A general vote demonstrated wide support: 431 Yes, 36 No, and 1 Abstention. However, voting on the particulars modified the law in several important ways.

One of its most important limitations at this point was the prohibition of popular consultations to amend the national constitution. The PRD voted in the majority for this version in exchange for continued discussion regarding the privatization of PEMEX, which they sought to prevent.⁵ The PRD, supported by the Partido del Trabajo (PT) and the Movimiento Ciudadano (MC), also fought to prevent the President from having the power to propose referendums. This too went on unchanged. After general approval, the law was sent to the Chamber of Senators. Table 2 provides a timeline for the Ley Federal de Consulta Popular and the votes cast for the general terms of the law (Table 3 provides detailed votes for each draft by party).

In the Chamber of Senators, on the morning of February 26, 2014, direct democracy had widespread support until the PAN broke an agreement with the PRI to support the law. The delay was due to the PAN, PRD, and the PT's persistent arguments against several restrictions. Discussion continued into the morning hours of the following day, when the Senate agreed to revise articles 5, 6, 12, 14, 15, 20, 21,

5. For more details on this round of elections see: <http://www.animalpolitico.com/2013/12/dictamen-de-consulta-popular-avanza-en-la-camara-de-diputados/>.

Table 2. Legislative Timeline: Ley Federal de Consulta Popular.
Source: Mexican Legislative Records.

Branch of Government	Date	Vote		
		Yes	No	Abs.
<i>Chamber of Deputies</i>				
Entry Date	Dec 4, 2013			
First Reading	Dec 5, 2013			
Discussion and Vote	Dec 10, 2013	431	36	1
<i>Chamber of Senators</i>				
Entry Date	Dec 10, 2013			
First Reading	Feb 25, 2014			
Discussion and Vote	Feb 26, 2014	103	10	1
<i>Chamber of Deputies</i>				
Entry Date	Mar 5, 2014			
First Reading	Mar 5, 2014			
Discussion and Vote	Mar 6, 2014	362	57	4
<i>Executive</i>				
Submitted to President	Mar 6, 2014			
Published in the Official Gazette	Mar 14, 2014			

25, 28, 30, 32, 33, 41, 64 and the transitory text.⁶ While the legislation went on to be approved (103 Yes, 10 No, 1 Abstention), several of these revised articles are important to consider.

First, the legislation did not allow citizens to sign more than one petition to help qualify a referendum to the ballot. At the insistence of the PAN and PRD, the law was modified, allowing citizens to sign more than one petition. The rest of the Senate agreed on the condition that petitions during the same election could only share 20 percent of supporters. While an improvement, the change still places significant restraints on citizens and on groups who plan to collect signatures for popular consultations as 80 percent of signatures must be unique to each petition.

Second, originally Article 5 of the LFCP stated “[o]bjects of popular consultation will be those acts of the legislative Congress of the union as well as administrative acts of the national executive,

6. Modifications to these articles is recorded in the Gaceta Parlamentaria of the Chamber of Deputies for March 6, 2014. These documents can be found at <http://gaceta.diputados.gob.mx>. A discussion of these changes is also available at <http://www.animalpolitico.com/2014/02/senadores-aprueban-que-la-corte-tenga-la-ultima-palabra-en-la-consulta-popular/>.

as long as they are of national transcendence.”⁷ The biggest omission was the ability to amend the national constitution via popular consultation. This was included by the PRI and supported by PAN in order to guard themselves against having a popular consultation on the privatization of PEMEX. In mid-January 2014, PAN Senators expressed their commitment to the law but also their commitment to include text prohibiting the alteration of the constitution. However, during the debate on February 26, 2014, members of the PAN switched sides and voted on scraping the prohibition to modify the constitution. The language was changed to “Objects of popular consultation will be issues of national transcendence”⁸ (Becerril and Ballinas 2014). By replacing most of the sentence with “issues” (temas), the new rule increased the domain where popular consultation could be used, including the constitution.

Third, Article 6 of the LFCP originally defined “issues of national transcendence” with five categories: 1) those that affect the majority of the national territory; 2) those that impact a significant part of the population; 3) those that propose the creation, modification, or elimination of public policy that would affect the majority of the national territory or a significant part of the citizens; 4) those that propose new laws or the modification of existing laws that may impact a significant part of citizens; and 5) others determined by Congress. However, the Senate decided to delete the final three categories. The revised Article 6 now states that issues of national transcendence are those that may have repercussion in the majority of the national territory and those that may impact a significant part of citizens. This change took power away from Congress by prohibiting it from deciding what constituted issues of national transcendence. The responsibility was transferred to the Supreme Court.

Finally, on February 26, 2014, Senators decided to limit the issues that could be decided via popular consultation: human rights, taxes, spending of the country, and national security.⁹ While these are issues that most countries might want to protect from popular consultation, they have the negative attribute of being very broad.

7. “Serán objeto de consulta popular los actos de carácter legislativo del Congreso de la Unión, así como los actos administrativos del Ejecutivo Federal, siempre que sean de trascendencia nacional.” This and all subsequent translations are my own.

8. “Serán objeto de consulta popular los temas de trascendencia nacional.”

9. See: <http://expansion.mx/nacional/2014/02/27/el-senado-aprueba-la-consulta-popular-pero-no-para-la-reforma-energetica>.

For example, the adoption or modification of many issues can be said to affect the spending of a country.

After these changes, the Senate approved the law and returned it to the Chamber of Deputies where it was again approved in its general terms on March 6, 2014 (362 Yes, 57 No, 4 Abstentions (see Table 2)). The legislative discussion demonstrated disagreements among legislative groups, particularly parties on the left. When discussing the particulars of the law, the PRD, MORENA, and the PT proposed to modify 25 articles that they interpreted as a simulation of the real thing. None of the changes were adopted. As a result, the PRD voted divided (57 Yes, 24 No) and all members of the PT and MC voted against it. The general terms of the law were approved, albeit with significant disagreement. Table 3 summarizes the votes by party. After approval, the law was sent to President Peña Nieto, who signed the law on March 14, 2014.

Design of the Ley Federal de Consulta Popular

After its approval, the Ley Federal de Consulta Popular gave citizens, legislators, and the president the ability to propose popular consultation on issues of national importance. Issues of national importance include those that: 1) may have repercussion on the majority of the territory of the country; and 2) those that may impact a significant part of the population. However, six broad topics cannot be decided via direct democracy: 1) the restriction of human rights already recognized in the Constitution; 2) the representative republican form of government; 3) electoral legislation; 4) national security; 5) functions of the armed forces; and 6) tax and expenditures by the state. The power to decide whether proposals encompass these issues was given to the supreme court.

The president can propose a referendum every three years. To do so, they must first consult with Congress, who will then send the petition to the SCJN. If approved, the proposal will return to Congress for a vote. The consultation appears on the ballot if a simple majority of both deputies and senators approve it. As for Congress, any of the chambers can draft a consultation when 33 percent of the members support it. After a proposal is drafted, a majority of both chambers need to approve it. Next, the SCJN approves its constitutionality before it appears on the following federal election. While not specified in the Constitution, congressional members do not have to follow their specific path; they can follow the signature gathering method created for citizens instead.

Table 3. Ley Federal de Consulta Popular: Votes Cast by Party.
Source: Mexican Legislative Records.

Party	Yes	No	Abstain	Absent	Total
Chamber of Deputies - December 10, 2013					
PRI	203	0	0	11	214
PAN	107	0	0	7	114
PRD	86	9	1	5	101
PVEM	25	0	0	2	27
MC	0	17	0	3	20
PT	2	10	0	2	14
Other	8	0	0	2	10
Total	431	36	1	32	500
Chamber of Senators - February 26, 2014					
PRI	51	0	0	1	52
PAN	34	0	0	1	35
PRD	11	8	0	0	19
PVEM	7	0	0	0	7
PT	0	2	1	0	3
Other	0	0	0	0	0
Total	103	10	1	2	116
Chamber of Deputies - March 6, 2014					
PRI	185	0	0	29	214
PAN	88	2	0	23	113
PRD	57	24	4	16	101
PVEM	23	0	0	4	27
MC	0	18	0	2	20
PT	0	13	0	1	14
Other	9	0	0	1	10
Total	362	57	4	76	499

PRI- Partido Revolucionario Institucional

PAN- Partido Acción Nacional

PRD- Partido de la Revolución Democrática

PVEM- Partido Verde Ecologista de México

MC- Movimiento Ciudadano

PT- Partido del Trabajo

As discussed later, this is precisely what Mexican political parties did in 2014.

If citizens wish to propose an issue for popular consultation, leaders of the proposal must consult with a congressional chamber. The chamber will then notify the Instituto Nacional Electoral (INE)¹⁰

10. The INE was also a creation of the Reforma Política of 2014. It replaced the Instituto Federal Electoral (IFE).

who will verify that the petition is supported by at least 2 percent of eligible and registered voters (currently, about 1.7 million signatures are needed). Proposals need to include names, signatures, information of the solicitors, justifications as to why the issue is of national importance, and the question to appear on the ballot (for which the answer must be a clear 'yes' or 'no'). If no violations are found, the proposal proceeds to the *SCJN* for matters of constitutionality and, if approved, appears in the following national election.

Whenever voter signatures are collected, certain barriers exist. Any registered voter may sign a petition in favor of a popular consultation. However, the proposals in any given election can only share 20 percent of the signatures. The other 80 percent must come from different citizens. If two proposals violate this rule, only the first is considered. Time also matters. Popular consultations will only be conducted during national elections—every three years. This means that when the necessary signatures have been gathered, citizens must approach one chamber of Congress between September 1 and 15 of the year before the proposal is set to appear on the ballot.

There is also a turnout quorum. Results of popular consultations are only binding when at least 40 percent of eligible citizens turn out to vote. One of the most restrictive features involves the actual application of successful popular consultations: they will only take effect for three years after their approval. This limitation is unique to Mexico among Latin American countries and ensures that laws decided by citizens are not permanent, unlike laws passed by Congress.

The legislation is unclear on what happens if less than 40 percent of citizens turn out to vote. In this case, the referendum may not be binding but there is no discussion on whether Congress can still make it binding if they wish. Such a high participation quorum also signifies the conservative nature of popular referendums. Quorums in general, and turnout quorums in particular, have two main objectives: to stop change and to provide legitimacy (Qvortrup 2002). Turnout quorums also open up the possibility of demobilizing voters. Those who seek to defeat a referendum have two options: demobilize voters so the turnout quorum is not reached or convince citizens to vote against it. In instances of high turnout quorums, the former might be easier.

These barriers have led some politicians to criticize the legislation. Deputy Manuel Huerta Ladrón de Guevara (PT) stated that the new laws are not pro-citizen because they involve a torturous and complicated road for citizens to present their proposal. Similarly,

Ricardo Mejía Berdeja (MC) argued that the new laws only amount to a simulation of popular consultation because it is almost impossible for citizens to undertake the entire process successfully (Cámara de Diputados 2014).

The importance of the Supreme Court cannot be overemphasized. Whether the president, Congress, or citizens submit a proposal, the SCJN decides whether the matter is constitutional and whether it satisfies the “national importance” criteria. The SCJN also decides whether the question asked is neutral and whether it can be answered in a clear binary, “yes” or “no” manner. Once the SCJN approves a proposal, the INE is responsible for organizing the election, including the design of pamphlets. The INE will also specify the radio and television time for supporters and opponents. Advertisements cannot contain any normative claims that imply the proposal should be accepted or rejected. Additionally, no private individual or group may advertise on the issue whether in favor, in opposition, or in a neutral fashion.

These rules preempt the influence of money on popular consultations, as has been the case, for example, in the United States, where the Supreme Court has established that money is the equivalent of free speech. In the U.S., people or groups with enough resources can hire signature collectors and flood the means of media to essentially control the agenda and outcome of a vote in what is called the “initiative industry” (Magleby 1984). American Supreme Court cases like *Buckley v. Valeo* (1975), *First National Bank of Boston v. Bellotti* (1977), and *Citizens against Rent Control v. City of Berkeley* (1981) decided that expenditure for direct democracy is the equivalent of free speech and that corporations can contribute to initiatives and referendums freely (Magleby 1984). This is a problem that Mexico sought to avoid; it began with very strict rules regarding spending and state finances as well as advertisement rules.

Mexican Direct Democracy in Comparative Perspective

Adopting direct democracy in Latin America was generally understood to be the result of a perception that institutions of representative democracy—notably political parties and legislative bodies—had failed to serve citizens (Barczak 2001, 38). In this case, constitutional changes to adopt direct democracy were demanded from “below” and aimed to have an integrative social function (Schilling-Vacaflor 2011). In this interpretation, Barczak (2001) proposes that direct democracy appeared in Latin America following two conditions. In the first, direct democracy was adopted when constitutions were

written by formerly excluded political interests that came to dominate political institutions (as in Peru, Argentina, Brazil, Ecuador, and Venezuela) (Barczak 2001, 40). In the second instance, direct democracy was adopted when, under conditions of institutional stress, traditionally excluded interests mobilized to capture a significant, but not controlling, share of the authority over the reform-writing process (as in Colombia and Paraguay) (Barczak 2001, 41). These explanations, however, do not account for Uruguay, Chile, and Bolivia, where direct democracy was present before constitutional reforms (Altman 2011).

Mexican direct democracy differs from these theoretical expectations. In Mexico, direct democracy was largely a product of the PRI, the traditional centrist party that dominated Mexican politics for seven decades until it lost the presidency in 2000. The most important legislation—Section VIII or Article 35 and the *Ley Federal de Consulta Popular*—was not under the direction of the left parties. On the contrary, the PRD was originally skeptical of the new institutions, which it saw as simulations of democracy and a way for the PRI to pursue party goals. Table 3 breaks down the voting for the LFCP and demonstrates that many members of the left parties (including the PRD, MC, and PT) opposed it. Additionally, in the congressional discussion of adding Section VIII to Article 35, members of the PRD and the PAN were key in deleting direct democracy during the November 4, 2011 vote. Legislative records suggest that their opposition did not mean they disagreed with direct democracy as a way of making political decisions; instead they did not believe the proposed institutions to be genuine direct democracy capable of benefiting citizens.

Using national constitutions and legislative records, Table 4 summarizes three major characteristics of popular consultations among Latin American countries: 1) the number of signatures required to place consultations on the ballot; 2) whether the vote is binding; and 3) the issues that cannot be decided via popular consultation.

The number of signatures to be collected vary drastically. On the low end are countries like Nicaragua with 5,000 signatures and Brazil with 1 percent of eligible voters (Brazil however has the further requirement that signatures must be from at least five states). On the high end are countries like Venezuela, which requires signatures from 15 percent of eligible voters when the consultation may affect national sovereignty and 10 percent when it involves internal social issues. Uruguay requires the highest percentage (25 percent) for social issues.

Voter turnout quorums are present in some countries. In Colombia, 25 percent of eligible citizens must participate to make the outcome binding. Honduras contains the highest requirement at 51 percent, while Mexico's requirement is 40 percent. High turnout

Table 4. Rules for Popular Consultations by Citizens of Latin American Countries.
Source: Constitutions of Latin American countries and relevant articles.

	Number or Percent of Signatures Required and other requirements	Vote Binding?	Issue Restrictions
BOL	Process is unclear. Has not had a successful popular consultation.	Unspecified	Unspecified; up to Congress to decide limits on issues.
BRA	Popular consultations must be signed by at least 1% of the national electorate, distributed throughout at least five states, with no less than three-tenths of 1% of the voters in each of them.	Unspecified	Unspecified; up to Congress to decide.
COL	Popular consultations must be signed by at least 5% of eligible voters. Proposals that seek to repeal an existing law must be backed by 1/10 of the census and 25% of eligible voters must vote for it to be binding.	Sometimes	International treaties, budget, or taxation.
CRI	Popular consultations must be signed by at least 5% of eligible voters.	Unspecified	Budget, taxes, monetary policy, pensions, security, or administrative organization.
ECU	Popular consultations must be signed by at least 5% of eligible voters.	Unspecified	Taxes, treaties, and administrative structure.
HON	Popular consultations must be signed by at least 2% of eligible voters.	51% quorum	Judicial powers, taxes, amnesty, monetary policy, and treaties.
MEX	Popular consultations must be signed by at least 2% of eligible voters.	With a 40% quorum	Human rights, article 40 of Constitution, national security, the armed forces, electoral law, taxes and expenditures.

(continued)

TABLE 4. (continued)

	Number or Percent of Signatures Required and other requirements	Vote Binding?	Issue Restrictions
NIC	Popular consultations must be signed by at least 5,000 eligible voters.	Unspecified	Taxes, all issues international in nature, and amnesty.
URY	If consultation seeks to change the constitution, signatures from 10% of eligible voters are needed and 35% turnout required to be binding. If it involves social issues, 25% of citizens must sign petition within a one year time period to appear on the ballot.	Binding without turnout quorum	Taxes.
VEN	Issues that may affect national sovereignty require 15% while other social issues require 10%. If the consultation aims to do away with a law, as opposed to establishing a new one, 5%-10% of signatures may be required.	Determined by Legislature	Taxes, human rights, international treaties, or amnesty issues.

Note: The Constitutions of Argentina, Chile, El Salvador, and Guatemala do not give citizens the explicit right to organize popular referendums. The Constitutions of Panama, Paraguay, and Peru do not specify either way.

rates increase the difficulty of adopting new measures and help maintain the status quo. In Uruguay, however, there is no quorum requirement; the outcome is binding no matter the turnout. Restrictions of issues that can be decided via popular consultation also vary. Some countries are clear on the issues but also leave room for interpretation. For example, Brazil and Bolivia do not provide a list of issues but instead give power to Congress to decide. Approval of consultations in this case might vary depending on the configuration of the legislature.

The First Four Referendums

The first two referendum proposals in Mexico involved the privatization of PEMEX. PEMEX made headlines when President Enrique Peña Nieto announced in June 2013 that the government would begin constitutional reforms to allow for private investment in PEMEX, consequently adopted in 2014. The reform allows private companies to participate in the petroleum industry for the first time since its nationalization in 1938. Even before privatization, hundreds of thousands of citizens expressed their desire to vote on a referendum to decide the future of PEMEX. A July 2013 public opinion poll found that 49 percent of Mexicans did not want PEMEX to be privatized while only 16 percent expressed the opposite.¹¹ This is one of the reasons the original draft of the *Ley Popular de Consulta Popular*, at the request of the PAN and PRI, prohibited the change of the constitution via popular consultation.

The PRD and MORENA—the two main left parties—sought an early start to collect signatures to overturn the privatization of PEMEX. However, the two parties, unwilling to work together on one referendum, submitted separate proposals to the INE. The questions proposed are listed in Table 5. Supporters asserted that allowing private companies to participate in the oil industry would prompt more corruption and capital flight, and would ultimately hurt the poor. The decision to collect signatures for two referendums is a sign of the recent fragmentation among the increasingly frustrated Mexican left that resulted in the creation of MORENA after separating from the PRD (Aguilera 2015).

Shortly thereafter, in August 2014, the PRI announced its intent to propose a referendum to decrease the number of deputies and senators in the federal Congress. Led by César Camacho, the referendum sought to reduce the size of the Chamber of Deputies from 500 to 400 deputies, doing away with 100 of the 200 members currently elected

11. Parametría conducted the poll between July 13 and 16, 2013. 800 people participated. The margin of error was +/- 3.5 percent with statistical confidence of 95 percent. See: <http://www.parametria.com.mx/DetalleParMedios.php?PM=627>.

Table 5. First Four National Referendum Proposals in Mexico, 2014.

Party	Topic	Proposal Question	SCJN Decision
PRD	PEMEX	“Do you agree that we should keep Articles 25, 27, and 28 of the constitution outlining energy matters?”	1 to 9: Unconstitutional
MORENA	PEMEX	“Do you agree or disagree that contracts and concession should be given to national or foreign parties for their exploitation of petroleum, gas, refinement, petrochemicals, and the energy industry?”	1 to 9: Unconstitutional
PRI	Size of Congress	“Do you agree that the Constitution should be modified to cut 100 of the 200 federal deputies elected by proportional representation as well as the 32 Senators elected by proportional representation?”	0 to 10: Unconstitutional
PAN	Minimum Wage	“Do you agree that the Federal Work Law establish that the National Commission of Minimum Wage fix a minimum salary that covers the cutoff line proposed by the National Evaluation Council of Politics of Social Development?”	4 to 6: Unconstitutional

by proportional representation. The senate would similarly be reduced from 128 to 96 members by eliminating the 32 senators currently elected by proportional representation. Supporters argued that the referendum would cut spending by reducing the amount of resources and make it easier to reach a consensus on key issues.¹²

Around the same time, the PAN, under the direction of Gustavo Madero, announced that it would propose a referendum to increase the national minimum wage. The referendum sought to increase wages to a level equivalent to the cost of basic family necessities, something not proposed since 1981. While the referendums proceeded, the PRD argued that the PAN's proposal amounted to electoral manipulation ahead of the elections in the federal lower chamber, and assorted gubernatorial, state congressional, and municipal elections in 17 of the country's 32 federal entities in June 7, 2015 (LatinNews 2014).

Weeks after submitting the referendums, the SCJN ruled all four proposals unconstitutional. On October 29, 2014, the SCJN ruled by 4 votes to 6 against the petition by the PAN for a referendum to increase the national minimum wage. It rejected the proposal because the referendum interfered with state finances, something prohibited in the Constitution. One day later, on October 30, the SCJN rejected the two referendums seeking to eliminate the energy reform bill in a 1 to 9 decision. The majority opinion asserted that this referendum also interfered with Mexico's income and spending. The decision was a big boost for the government of President Peña Nieto and a big blow to Mexico's left, which had gathered millions of signatures in support of the referendums. Finally, the PRI's attempt to reduce the size of Congress was struck down in a unanimous vote. The SCJN maintained that it interfered with the functioning of the electoral system. The court also argued that the referendum would restrict human rights (by doing away with representation), undermine national security, alter the organization and functioning of the Armed Forces, and interfere with issues of government spending.¹³ The year 2015 was left with no referendums.¹⁴

12. For more details on the proposal, see: <http://pri.org.mx/SomosPRI/blog/bloog.aspx?y=14155>.

13. For more details on the role of the supreme court and the constitutionality of the four referendums, see: <http://cidac.org/el-fin-de-la-consulta-popular/>.

14. The decisions of the SCJN did not mention any issues with the wording of the questions. Yet, it is important to consider how the questions were framed. Overall the questions were perhaps not easily answerable by the average citizen. While MORENA's question is more concrete, the other three are not easy "yes or no" questions. Norberto Bobbio's suggestion that direct decision-making works best when there are a limited number of alternative policy choices—yes or no answers—is important in this

In reaction to these decisions, members of all parties expressed their discontent towards the seemingly all-powerful Supreme Court. Andrés Manuel López Obrador—founder of MORENA and former candidate for Mexico's presidency—asserted that the Court's decision was illegal and Martí Batres, leaders of MORENA called the decision irresponsible. The PRD, under the direction of Carlos Navarrete, expressed their intent to take the case to the Inter-American Commission of Human Rights (IACHR) and its sister body, the Inter-American Court of Human Rights (CorteIDH) for redress. The PRD asserted that the SCJN decision undermined the rights of Mexican voters to participate in the most important issues for the nation's progress, as specified in the constitution. Cuauhtémoc Cárdenas, who directed the campaign to collect the requisite signatures for the reversal of the nationalization of the oil industry undertaken by his father, former President Lázaro Cárdenas del Río, referred to the SCJN as biased and partisan (LatinNews 2014). Lastly, the PAN and the PRI expressed their desire to reform the legislation of direct democracy to more concretely specify which issues can and cannot be proposed for popular consultations (Gutiérrez Ávila 2014; Nieto 2014).

Given the clear prohibition of certain topics for popular consultation and the power of the SCJN, political parties might have desired more than simply placing a referendum on the ballot. Their reactions towards the SCJN reveal something more important: their belief that direct democracy should be spearheaded by parties and not citizens.

Parties Intent to Claim Direct Democracy as Their Own

Given that there exists a congressional route for parties to use popular consultations, why did they decide to collect citizen's signatures instead? Several possibilities of the parties' actions are important to consider, all of which are a result of the design and rules of popular consultation. Understanding the design and rules demonstrates how direct democracy might evolve into a tool of political parties and not one of citizens.

First, because only 20 percent of signatures can be shared in proposed referendums on any given round of elections, it is possible that parties will be competing for signatures. This is perhaps why the PAN, in alliance with the PRI, may have wanted to increase the difficulty of collecting signatures for the two left parties regarding PEMEX (Cantú 2014). It was not surprising that the minimum wage referendum by

regard. Otherwise, multiple and conflicting points of view will require the presence of intermediaries—that is, representative elements (Bobbio 1989).

the PAN targeted the poor and working class, the same demographic first sought out by the PRD and MORENA. Mexicans at the lower end of the socio-economic strata would perhaps be more likely to support an increase in the minimum wage than a state-owned PEMEX.

Another possible intention by the PAN and the PRI may have been to increase voter turnout ahead of the midterm elections June 2015. Had the PEMEX referendums been approved by the SCJN, they would have appeared on the midterm election ballots, which, as in the U.S., tend to have a lower voter turnout compared to presidential elections. Their presence would have benefited the PRD and MORENA chances of gaining Congressional representatives (Cantú 2014). By placing their own referendum on the ballot, each party sought to increase their midterm votes and approval rating ahead of the elections. This possibility has found support in the study of U.S. direct democracy. Research has found that the presence of initiatives or referendums increases overall turnout compared to ballots without propositions (Scholzman and Yohai 2008; Smith 2001). In Mexico, turnout might depend partly on which party proposes a referendum: a national poll conducted by Parametría¹⁵ in August 2014 asked citizens what factor would most determine their participation in popular consultations. While 65 percent stated that the issue would be the most important factor, 10 percent said that their participation would be determined by the party that proposes the referendum, and 16 percent said they would consider both. This suggests that voting turnout may partly depend on the party that proposes the consultation.

While it is expected that parties compete for votes to increase their influence in Congress, the actions by the PRI and the PAN as well as the PRD and MORENA demonstrate their attempt to use voters for their own desires, instead of the other way around. The PRD and MORENA had no choice but to gather signatures because the alliance between the PRI and PAN made it impossible to get the 33 percent approval within a chamber of Congress to propose a referendum. On the other hand, the proposed referendums by the PRI and the PAN may have been of strategic importance rather than true care for citizens since their alliance provided them more than the 33 percent support in Congress to undertake a popular consultation.

It is also important to account for the resources needed to place a referendum on the ballot. Doing so requires significant amounts of resources for signature gatherers and for coordination to overcome

15. The poll was conducted between August 22 and 26, 2014. It consisted of 800 respondents. Results contain a margin of error of +/- 3.5 percent. For details, see: <http://www.parametria.com.mx/DetalleEstudioImprimir.php?E=4703>.

collective action problems. This is something citizens lack but political parties have. While there are limitations on money in advertising, once the proposal makes it onto the ballot, resources still play a crucial role when millions of signatures need to be collected. This was a small hurdle for parties who gathered signatures in a matter of weeks. Citizen groups may have had a harder time accomplishing the same task. Although this is only the first modern attempt at national consultations in Mexico, a signature-gathering industry—an industry where gathering signatures is a paid job with commission on the number of signatures (Magleby 1984)—might develop.

These scenarios demonstrate that parties may not necessarily be responding to the demands of citizens but are instead using citizens for their goals. In effect, the first four referendums provide insights into how parties—using the resources and structural organization available to them—can take advantage of the design of popular consultations and impose themselves over the process. While citizens would have been the final decision-makers, it is equally important to consider their role before the vote, because it demonstrates who controls the agenda. In the first four referendums, citizens played a marginal role.

Discussion and Contributions

This article has argued that the design of popular consultations was influenced by divisions among political parties and that the subsequent legislation (its barriers and rules) has affected how popular consultation are used. As such, the direct democracy process is endogenous; we cannot conceive of its use independent of the powers (parties) that created it and their disagreements. Understanding this provides insights into how the process is being used by parties but not by citizens. If we judge the adoption of direct democracy by its promises—to give citizens greater control of government by reducing the gap between citizens and government—they have not been delivered. The experience so far demonstrates, instead of being an additional tool of the masses, popular consultations are beginning to take shape as a tool of political parties.

It might be maintained that the argument in this paper is too much about institutional functionalism and not enough about the politics that shape institutions. In fact, this might be reminiscent of 1990s comparative research which largely examined the design of government institutions (formal and informal) critical in the functioning of a country (executives, legislatures, judiciaries, constitutions, parties, central banks, etc.) (Levitsky and Murillo, 2009). While this judgment is fair, the examination of both causal arrows is important to examine. That is,

we need to understand how the design of popular consultations affects party behavior as well as the effect that parties had on the design of popular consultations. Doing both—as this paper does—increases our understanding of the development of direct democracy.

While past research has largely focused on the effects of direct democracy, this paper maintains that research should have a strong understanding of the conditions that led to the adoption of direct democracy in the first place. Once done, we can begin to examine the design of direct democracy, because its blueprints help explain how direct democracy is used. The absence of any referendums in the June 7, 2015 election ballot in Mexico further suggest that we need to understand their design. Some institutions are born weak and their weakness is exemplified by their absence.

As the direct democracy process develops in Mexico, research should be attentive to any changes in the design as it will determine who can use it and for what purposes. Future research should also inquire about direct democracy at the state level in Mexico. Although this paper only discusses popular consultations at the national level, a majority of Mexican states allow for the realization of popular consultations.¹⁶ The existence of direct democracy, however, does not mean that they are actually used (Zayas 2007). In fact, little research exists on popular consultations at the state level. Like direct democracy at the national level, direct democracy at the state level contains several hurdles, each idiosyncratic to each state. While a complete analysis of direct democracy at the subnational level in Mexico is out of the scope of this paper, future research should study why popular consultations at the state level are so uncommon.

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16. Perhaps the first experience with direct democracy at the state level in Mexico occurred in 1824, when the state of Chiapas held a referendum in which its citizens endorsed the state's incorporation to Mexico. Today, a total of 22 state constitutions allow for the use of direct democracy, although it has rarely been used. Their adoption at the state level occurred during a time of political reforms during the period between 1995 and 2005 (Zayas Ornelas 2004, 2007; Orozco Henríquez y Silva Adaya 2002). The adoption coincides with the alternation of power between the formerly dominant PRI and its competitors, the PRD and PAN. However, the move away from the dominance of the PRI is not a prerequisite for the adoption of MDDs.

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